Texas Laws
Relating to the Department of
Aging and Disability Services

Contains laws as amended through the
80th Texas Legislature, Regular Session, 2007

These selected laws contain references to the Texas Department on Aging (TDOA), the Texas Department of Mental Health and Mental Retardation (TDMHMR), and the Texas Department of Human Services (TDHS). These agencies were abolished, effective September 1, 2004, in accordance with §1.26 of House Bill 2292, 78th Texas Legislature, 2003. On that date the powers, duties, functions, programs, and activities of TDOA, TDMHMR (relating to the provision of mental retardation services), and of TDHS (relating to the provision of long-term care services and community-based support and services, licensing and enforcing regulations applicable to long-term care facilities, and licensing and enforcing regulations applicable to home and community support services agencies), were transferred to the Department of Aging and Disability Services (DADS) in accordance with §1.20 of House Bill 2292. Also, on that date the powers, duties, functions, programs, and activities of TDMHMR relating to the provision of mental health services were transferred to the Department of State Health Services (DSHS) in accordance with §1.19 of House Bill 2292.* In accordance with §1.20 of House Bill 2292, a reference in law to the governing body of TDOA, TDMHMR, or TDHS, means the Health and Human Services Commission or its executive commissioner. Any interpretation of these laws containing references to TDOA, TDMHMR, and TDHS, should take into account the aforementioned provisions in House Bill 2292.

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Published by the
Department of Aging and Disability Services
Austin, Texas
January 2008
HEALTH AND SAFETY CODE

CHAPTER 142. Home and Community Support Services

Section
142.001. Definitions ..................................................................................................................67
142.0011. Scope, Purpose, and Implementation ..............................................................69
142.0012. Controlling Person ...............................................................................................69
142.002. License Required .....................................................................................................70
142.0025. Temporary License .............................................................................................70
142.003. Exemptions From Licensing Requirement ..........................................................70
142.004. License Application .................................................................................................71
142.005. Compliance Record in Other States .....................................................................72
142.006. License Issuance; Term ...........................................................................................72
142.0061. Possession of Sterile Water or Saline .................................................................72
142.0062. Possession of Certain Vaccines or Tuberculin .....................................................73
142.0063. Possession of Certain Dangerous Drugs ...........................................................73
142.0065. Display of License .................................................................................................74
142.007. Notice of Drug Testing Policy ................................................................................74
142.008. Branch Office .........................................................................................................74
142.0085. Alternate Delivery Site License ...........................................................................74
142.009. Surveys; Consumer Complaints .............................................................................75
142.0091. Surveyor Training ...............................................................................................75
142.0092. Consumer Complaint Data ................................................................................76
142.0093. Retaliation Prohibited .........................................................................................76
142.0094. Use of Regulatory Survey Reports and Other Documents ................................77
142.010. Fees .......................................................................................................................77
142.0105. License Renewal .................................................................................................77
142.011. Denial, Suspension, or Revocation of License .......................................................78
142.012. Powers and Duties ...............................................................................................78
142.013. Injunction ...............................................................................................................78
142.014. Civil Penalty ..........................................................................................................79
142.0145. Violation of Law Relating to Advance Directives ..............................................79
142.015. Advisory Council .................................................................................................79
142.016. Memorandum of Understanding Relating to Nursing Services; Guidelines ......79
142.017. Administrative Penalty .........................................................................................80
142.0171. Notice; Request for Hearing ................................................................................81
142.0173. Notice and Payment of Administrative Penalty; Judicial Review; Refund ..........81
142.0174. Use of Administrative Penalty ..........................................................................82
142.0175. Expenses and Costs for Collection of Civil or Administrative Penalty .............82
142.018. Reports of Abuse, Exploitation, or Neglect .........................................................83
142.019. Certain Physician Referrals Prohibited ..............................................................83
142.020. Disposal of Special or Medical Waste .................................................................83
142.021. Administration of Medication ..............................................................................83
142.022. Exemptions for Nursing Students and Medication Aide Trainees .......................83
142.023. Rules for Administration of Medication ...............................................................84
142.024. Home Health Medication Aide Training Programs .............................................84
142.025. Issuance and Renewal of Home Health Medication Aide Permit .......................84
142.026. Fees for Issuance and Renewal of Home Health Medication Aide Permit ..........84
142.027. Violation of Home Health Medication Aide Permits ...........................................84
142.028. Emergency Suspension of Home Health Medication Aide Permits ....................84
142.029. Administration of Medication; Criminal Penalty .................................................85
142.030. Dispensing Dangerous Drugs or Controlled Substances; Criminal Penalty .......85
### CHAPTER 166. ADVANCE DIRECTIVES

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>166.001</td>
<td>Short Title</td>
</tr>
<tr>
<td>166.002</td>
<td>Definitions</td>
</tr>
<tr>
<td>166.003</td>
<td>Witnesses</td>
</tr>
<tr>
<td>166.004</td>
<td>Statement Relating to Advance Directive</td>
</tr>
<tr>
<td>166.005</td>
<td>Enforceability of Advance Directives Executed in Another Jurisdiction</td>
</tr>
<tr>
<td>166.006</td>
<td>Effect of Advance Directive On Insurance Policy and Premiums</td>
</tr>
<tr>
<td>166.007</td>
<td>Execution of Advance Directive May Not Be Required</td>
</tr>
<tr>
<td>166.008</td>
<td>Conflict Between Advance Directives</td>
</tr>
<tr>
<td>166.009</td>
<td>Certain Life-Sustaining Treatment Not Required</td>
</tr>
<tr>
<td>166.010</td>
<td>Applicability of Federal Law Relating to Child Abuse and Neglect</td>
</tr>
<tr>
<td>166.031</td>
<td>Definitions</td>
</tr>
<tr>
<td>166.032</td>
<td>Written Directive By Competent Adult; Notice to Physician</td>
</tr>
<tr>
<td>166.033</td>
<td>Form of Written Directive</td>
</tr>
<tr>
<td>166.034</td>
<td>Issuance of Nonwritten Directive By Competent Adult Qualified Patient</td>
</tr>
<tr>
<td>166.035</td>
<td>Execution of Directive On Behalf of Patient Younger Than 18 Years of Age</td>
</tr>
<tr>
<td>166.036</td>
<td>Notarized Document Not Required; Requirement of Specific Form Prohibited</td>
</tr>
<tr>
<td>166.037</td>
<td>Patient Desire Supersedes Directive</td>
</tr>
<tr>
<td>166.038</td>
<td>Procedure When Declarant is Incompetent or Incapable of Communication</td>
</tr>
<tr>
<td>166.039</td>
<td>Procedure When Person Has Not Executed or Issued a Directive and is Incompetent or Incapable of Communication</td>
</tr>
<tr>
<td>166.040</td>
<td>Patient Certification and Prerequisites for Complying With Directive</td>
</tr>
<tr>
<td>166.041</td>
<td>Duration of Directive</td>
</tr>
<tr>
<td>166.042</td>
<td>Revocation of Directive</td>
</tr>
<tr>
<td>166.043</td>
<td>Reexecution of Directive</td>
</tr>
<tr>
<td>166.044</td>
<td>Limitation of Liability for Withholding or Withdrawing Life-Sustaining Procedures</td>
</tr>
<tr>
<td>166.045</td>
<td>Liability for Failure to Effectuate Directive</td>
</tr>
<tr>
<td>166.046</td>
<td>Procedure if Not Effectuating a Directive or Treatment Decision</td>
</tr>
<tr>
<td>166.047</td>
<td>Honoring Directive Does Not Constitute Offense of Aiding Suicide</td>
</tr>
<tr>
<td>166.048</td>
<td>Criminal Penalty; Prosecution</td>
</tr>
<tr>
<td>166.049</td>
<td>Pregnant Patients</td>
</tr>
<tr>
<td>166.050</td>
<td>Mercy Killing Not Condoned</td>
</tr>
<tr>
<td>166.051</td>
<td>Legal Right or Responsibility Not Affected</td>
</tr>
<tr>
<td>166.052</td>
<td>Statements Explaining Patients Right to Transfer</td>
</tr>
<tr>
<td>166.053</td>
<td>Registry to Assist Transfers</td>
</tr>
<tr>
<td>166.081</td>
<td>Definitions</td>
</tr>
<tr>
<td>166.082</td>
<td>Out-Of-Hospital DNR Order; Directive to Physicians</td>
</tr>
<tr>
<td>166.083</td>
<td>Form of Out-Of-Hospital DNR Order</td>
</tr>
<tr>
<td>166.084</td>
<td>Issuance of Out-Of-Hospital DNR Order By Nonwritten Communication</td>
</tr>
<tr>
<td>166.085</td>
<td>Execution of Out-Of-Hospital DNR Order On Behalf of a Minor</td>
</tr>
<tr>
<td>166.086</td>
<td>Desire of Person Supersedes Out-Of-Hospital DNR Order</td>
</tr>
<tr>
<td>166.087</td>
<td>Procedure When Declarant is Incompetent or Incapable of Communication</td>
</tr>
<tr>
<td>166.088</td>
<td>Procedure When Person Has Not Executed or Issued Out-Of-Hospital DNR Order and is Incompetent or Incapable of Communication</td>
</tr>
<tr>
<td>166.089</td>
<td>Compliance With Out-Of-Hospital DNR Order</td>
</tr>
<tr>
<td>166.090</td>
<td>DNR Identification Device</td>
</tr>
<tr>
<td>166.091</td>
<td>Duration of Out-Of-Hospital DNR Order</td>
</tr>
<tr>
<td>166.092</td>
<td>Revocation of Out-Of-Hospital DNR Order</td>
</tr>
<tr>
<td>166.093</td>
<td>Reexecution of Out-Of-Hospital DNR Order</td>
</tr>
<tr>
<td>166.094</td>
<td>Limitation On Liability for Withholding Cardiopulmonary Resuscitation and Certain Other Life-Sustaining Procedures</td>
</tr>
</tbody>
</table>
Chapter 222. Health Care Facility Survey, Construction, Inspection, and Regulation

Subchapter A: Survey and Construction of Hospitals [not included]

Subchapter B: Limitation on Inspection and Other Regulation of Health Care Facilities

Section
222.021. Purpose.................................................................109
222.022. Definitions .............................................................109
222.023. Limitation on Inspections........................................109
222.024. Certification or Accreditation Instead of Inspection.........................................................109
222.025. Limitation of Other Regulation........................................110
222.0255. Nursing Homes .........................................................110
222.026. Complaint Investigations and Enforcement Authority.......................................................110
222.027. Physician on Survey Team........................................110

Subchapter C: Surveys Of Intermediate Care Facilities for Mentally Retarded

Section
222.041. Definitions ..............................................................110
222.042. Licensing of ICF-MR Beds and Facilities.................................111
222.043. Review of ICF-MR Surveys ..........................................111
222.044. Follow-Up Surveys ......................................................111
222.046. Surveys of ICF-MR Facilities .........................................111
CHAPTER 242. Convalescent and Nursing Homes and Related Institutions

Section
242.001. Scope, Purpose, and Implementation ................................................................. 112
242.002. Definitions ........................................................................................................ 112
242.0021. Controlling Person ...................................................................................... 113
242.003. Exemptions ...................................................................................................... 113
242.004. Simultaneous Care For Pregnant Women and Other Women ......................... 114
242.005. Performance Reports ....................................................................................... 114
242.006. Directory of Licensed Institutions ................................................................. 114
242.007. Consultation and Cooperation ......................................................................... 114
242.008. Employment of Personnel ............................................................................ 114
242.009. Federal Funds ................................................................................................. 114
242.010. Change of Administrators ............................................................................. 114
242.011. Language Requirements Prohibited ............................................................. 114
242.012. Paperwork Reduction Rules .......................................................................... 114
242.013. Prohibition of Remuneration ......................................................................... 115
242.014. Licensed Administrator ................................................................................ 115
242.015. Fees and Penalties ......................................................................................... 115
242.016. Admissibility of Certain Evidence in Civil Actions ........................................ 115
242.017. License Required ........................................................................................... 115
242.018. License or Renewal Application ..................................................................... 116
242.019. Issuance and Renewal of License ..................................................................... 116
242.021. Temporary Change of Ownership License .................................................... 117
242.022. License Fees .................................................................................................. 118
242.023. Licensing Categories ...................................................................................... 118
242.024. Grading ........................................................................................................... 119
242.025. Rules; Minimum Standards .......................................................................... 119
242.026. Notice of Certain Employment Policies .......................................................... 120
242.027. Restraint and Seclusion ................................................................................ 120
242.028. Reasonable Time to Comply ......................................................................... 120
242.029. Early Compliance Review ............................................................................ 120
242.030. Fire Safety Requirements ............................................................................... 120
242.031. Certification of Institutions That Care For Persons With Alzheimers Disease and Related Disorders ................................................................. 121
242.032. False Communication Concerning Certification; Criminal Penalty .................. 121
242.033. Posting ........................................................................................................... 121
242.034. Inspections .................................................................................................... 122
242.035. Unannounced Inspections ............................................................................ 122
242.036. Reporting of Violations ................................................................................ 123
242.037. Disclosure of Unannounced Inspections; Criminal Penalty ......................... 123
242.038. Open Hearing ............................................................................................... 123
242.039. Accreditation Review to Satisfy Inspection or Certification Requirements .... 124
242.040. Licensing Surveys ........................................................................................ 124
242.041. Quality Improvement ..................................................................................... 124
242.042. Notification of Award of Exemplary Damages ............................................. 125
242.043. Drug Testing of Employees ......................................................................... 125
242.044. Denial, Suspension, or Revocation of License ............................................... 126
242.045. Exclusion ...................................................................................................... 126
242.046. Emergency Suspension or Closing Order .................................................... 126
242.047. Injunction ..................................................................................................... 126
242.048. License Requirement; Criminal Penalty ........................................................ 127
242.049. Civil Penalty .................................................................................................. 127
242.050. Administrative Penalty .................................................................................. 128
242.051. Violation of Law Relating to Advance Directives ........................................ 129
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>242.305</td>
<td>Board Officers; Meetings; Quorum; Expenses</td>
</tr>
<tr>
<td>242.306</td>
<td>Application of Open Meetings and Administrative Procedure Act</td>
</tr>
<tr>
<td>242.307</td>
<td>Powers and Duties of The Board</td>
</tr>
<tr>
<td>242.308</td>
<td>Administrative Functions</td>
</tr>
<tr>
<td>242.309</td>
<td>Fees; Funds</td>
</tr>
<tr>
<td>242.310</td>
<td>Practicing Without A License</td>
</tr>
<tr>
<td>242.311</td>
<td>License Application; Qualifications</td>
</tr>
<tr>
<td>242.312</td>
<td>Examination</td>
</tr>
<tr>
<td>242.313</td>
<td>Licenses; Temporary License; Inactive Status</td>
</tr>
<tr>
<td>242.314</td>
<td>Provisional License</td>
</tr>
<tr>
<td>242.315</td>
<td>License Renewal</td>
</tr>
<tr>
<td>242.316</td>
<td>Mandatory Continuing Education</td>
</tr>
<tr>
<td>242.317</td>
<td>Complaint Receipt, Investigation, and Disposition</td>
</tr>
<tr>
<td>242.318</td>
<td>Sanctions</td>
</tr>
<tr>
<td>242.319</td>
<td>Written Reprimand and Continuing Education As Sanctions</td>
</tr>
<tr>
<td>242.320</td>
<td>Administrative Penalty As Sanction</td>
</tr>
<tr>
<td>242.321</td>
<td>Notice and Hearing</td>
</tr>
<tr>
<td>242.322</td>
<td>Informal Proceedings</td>
</tr>
<tr>
<td>242.323</td>
<td>Monitoring of License Holder</td>
</tr>
<tr>
<td>242.324</td>
<td>Civil Penalty</td>
</tr>
<tr>
<td>242.325</td>
<td>Assistance of Attorney General</td>
</tr>
<tr>
<td>242.326</td>
<td>Offense</td>
</tr>
<tr>
<td>242.327</td>
<td>Protection For Refusal to Engage in Certain Conduct</td>
</tr>
<tr>
<td>242.401</td>
<td>Quality of Life</td>
</tr>
<tr>
<td>242.402</td>
<td>Quality of Care</td>
</tr>
<tr>
<td>242.403</td>
<td>Standards For Quality of Life and Quality of Care</td>
</tr>
<tr>
<td>242.404</td>
<td>Policies, Procedures, and Practices For Quality of Care and Quality of Life</td>
</tr>
<tr>
<td>242.501</td>
<td>Residents Rights</td>
</tr>
<tr>
<td>242.502</td>
<td>Rights Cumulative</td>
</tr>
<tr>
<td>242.503</td>
<td>Duties of Institution</td>
</tr>
<tr>
<td>242.504</td>
<td>Information About Residents Rights and Violations</td>
</tr>
<tr>
<td>242.505</td>
<td>Prescription of Psychoactive Medication</td>
</tr>
<tr>
<td>242.551</td>
<td>Complaint Requesting Inspection</td>
</tr>
<tr>
<td>242.552</td>
<td>Disclosure of Substance of Complaint</td>
</tr>
<tr>
<td>242.553</td>
<td>Confidentiality</td>
</tr>
<tr>
<td>242.554</td>
<td>Preliminary Review of Complaint; Inspection</td>
</tr>
<tr>
<td>242.601</td>
<td>Medication Administration</td>
</tr>
<tr>
<td>242.602</td>
<td>Pharmacist Services</td>
</tr>
<tr>
<td>242.603</td>
<td>Storage and Disposal of Medications</td>
</tr>
<tr>
<td>242.604</td>
<td>Reports of Medication Errors and Adverse Reactions</td>
</tr>
<tr>
<td>242.605</td>
<td>Medication Reference Sources</td>
</tr>
<tr>
<td>242.606</td>
<td>Permits to Administer Medication</td>
</tr>
<tr>
<td>242.607</td>
<td>Exemptions For Nursing Students and Medication Aide Trainees</td>
</tr>
<tr>
<td>242.608</td>
<td>Rules For Administration of Medication</td>
</tr>
<tr>
<td>242.609</td>
<td>Training Programs to Administer Medication</td>
</tr>
<tr>
<td>242.610</td>
<td>Issuance and Renewal of Permit to Administer Medication</td>
</tr>
<tr>
<td>242.611</td>
<td>Results of Examination For Issuance of Permit</td>
</tr>
<tr>
<td>242.612</td>
<td>Fees For Issuance and Renewal of Permit to Administer Medication</td>
</tr>
<tr>
<td>242.613</td>
<td>Violation of Permits to Administer Medication</td>
</tr>
<tr>
<td>242.614</td>
<td>Emergency Suspension of Permits to Administer Medication</td>
</tr>
<tr>
<td>242.841</td>
<td>Administration of Medication; Criminal Penalty</td>
</tr>
<tr>
<td>242.842</td>
<td>Criminal and Civil Liability</td>
</tr>
<tr>
<td>242.843</td>
<td>Covert Use of Electronic Monitoring Device; Liability of Department or Institution</td>
</tr>
<tr>
<td>242.844</td>
<td>Required Form on Admission</td>
</tr>
<tr>
<td>242.845</td>
<td>Authorized Electronic Monitoring: Who May Request</td>
</tr>
</tbody>
</table>
CHAPTE R 247. Assisted Living Facilities

Section
247.001. Short Title ................................................................. 177
247.0011. Scope, Purpose, and Implementation ..................................... 177
247.002. Definitions ................................................................. 177
247.0025. Immediate Threat of Harm ............................................. 178
247.003. Application of Other Law .................................................. 178
247.004. Exemptions ................................................................. 178
247.005. Controlling Person ......................................................... 178
247.006. Advisory Committee ..................................................... 179
247.021. License Required ........................................................ 179
247.022. License Application ....................................................... 179
247.023. Issuance and Renewal of License ...................................... 180
247.0231. Compliance Record In Other States ............................... 180
247.024. Fees; Disposition of Revenue ........................................... 180
247.025. Adoption of Rules ....................................................... 180
247.0255. Restraint and Seclusion ............................................... 180
247.026. Standards ................................................................. 180
247.0261. Early Compliance Review ........................................... 181
247.027. Inspections ................................................................. 182
247.0271. Inspection Exit Conference ........................................... 182
247.0272. Inspector Training; Required Examination ..................... 182
247.028. Assistance by Department ............................................. 182
247.029. Facilities for Persons with Alzheimers Disease ............... 183
247.030. Facilities for Supervision of Medication and General Welfare 183
247.031. Municipal Enforcement ............................................... 183
247.032 Accreditation Survey to Satisfy Inspection Requirements ...... 183
247.0321. Feasibility of Registering Small Facilities ...................... 184
247.033. Denial, Suspension, or Revocation of License .................... 184
247.034. Emergency Suspension or Closing Order ....................... 184
247.0341. Investigation of Abuse, Exploitation, or Neglect .......... 185
247.0344. Injunction ............................................................... 185
247.0345. Civil Penalties ........................................................... 185
247.03451. Administrative Penalty .............................................. 186
247.03452. Right to Correct ......................................................... 187
247.03453. Report Recommending Administrative Penalty ............ 187
247.03454. Hearing on Administrative Penalty ............................... 188
247.03455. Notice and Payment of Administrative Penalty; Interest; Refund 189
247.03456. Application of Other Law ........................................... 189
247.03457. Amelioration of Violation ............................................ 189
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>247.0548</td>
<td>Use of Administrative Penalty</td>
<td>190</td>
</tr>
<tr>
<td>247.0459</td>
<td>Violation of Law Relating to Advance Directives</td>
<td>190</td>
</tr>
<tr>
<td>247.046</td>
<td>Cooperation Among Agencies</td>
<td>190</td>
</tr>
<tr>
<td>247.047</td>
<td>Transition</td>
<td>190</td>
</tr>
<tr>
<td>247.048</td>
<td>Regional Training for Agencies and Local Governments</td>
<td>191</td>
</tr>
<tr>
<td>247.049</td>
<td>Use of Regulatory Reports and Documents</td>
<td>191</td>
</tr>
<tr>
<td>247.050</td>
<td>Monitoring of Unlicensed Facilities; Reporting</td>
<td>191</td>
</tr>
<tr>
<td>247.051</td>
<td>Informal Dispute Resolution</td>
<td>192</td>
</tr>
<tr>
<td>247.061</td>
<td>Coordination Between Agencies</td>
<td>192</td>
</tr>
<tr>
<td>247.062</td>
<td>Directory of Assisted Living Facilities; Consumers Guide</td>
<td>192</td>
</tr>
<tr>
<td>247.063</td>
<td>Referrals</td>
<td>192</td>
</tr>
<tr>
<td>247.0631</td>
<td>Access</td>
<td>193</td>
</tr>
<tr>
<td>247.064</td>
<td>Residents Bill of Rights</td>
<td>193</td>
</tr>
<tr>
<td>247.065</td>
<td>Providers Bill of Rights</td>
<td>193</td>
</tr>
<tr>
<td>247.066</td>
<td>Appropriate Placement Determination</td>
<td>194</td>
</tr>
<tr>
<td>247.067</td>
<td>Health Care Professionals</td>
<td>194</td>
</tr>
<tr>
<td>247.068</td>
<td>Retaliation Prohibited</td>
<td>195</td>
</tr>
<tr>
<td>247.069</td>
<td>Consumer Choice for Assisted Living in Community Care Programs</td>
<td>195</td>
</tr>
</tbody>
</table>

**CHAPTER 250. Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>250.001</td>
<td>Definitions</td>
<td>196</td>
</tr>
<tr>
<td>250.002</td>
<td>Information Obtained by Facility, Regulatory Agency, or Private Agency</td>
<td>196</td>
</tr>
<tr>
<td>250.003</td>
<td>Verification of Employability; Discharge</td>
<td>196</td>
</tr>
<tr>
<td>250.004</td>
<td>Criminal History Record of Employees</td>
<td>197</td>
</tr>
<tr>
<td>250.005</td>
<td>Notice and Opportunity to be Heard Concerning Accuracy of Information</td>
<td>197</td>
</tr>
<tr>
<td>250.006</td>
<td>Convictions Barring Employment</td>
<td>197</td>
</tr>
<tr>
<td>250.007</td>
<td>Records Privileged</td>
<td>198</td>
</tr>
<tr>
<td>250.008</td>
<td>Criminal Penalty</td>
<td>198</td>
</tr>
<tr>
<td>250.009</td>
<td>Civil Liability</td>
<td>198</td>
</tr>
</tbody>
</table>

**CHAPTER 252. Intermediate Care Facilities for the Mentally Retarded**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>252.001</td>
<td>Purpose</td>
<td>199</td>
</tr>
<tr>
<td>252.002</td>
<td>Definitions</td>
<td>199</td>
</tr>
<tr>
<td>252.003</td>
<td>Exemptions</td>
<td>199</td>
</tr>
<tr>
<td>252.004</td>
<td>Allocated Federal Money</td>
<td>199</td>
</tr>
<tr>
<td>252.005</td>
<td>Language Requirements Prohibited</td>
<td>199</td>
</tr>
<tr>
<td>252.006</td>
<td>Rights of Residents</td>
<td>200</td>
</tr>
<tr>
<td>252.007</td>
<td>Paperwork Reduction Rules</td>
<td>200</td>
</tr>
<tr>
<td>252.008</td>
<td>Rules Generally</td>
<td>200</td>
</tr>
<tr>
<td>252.0085</td>
<td>Restraint and Seclusion</td>
<td>200</td>
</tr>
<tr>
<td>252.009</td>
<td>Consultation and Coordination</td>
<td>200</td>
</tr>
<tr>
<td>252.010</td>
<td>Change of Administrators; Fee</td>
<td>200</td>
</tr>
<tr>
<td>252.011</td>
<td>Prohibition of Remuneration</td>
<td>200</td>
</tr>
<tr>
<td>252.031</td>
<td>License Required</td>
<td>201</td>
</tr>
<tr>
<td>252.032</td>
<td>License Application</td>
<td>201</td>
</tr>
<tr>
<td>252.033</td>
<td>Issuance and Renewal of License</td>
<td>201</td>
</tr>
<tr>
<td>252.034</td>
<td>License Fees</td>
<td>201</td>
</tr>
<tr>
<td>252.035</td>
<td>Denial, Suspension, or Revocation of License</td>
<td>201</td>
</tr>
<tr>
<td>252.036</td>
<td>Minimum Standards</td>
<td>201</td>
</tr>
<tr>
<td>252.037</td>
<td>Reasonable Time to Comply</td>
<td>202</td>
</tr>
<tr>
<td>Section</td>
<td>Title</td>
<td>Page</td>
</tr>
<tr>
<td>---------</td>
<td>----------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>252.0375</td>
<td>Early Compliance Review</td>
<td>202</td>
</tr>
<tr>
<td>252.038</td>
<td>Fire Safety Requirements</td>
<td>202</td>
</tr>
<tr>
<td>252.039</td>
<td>Posting</td>
<td>202</td>
</tr>
<tr>
<td>252.040</td>
<td>Inspections</td>
<td>203</td>
</tr>
<tr>
<td>252.041</td>
<td>Unannounced Inspections</td>
<td>203</td>
</tr>
<tr>
<td>252.042</td>
<td>Disclosure of Unannounced Inspections; Criminal Penalty</td>
<td>203</td>
</tr>
<tr>
<td>252.043</td>
<td>Licensing Surveys</td>
<td>204</td>
</tr>
<tr>
<td>252.044</td>
<td>Reporting Violations</td>
<td>204</td>
</tr>
<tr>
<td>252.045</td>
<td>Admissibility of Certain Documents or Testimony</td>
<td>204</td>
</tr>
<tr>
<td>252.061</td>
<td>Emergency Suspension or Closing Order</td>
<td>204</td>
</tr>
<tr>
<td>252.062</td>
<td>Injunction</td>
<td>204</td>
</tr>
<tr>
<td>252.063</td>
<td>License Requirements; Criminal Penalty</td>
<td>205</td>
</tr>
<tr>
<td>252.064</td>
<td>Civil Penalty</td>
<td>205</td>
</tr>
<tr>
<td>252.065</td>
<td>Administrative Penalty</td>
<td>205</td>
</tr>
<tr>
<td>252.0651</td>
<td>Application of Other Law</td>
<td>206</td>
</tr>
<tr>
<td>252.066</td>
<td>Notice; Request for Hearing</td>
<td>206</td>
</tr>
<tr>
<td>252.067</td>
<td>Hearing; Order</td>
<td>207</td>
</tr>
<tr>
<td>252.068</td>
<td>Notice and Payment of Administrative Penalty; Judicial Review; Refund</td>
<td>207</td>
</tr>
<tr>
<td>252.069</td>
<td>Penalty Deposited to State Treasury</td>
<td>208</td>
</tr>
<tr>
<td>252.070</td>
<td>Expenses and Costs for Collection of Civil or Administrative Penalty</td>
<td>208</td>
</tr>
<tr>
<td>252.071</td>
<td>Amelioration of Violation</td>
<td>208</td>
</tr>
<tr>
<td>252.072</td>
<td>Amelioration of Violation</td>
<td>209</td>
</tr>
<tr>
<td>252.091</td>
<td>Findings and Purpose</td>
<td>209</td>
</tr>
<tr>
<td>252.092</td>
<td>Appointment by Agreement</td>
<td>210</td>
</tr>
<tr>
<td>252.093</td>
<td>Involuntary Appointment</td>
<td>210</td>
</tr>
<tr>
<td>252.094</td>
<td>Fee; Release of Money</td>
<td>210</td>
</tr>
<tr>
<td>252.095</td>
<td>Emergency Assistance Fee</td>
<td>210</td>
</tr>
<tr>
<td>252.096</td>
<td>Reimbursement</td>
<td>211</td>
</tr>
<tr>
<td>252.097</td>
<td>Notification of Closure</td>
<td>211</td>
</tr>
<tr>
<td>252.098</td>
<td>Criminal Penalty for Failure to Notify</td>
<td>211</td>
</tr>
<tr>
<td>252.099</td>
<td>Cooperation in Facility Closure</td>
<td>211</td>
</tr>
<tr>
<td>252.121</td>
<td>Definition</td>
<td>211</td>
</tr>
<tr>
<td>252.122</td>
<td>Reporting of Abuse and Neglect</td>
<td>211</td>
</tr>
<tr>
<td>252.123</td>
<td>Contents of Report</td>
<td>211</td>
</tr>
<tr>
<td>252.124</td>
<td>Anonymous Reports of Abuse or Neglect</td>
<td>212</td>
</tr>
<tr>
<td>252.125</td>
<td>Investigation and Report of Receiving Agency</td>
<td>212</td>
</tr>
<tr>
<td>252.126</td>
<td>Confidentiality</td>
<td>212</td>
</tr>
<tr>
<td>252.127</td>
<td>Immunity</td>
<td>212</td>
</tr>
<tr>
<td>252.128</td>
<td>Privileged Communications</td>
<td>212</td>
</tr>
<tr>
<td>252.129</td>
<td>Central Registry</td>
<td>212</td>
</tr>
<tr>
<td>252.130</td>
<td>Failure to Report; Criminal Penalty</td>
<td>213</td>
</tr>
<tr>
<td>252.131</td>
<td>Bad Faith, Malicious, or Reckless Reporting; Criminal Penalty</td>
<td>213</td>
</tr>
<tr>
<td>252.132</td>
<td>Suit for Retaliation</td>
<td>213</td>
</tr>
<tr>
<td>252.133</td>
<td>Suit for Retaliation Against Volunteer, Resident, or Family Member or Guardian of Resident</td>
<td>214</td>
</tr>
<tr>
<td>252.134</td>
<td>Reports Relating to Resident Deaths; Statistical Information</td>
<td>214</td>
</tr>
<tr>
<td>252.151</td>
<td>Administration of Medication</td>
<td>214</td>
</tr>
<tr>
<td>252.152</td>
<td>Required Medical Examination</td>
<td>214</td>
</tr>
<tr>
<td>252.181</td>
<td>Definitions</td>
<td>215</td>
</tr>
<tr>
<td>252.182</td>
<td>Respite Care</td>
<td>215</td>
</tr>
<tr>
<td>252.183</td>
<td>Plan of Care</td>
<td>215</td>
</tr>
<tr>
<td>252.184</td>
<td>Notification</td>
<td>215</td>
</tr>
<tr>
<td>252.185</td>
<td>Inspections</td>
<td>215</td>
</tr>
<tr>
<td>252.186</td>
<td>Suspension</td>
<td>215</td>
</tr>
<tr>
<td>252.201</td>
<td>Definition</td>
<td>215</td>
</tr>
<tr>
<td>252.202</td>
<td>Computing Quality Assurance Fee</td>
<td>216</td>
</tr>
</tbody>
</table>
CHAPTER 253. Employee Misconduct Registry

Section
253.001. Definitions ........................................................................................................... 218
253.002. Investigation by Department ....................................................................................... 218
253.003. Determination; Notice ................................................................................................... 218
253.004. Hearing; Order .................................................................................................................. 218
253.005. Notice; Judicial Review ................................................................................................. 219
253.006. Informal Proceedings ...................................................................................................... 219
253.007. Employee Misconduct Registry ....................................................................................... 219
253.75. Recording Reportable Conduct Reported by Department of Protective and
Regulatory Services ................................................................................................................. 219
253.008. Verification of Employability ........................................................................................... 219
253.009. Notification ........................................................................................................................ 220
253.10. Removal from Registry ..................................................................................................... 220

CHAPTER 255. Quality Assurance Early Warning System for Long-Term Care Facilities; Rapid Response Teams

Section
255.001. Definitions ........................................................................................................... 221
255.002. Early Warning System ..................................................................................................... 221
255.003. Quality-of-Care Monitors ................................................................................................ 221
255.004. Rapid Response Teams .................................................................................................... 221
255.005. Report .............................................................................................................................. 222

CHAPTER 313. Consent to Medical Treatment Act

Section
313.001. Short Title .................................................................................................................. 223
313.002. Definitions .................................................................................................................... 223
313.003. Exceptions and Application ............................................................................................. 223
313.004. Consent for Medical Treatment ....................................................................................... 223
313.005. Prerequisites for Consent ............................................................................................... 224
313.006. Liability for Medical Treatment Costs ............................................................................ 224
313.007. Limitation on Liability .................................................................................................... 224

CHAPTER 322. Use of Restraint and Seclusion in Certain Health Care Facilities

Section
322.001 Definitions .................................................................................................................. 225
322.051 Certain Restraints Prohibited ......................................................................................... 225
322.052 Adoption of Restraint and Seclusion Procedures ............................................................... 225
322.053 Notification ...................................................................................................................... 226
322.054 Retaliation Prohibited ...................................................................................................... 226
322.055 Medicaid Waiver Program .............................................................................................. 226
## CHAPTER 323. Emergency Services for Survivors of Sexual Assault

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>323.001</td>
<td>Definitions</td>
</tr>
<tr>
<td>323.002</td>
<td>Plan for Emergency Services</td>
</tr>
<tr>
<td>323.003</td>
<td>Rejection of Plan</td>
</tr>
<tr>
<td>323.004</td>
<td>Minimum Standards for Emergency Services</td>
</tr>
<tr>
<td>323.005</td>
<td>Information Form</td>
</tr>
<tr>
<td>323.006</td>
<td>Inspection</td>
</tr>
</tbody>
</table>

## TITLE 7. MENTAL HEALTH AND MENTAL RETARDATION

### Subtitle A: Texas Department of Mental Health and Mental Retardation

### CHAPTER 531. Provisions Generally Applicable to the Texas Department of Mental Health and Mental Retardation

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>531.001</td>
<td>Purpose; Policy</td>
</tr>
<tr>
<td>531.002</td>
<td>Definition</td>
</tr>
</tbody>
</table>

### CHAPTER 532. Organization of Texas Department of Mental Health and Mental Retardation

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>532.001</td>
<td>Composition of Department</td>
</tr>
<tr>
<td>532.002</td>
<td>Sunset Provision</td>
</tr>
<tr>
<td>532.003</td>
<td>Composition of Board</td>
</tr>
<tr>
<td>532.0035</td>
<td>Board Training</td>
</tr>
<tr>
<td>532.004</td>
<td>Restrictions on Board Appointment and Membership and on Department Employment</td>
</tr>
<tr>
<td>532.005</td>
<td>Terms</td>
</tr>
<tr>
<td>532.006</td>
<td>Chairman</td>
</tr>
<tr>
<td>532.007</td>
<td>Removal of Board Members</td>
</tr>
<tr>
<td>532.008</td>
<td>Repealed</td>
</tr>
<tr>
<td>532.009</td>
<td>Reimbursement for Expenses; Per Diem</td>
</tr>
<tr>
<td>532.010</td>
<td>Board Meetings</td>
</tr>
<tr>
<td>532.011</td>
<td>Commissioner</td>
</tr>
<tr>
<td>532.012</td>
<td>Medical Director</td>
</tr>
<tr>
<td>532.013</td>
<td>Repealed</td>
</tr>
<tr>
<td>532.014</td>
<td>Heads of Departmental Facilities</td>
</tr>
<tr>
<td>532.015</td>
<td>Rules and Policies</td>
</tr>
<tr>
<td>532.016</td>
<td>Personnel</td>
</tr>
<tr>
<td>532.017</td>
<td>Annual Reports</td>
</tr>
<tr>
<td>532.018</td>
<td>Audits</td>
</tr>
<tr>
<td>532.019</td>
<td>Public Interest Information and Complaints</td>
</tr>
<tr>
<td>532.020</td>
<td>Advisory Committees</td>
</tr>
<tr>
<td>532.021</td>
<td>Citizens' Planning Advisory Committee</td>
</tr>
</tbody>
</table>
### CHAPTER 533. Powers and Duties

#### Subchapter A: General Powers and Duties

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>533.0001</td>
<td>Powers and Duties of the Commissioner of Health and Human Services</td>
</tr>
<tr>
<td>533.001</td>
<td>Gifts and Grants</td>
</tr>
<tr>
<td>533.002</td>
<td>Competitive Review Requirement</td>
</tr>
<tr>
<td>533.003</td>
<td>Use of Funds for Volunteer Programs in Local Authorities and Community Centers</td>
</tr>
<tr>
<td>533.004</td>
<td>Liens</td>
</tr>
<tr>
<td>533.005</td>
<td>Easements</td>
</tr>
<tr>
<td>533.006</td>
<td>Reporting of Allegations against Physician</td>
</tr>
<tr>
<td>533.007</td>
<td>Access to Conviction Information; Criminal Penalty for Unlawful Disclosure</td>
</tr>
<tr>
<td>533.0075</td>
<td>Exchange of Employment Records</td>
</tr>
<tr>
<td>533.008</td>
<td>Employment Opportunities for Individuals with Mental Illness and Mental Retardation</td>
</tr>
<tr>
<td>533.009</td>
<td>Exchange of Patient and Client Records</td>
</tr>
<tr>
<td>533.0095</td>
<td>Collection and Maintenance of Information Regarding Persons found Not Guilty by Reason of Insanity</td>
</tr>
<tr>
<td>533.010</td>
<td>Information Relating to Patient's Condition</td>
</tr>
<tr>
<td>533.011</td>
<td>Return of Person with Mental Retardation to State of Residence</td>
</tr>
<tr>
<td>533.012</td>
<td>Cooperation of State Agencies</td>
</tr>
<tr>
<td>533.013</td>
<td>Duplication of Rehabilitation Services</td>
</tr>
<tr>
<td>533.014</td>
<td>Responsibility of Local Mental Health Authorities in Making Treatment Recommendations</td>
</tr>
<tr>
<td>533.015</td>
<td>Unannounced Inspections</td>
</tr>
<tr>
<td>533.016</td>
<td>Certain Procurements of Goods and Services by Service Providers</td>
</tr>
<tr>
<td>533.017</td>
<td>Participation in Department Purchasing Contracts or Group Purchasing Program</td>
</tr>
<tr>
<td>533.018</td>
<td>Special Olympics Texas Account</td>
</tr>
</tbody>
</table>

[Sections 533.019-533.030 reserved for expansion]

#### Subchapter B: Powers and Duties Relating to Provision of Services

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>533.031</td>
<td>Definitions</td>
</tr>
<tr>
<td>533.032</td>
<td>Long-Range Planning</td>
</tr>
<tr>
<td>533.0325</td>
<td>Continuum of Services in Campus Facilities</td>
</tr>
<tr>
<td>533.033</td>
<td>Determination of Required Range of Mental Health Services</td>
</tr>
<tr>
<td>533.034</td>
<td>Authority to Contract for Community-Based Services</td>
</tr>
<tr>
<td>533.0345</td>
<td>State Agency Service Standards</td>
</tr>
<tr>
<td>533.0346</td>
<td>Authority to Transfer Services to Community Centers</td>
</tr>
<tr>
<td>533.035</td>
<td>Local Mental Health and Mental Retardation Authorities</td>
</tr>
<tr>
<td>533.0351</td>
<td>Local Authority Technical Advisory Committee</td>
</tr>
<tr>
<td>533.0352</td>
<td>Local Authority Planning for Local Service Area</td>
</tr>
<tr>
<td>533.03521</td>
<td>Local Network Development Plan Creation and Approval</td>
</tr>
<tr>
<td>533.0354</td>
<td>Disease Management Practices and Jail Diversion Measures of Local Mental Health Authorities</td>
</tr>
<tr>
<td>533.0355</td>
<td>Local Mental Retardation Authority Responsibilities</td>
</tr>
<tr>
<td>533.0356</td>
<td>Local Behavioral Health Authorities</td>
</tr>
<tr>
<td>533.0357</td>
<td>Best Practices Clearinghouse for Local Mental Health Authorities</td>
</tr>
<tr>
<td>533.0358</td>
<td>Local Mental Health Authority’s Provision of Services as Provider of Last Resort</td>
</tr>
<tr>
<td>533.0359</td>
<td>Rulemaking for Local Mental Health Authorities</td>
</tr>
<tr>
<td>533.036</td>
<td>Report on Application for Services</td>
</tr>
<tr>
<td>533.037</td>
<td>Service Programs and Sheltered Workshops</td>
</tr>
<tr>
<td>533.038</td>
<td>Facilities and Services for Clients with Mental Retardation</td>
</tr>
<tr>
<td>533.039</td>
<td>Client Services Ombudsman</td>
</tr>
</tbody>
</table>

- xxiii -
533.040 Services for Children and Youth .......................................................................................... 253
533.041 Services for Emotionally Disturbed Children and Youth ......................................................254
533.0415 Memorandum of Understanding on Interagency Training ......................................................254
533.042 Annual Evaluation of Elderly Residents ..................................................................................255
533.043 Proposals for Geriatric, Extended, and Transitional Care ........................................................255
533.044 Memorandum of Understanding on Assessment Tools .............................................................256
533.045 Use of Certain Drugs for Certain Patients ..............................................................................256
533.046 Federal Funding for Mental Health Services for Children and Families .....................................256
533.047 Managed Care Organizations: Medicaid Program .....................................................................256
533.048 Guardianship Advisory Committee .........................................................................................256
533.049 Privatization of State School ....................................................................................................257
533.050 Privatization of State Mental Hospital ......................................................................................257

[Sections 533.051-533.060 reserved for expansion]

Section
533.061 Repealed ................................................................................................................................258
533.062 Plan on Long-Term Care for Persons with Mental Retardation ..............................................258
533.063 Review of ICF-MR Rules ........................................................................................................259
533.064 Repealed ................................................................................................................................259
533.065 ICF-MR Application Consolidation List ..................................................................................259
533.066 Information Relating to ICF-MR Program ............................................................................259

[Sections 533.067-533.080 reserved for expansion]

Subchapter D: Powers and Duties Relating to Department Facilities

Section
533.081 Development of Facility Budgets ............................................................................................259
533.082 Determination of Savings in Facilities ....................................................................................259
533.083 Criteria for Expansion, Closure, or Consolidation of Facility ..................................................259
533.084 Management of Surplus Real Property ..................................................................................260
533.0844 Mental Health Community Services Account .......................................................................260
533.0846 Mental Retardation Community Services Account ...............................................................260
533.085 Facilities for Inmate and Parolee Care .....................................................................................260
533.086 Use of Department Facilities by Substance Abusers .................................................................261
533.087 Lease of Real Property .............................................................................................................261

[Sections 533.088-533.100 reserved for expansion]

Subchapter E: Jail Diversion Program [not included]

Chapter 534. Community Services

Subchapter A: Community Centers

Section
534.001 Establishment ............................................................................................................................262
534.0015 Purpose and Policy ..................................................................................................................262
534.002 Board of Trustees for Center Established by One Local Agency ..............................................262
534.003 Board of Trustees for Center Established by At Least Two Local Agencies ..............................263
534.004 Procedures Relating to Board of Trustees Membership ..........................................................263
Subchapter B: Community Based Services

Section
534.051 Repealed ................................................................. 273
534.052 Rules and Standards .................................................. 273
534.053 Required Community-Based Services ........................ 273
534.0535 Joint Discharge Planning ......................................... 273
534.054 Designation of Provider ........................................... 274
534.055 Contracts for Certain Community Services ............... 274
534.056 Coordination of Activities ........................................ 275
Subchapter C: Health Maintenance Organization

Section
534.101 Health Maintenance Organization Certificate of Authority...................................................279
534.102 Laws and Rules......................................................................................................................280
534.103 Application of Laws and Rules...........................................................................................280
534.104 Application of Specific Laws ...............................................................................................280
534.105 Consideration of Bids ...........................................................................................................280
534.106 Conditions for Certain Contracts ...........................................................................................280

CHAPTER 535. Support Services

Subchapter A: Assistance for Persons with Mental Disabilities

Section
535.001 Definitions ............................................................................................................................281
535.002 Adoption of Rules and Implementation of Program ............................................................281
535.003 Eligibility ...............................................................................................................................281
535.004 Provision of Assistance and Support Services .................................................................282
535.005 Support Services for Certain Clients ...................................................................................282
535.006 Limitation of Duty .................................................................................................................282
535.007 Payment of Assistance .........................................................................................................282
535.008 Selection of Programs or Providers .......................................................................................283
535.009 Copayment System ..............................................................................................................283
535.010 Charge .................................................................................................................................283
535.011 Client Responsibility for Payment .........................................................................................283
535.012 Review of Client's Needs .......................................................................................................283
535.013 Notification of Change in Circumstances ..........................................................................283
535.014 Criminal Penalty .................................................................................................................283

[Sections 535.015-535.020 reserved for expansion]

[Chapters 536-550 reserved for expansion]
# SUBTITLE B. STATE FACILITIES

## CHAPTER 551. General Provisions

### Subchapter A: General Powers and Duties Relating to State Facilities

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>551.001</td>
<td>Definitions</td>
<td>285</td>
</tr>
<tr>
<td>551.002</td>
<td>Prohibition of Interest</td>
<td>285</td>
</tr>
<tr>
<td>551.003</td>
<td>Deposit of Patient or Client Funds</td>
<td>285</td>
</tr>
<tr>
<td>551.004</td>
<td>Benefit Fund</td>
<td>285</td>
</tr>
<tr>
<td>551.005</td>
<td>Disbursement of Patient Funds</td>
<td>285</td>
</tr>
<tr>
<td>551.006</td>
<td>Facility Standards by Department of Health</td>
<td>285</td>
</tr>
<tr>
<td>551.007</td>
<td>Building and Improvement Program</td>
<td>286</td>
</tr>
<tr>
<td>551.008</td>
<td>Transfer of Facilities</td>
<td>286</td>
</tr>
</tbody>
</table>

[Sections 551.009-551.020 reserved for expansion]

### Subchapter B: Provisions Applicable to Facility Superintendent and Business Manager

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>551.021</td>
<td>Repealed</td>
<td>286</td>
</tr>
<tr>
<td>551.022</td>
<td>Powers and Duties of Superintendents</td>
<td>286</td>
</tr>
<tr>
<td>551.023</td>
<td>Repealed</td>
<td>287</td>
</tr>
<tr>
<td>551.024</td>
<td>Superintendent's Duty to Admit Commissioner and Board Members</td>
<td>287</td>
</tr>
<tr>
<td>551.025</td>
<td>Duty to Report Missing Patient or Client</td>
<td>287</td>
</tr>
<tr>
<td>551.026</td>
<td>Business Manager</td>
<td>287</td>
</tr>
</tbody>
</table>

[Sections 551.027-551.040 reserved for expansion]

### Subchapter C: Powers and Duties Relating to Patient Care

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>551.041</td>
<td>Medical and Dental Treatment</td>
<td>287</td>
</tr>
<tr>
<td>551.042</td>
<td>Outpatient Clinics</td>
<td>287</td>
</tr>
<tr>
<td>551.043</td>
<td>Mental Hygiene Clinic Service</td>
<td>288</td>
</tr>
<tr>
<td>551.044</td>
<td>Occupational Therapy Programs</td>
<td>288</td>
</tr>
</tbody>
</table>

## CHAPTER 553. State Schools

### Subchapter A: General Provisions

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>553.001</td>
<td>Epilepsy</td>
<td>289</td>
</tr>
</tbody>
</table>

[Sections 553.002-553.020 reserved for expansion]

### Subchapter B: State Schools

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>553.021</td>
<td>Repealed</td>
<td>289</td>
</tr>
<tr>
<td>553.022</td>
<td>San Antonio State School</td>
<td>289</td>
</tr>
</tbody>
</table>
SUBTITLE C. TEXAS MENTAL HEALTH CODE

CHAPTER 574. Court-Ordered Mental Health Services

[Sections 574.001 through 574.082 not included]

Section
574.083. Return to Facility Under Certificate of Facility Administrator or Court Order .......................290

[Sections 574.084 through 574.202 not included]

CHAPTER 575. Admission and Transfer Procedures for Inpatient Services

Subchapter B: Transfer Procedures

Section
575.012 Transfer of Person with Mental Retardation to State Hospital ..................................................291
575.013 Transfer of Person with Mental Retardation to State School.....................................................291

SUBTITLE D. PERSONS WITH MENTAL RETARDATION ACT

CHAPTER 591. General Provisions

Subchapter A: General Provisions

Section
591.001 Short Title .................................................................................................................................292
591.002 Purpose .....................................................................................................................................292
591.003 Definitions .................................................................................................................................292
591.004 Rules .........................................................................................................................................293
591.005 Least Restrictive Alternative .....................................................................................................293
591.006 Consent ......................................................................................................................................293

[Sections 591.007-591.010 reserved for expansion]

Subchapter B: Duties of Department

Section
591.011 Department Responsibilities ..................................................................................................293
591.012 Cooperation with Other Agencies ............................................................................................294
591.013 Long-Range Plan .......................................................................................................................294

[Sections 591.014-591.020 reserved for expansion]

Subchapter C: Penalties and Remedies

Section
591.021 Criminal Penalty .....................................................................................................................295
591.022 Civil Penalty .............................................................................................................................295
591.023 Injunctive Relief; Civil Penalty .................................................................................................295
591.024 Civil Action Against Department Employee ...........................................................................295
591.025 Liability .....................................................................................................................................296
CHAPTER 592. Rights of Persons with Mental Retardation

Subchapter A: General Provisions

Section
592.001 Purpose................................................................................................................ 297
592.002 Rules ....................................................................................................................... 297

[Sections 592.003-592.010 reserved for expansion]

Subchapter B: Basic Bill of Rights

Section
592.011 Rights Guaranteed .................................................................................................. 297
592.012 Protection from Exploitation and Abuse ................................................................. 297
592.013 Least Restrictive Living Environment ...................................................................... 297
592.014 Education ................................................................................................................ 297
592.015 Employment ............................................................................................................. 297
592.016 Housing .................................................................................................................... 297
592.017 Treatment and Services .......................................................................................... 298
592.018 Determination of Mental Retardation ..................................................................... 298
592.019 Administrative Hearing ........................................................................................... 298
592.020 Independent Determination of Mental Retardation .................................................. 298
592.021 Additional Rights .................................................................................................... 298

[Sections 592.022-592.030 reserved for expansion]

Subchapter C: Rights of Clients

Section
592.031 Rights in General .................................................................................................... 298
592.032 Least Restrictive Alternative .................................................................................... 298
592.033 Individualized Plan .................................................................................................. 298
592.034 Review and Reevaluation ....................................................................................... 298
592.035 Participation in Planning ......................................................................................... 299
592.036 Withdrawal from Voluntary Services .................................................................... 299
592.037 Freedom from Mistreatment ................................................................................... 299
592.038 Freedom from Unnecessary Medication ................................................................. 299
592.039 Grievances .............................................................................................................. 299
592.040 Information about Rights ....................................................................................... 299

[Sections 592.041-592.050 reserved for expansion]

Subchapter D: Rights of Residents

Section
592.051 General Rights of Residents .................................................................................. 299
592.052 Medical and Dental Care and Treatment ............................................................... 300
592.053 Standards of Care .................................................................................................. 300
592.054 Duties of Superintendent or Director .................................................................... 300
592.055 Unusual or Hazardous Treatment ......................................................................... 300
CHAPTER 593. Admission and Commitment to Mental Retardation Services

Subchapter A: General Provisions

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>593.001</td>
<td>Admission</td>
<td>301</td>
</tr>
<tr>
<td>593.002</td>
<td>Consent Required</td>
<td>301</td>
</tr>
<tr>
<td>593.003</td>
<td>Requirement of Determination of Mental Retardation</td>
<td>301</td>
</tr>
<tr>
<td>593.004</td>
<td>Application for Determination of Mental Retardation</td>
<td>301</td>
</tr>
<tr>
<td>593.005</td>
<td>Determination of Mental Retardation</td>
<td>301</td>
</tr>
<tr>
<td>593.006</td>
<td>Report</td>
<td>301</td>
</tr>
<tr>
<td>593.007</td>
<td>Notification of Certain Rights</td>
<td>302</td>
</tr>
<tr>
<td>593.008</td>
<td>Administrative Hearing</td>
<td>302</td>
</tr>
<tr>
<td>593.009</td>
<td>Hearing Report; Final Decision</td>
<td>302</td>
</tr>
<tr>
<td>593.010</td>
<td>Appeal</td>
<td>302</td>
</tr>
<tr>
<td>593.011</td>
<td>Fees for Services</td>
<td>302</td>
</tr>
<tr>
<td>593.012</td>
<td>Absent Without Authority</td>
<td>302</td>
</tr>
<tr>
<td>593.013</td>
<td>Requirement of Interdisciplinary Team Recommendations</td>
<td>302</td>
</tr>
</tbody>
</table>

[Sections 593.014-593.020 reserved for expansion]

Subchapter B: Application and Admission to Voluntary Mental Retardation Services

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>593.021</td>
<td>Application for Voluntary Services</td>
<td>303</td>
</tr>
<tr>
<td>593.022</td>
<td>Admission to Voluntary Mental Retardation Services</td>
<td>303</td>
</tr>
<tr>
<td>593.023</td>
<td>Rules Relating to Planning of Services or Treatment</td>
<td>303</td>
</tr>
<tr>
<td>593.024</td>
<td>Application for Voluntary Residential Care Services</td>
<td>303</td>
</tr>
<tr>
<td>593.025</td>
<td>Placement Preference</td>
<td>304</td>
</tr>
<tr>
<td>593.026</td>
<td>Regular Voluntary Admission</td>
<td>304</td>
</tr>
<tr>
<td>593.027</td>
<td>Emergency Admission</td>
<td>304</td>
</tr>
<tr>
<td>593.028</td>
<td>Respite Care</td>
<td>304</td>
</tr>
<tr>
<td>593.029</td>
<td>Treatment of Minor Who Reaches Majority</td>
<td>304</td>
</tr>
<tr>
<td>593.030</td>
<td>Withdrawal from Services</td>
<td>305</td>
</tr>
</tbody>
</table>

[Sections 593.031-593.040 reserved for expansion]

Subchapter C: Commitment to Residential Care Facility

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>593.041</td>
<td>Application for Placement; Jurisdiction</td>
<td>305</td>
</tr>
<tr>
<td>593.042</td>
<td>Form of Application</td>
<td>305</td>
</tr>
<tr>
<td>593.043</td>
<td>Representation by Counsel; Appointment of Attorney</td>
<td>305</td>
</tr>
<tr>
<td>593.044</td>
<td>Order for Protective Custody</td>
<td>306</td>
</tr>
<tr>
<td>593.045</td>
<td>Detention in Protective Custody</td>
<td>306</td>
</tr>
<tr>
<td>593.046</td>
<td>Release from Protective Custody</td>
<td>306</td>
</tr>
<tr>
<td>593.047</td>
<td>Setting on Application</td>
<td>306</td>
</tr>
<tr>
<td>593.048</td>
<td>Hearing Notice</td>
<td>306</td>
</tr>
<tr>
<td>593.049</td>
<td>Hearing Before Jury; Procedure</td>
<td>306</td>
</tr>
<tr>
<td>593.050</td>
<td>Conduct of Hearing</td>
<td>307</td>
</tr>
<tr>
<td>593.051</td>
<td>Dismissal After Hearing</td>
<td>307</td>
</tr>
<tr>
<td>593.052</td>
<td>Order for Commitment</td>
<td>307</td>
</tr>
<tr>
<td>593.053</td>
<td>Decision</td>
<td>307</td>
</tr>
<tr>
<td>593.054</td>
<td>Not a Judgment of Incompetence</td>
<td>307</td>
</tr>
<tr>
<td>593.055</td>
<td>Designation of Facility</td>
<td>307</td>
</tr>
</tbody>
</table>
Table of Contents – Health and Safety Code

593.056  Appeal.............................................................307

[Sections 593.057-593.070 reserved for expansion]

Subchapter D: Fees

<table>
<thead>
<tr>
<th>Section</th>
<th>Section Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>593.071</td>
<td>Application of Subchapter</td>
<td>308</td>
</tr>
<tr>
<td>593.072</td>
<td>Inability to Pay</td>
<td>308</td>
</tr>
<tr>
<td>593.073</td>
<td>Determination of Residential Costs</td>
<td>308</td>
</tr>
<tr>
<td>593.074</td>
<td>Maximum Fees</td>
<td>308</td>
</tr>
<tr>
<td>593.075</td>
<td>Sliding Fee Schedule</td>
<td>308</td>
</tr>
<tr>
<td>593.076</td>
<td>Fee Schedule for Divorced Parents</td>
<td>308</td>
</tr>
<tr>
<td>593.077</td>
<td>Child Support Payments for Benefit of Resident</td>
<td>308</td>
</tr>
<tr>
<td>593.078</td>
<td>Payment for Adult Residents</td>
<td>309</td>
</tr>
<tr>
<td>593.079</td>
<td>Previous Fee Agreements</td>
<td>309</td>
</tr>
<tr>
<td>593.080</td>
<td>State Claims for Unpaid Fees</td>
<td>309</td>
</tr>
<tr>
<td>593.081</td>
<td>Trust Exemption</td>
<td>309</td>
</tr>
</tbody>
</table>

[Sections 593.082-593.090 reserved for expansion]

Subchapter E: Admission and Commitment Under Prior Law

<table>
<thead>
<tr>
<th>Section</th>
<th>Section Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>593.091</td>
<td>Admission and Commitment</td>
<td>310</td>
</tr>
<tr>
<td>593.092</td>
<td>Discharge of Person Voluntarily Admitted to Residential Care Facility</td>
<td>310</td>
</tr>
<tr>
<td>593.093</td>
<td>Reimbursement to County</td>
<td>310</td>
</tr>
</tbody>
</table>

CHAPTER 594. Transfer or Discharge

Subchapter A: General Provisions

<table>
<thead>
<tr>
<th>Section</th>
<th>Section Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>594.001</td>
<td>Applicability of Chapter</td>
<td>311</td>
</tr>
<tr>
<td>594.002</td>
<td>Leave; Furlough</td>
<td>311</td>
</tr>
<tr>
<td>594.003</td>
<td>Habeas Corpus</td>
<td>311</td>
</tr>
</tbody>
</table>

[Sections 594.004-594.010 reserved for expansion]

Subchapter B: Transfer or Discharge

<table>
<thead>
<tr>
<th>Section</th>
<th>Section Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>594.011</td>
<td>Service Provider</td>
<td>311</td>
</tr>
<tr>
<td>594.012</td>
<td>Request by Client, Parent, or Guardian</td>
<td>311</td>
</tr>
<tr>
<td>594.013</td>
<td>Notice of Transfer or Discharge; Approval</td>
<td>311</td>
</tr>
<tr>
<td>594.014</td>
<td>Right to Administrative Hearing</td>
<td>311</td>
</tr>
<tr>
<td>594.015</td>
<td>Administrative Hearing</td>
<td>311</td>
</tr>
<tr>
<td>594.016</td>
<td>Decision</td>
<td>312</td>
</tr>
<tr>
<td>594.017</td>
<td>Appeal</td>
<td>312</td>
</tr>
<tr>
<td>594.018</td>
<td>Notice to Committing Court</td>
<td>312</td>
</tr>
<tr>
<td>594.019</td>
<td>Alternative Services</td>
<td>312</td>
</tr>
</tbody>
</table>

[Sections 594.020-594.030 reserved for expansion]
### Subchapter C: Transfer to State Mental Hospital

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>594.031</td>
<td>Transfer of Voluntary Resident</td>
</tr>
<tr>
<td>594.032</td>
<td>Transfer of Court-Committed Resident</td>
</tr>
<tr>
<td>594.033</td>
<td>Evaluation; Court Order</td>
</tr>
<tr>
<td>594.034</td>
<td>Request for Transfer Order</td>
</tr>
<tr>
<td>594.035</td>
<td>Hearing Date</td>
</tr>
<tr>
<td>594.036</td>
<td>Notice</td>
</tr>
<tr>
<td>594.037</td>
<td>Hearing Location</td>
</tr>
<tr>
<td>594.038</td>
<td>Hearing Before Jury</td>
</tr>
<tr>
<td>594.039</td>
<td>Resident Present at Hearing</td>
</tr>
<tr>
<td>594.040</td>
<td>Open Hearing</td>
</tr>
<tr>
<td>594.041</td>
<td>Medical Evidence</td>
</tr>
<tr>
<td>594.042</td>
<td>Hearing Determination</td>
</tr>
<tr>
<td>594.043</td>
<td>Discharge of Resident</td>
</tr>
<tr>
<td>594.044</td>
<td>Transfer to Residential Care Facility</td>
</tr>
<tr>
<td>594.045</td>
<td>Return of Court-Ordered Transfer Resident</td>
</tr>
</tbody>
</table>

### CHAPTER 595. Records

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>595.001</td>
<td>Confidentiality of Records</td>
</tr>
<tr>
<td>595.002</td>
<td>Rules</td>
</tr>
<tr>
<td>595.003</td>
<td>Consent to Disclosure</td>
</tr>
<tr>
<td>595.004</td>
<td>Right to Personal Record</td>
</tr>
<tr>
<td>595.005</td>
<td>Exceptions</td>
</tr>
<tr>
<td>595.0055</td>
<td>Disclosure of Name and Birth and Death Dates for Certain Purposes</td>
</tr>
<tr>
<td>595.006</td>
<td>Use of Record in Criminal Proceedings</td>
</tr>
<tr>
<td>595.007</td>
<td>Confidentiality of Past Services</td>
</tr>
<tr>
<td>595.008</td>
<td>Exchange of Records</td>
</tr>
<tr>
<td>595.009</td>
<td>Receipt of Information by Persons Other Than Client or Patient</td>
</tr>
<tr>
<td>595.010</td>
<td>Disclosure of Physical or Mental Condition</td>
</tr>
</tbody>
</table>

### CHAPTER 597. Capacity of Clients to Consent to Treatment

#### Subchapter A: General Provisions

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>597.001</td>
<td>Definitions</td>
</tr>
<tr>
<td>597.002</td>
<td>Rules</td>
</tr>
<tr>
<td>597.003</td>
<td>Exceptions</td>
</tr>
</tbody>
</table>

[Sections 597.004-597.020 reserved for expansion]

#### Subchapter B: Assessment of Client's Capacity; Incapacitated Clients Without Guardians

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>597.021</td>
<td>ICF-MR Assessment of Client's Capacity to Consent to Treatment</td>
</tr>
</tbody>
</table>

[Sections 597.022-597.040 reserved for expansion]

#### Subchapter C: Surrogate Consent for ICF-MR Clients

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>597.041</td>
<td>Surrogate Decision-Makers</td>
</tr>
<tr>
<td>597.042</td>
<td>Surrogate Consent Committee Established; Departmental Support</td>
</tr>
</tbody>
</table>
597.043 Committee Membership .................................................................................................. 318
597.044 Application for Treatment Decision .................................................................................. 319
597.045 Notice of Review of Application for Treatment Decision ................................................. 319
597.046 Preview of Application ........................................................................................................ 319
597.047 Confidential Information .................................................................................................. 319
597.048 Review of Application ........................................................................................................ 320
597.049 Determination of Best Interest .......................................................................................... 320
597.050 Notice of Determination ..................................................................................................... 320
597.051 Effect of Committee's Determination ................................................................................ 320
597.052 Scope of Consent ................................................................................................................ 321
597.053 Appeals ............................................................................................................................... 321
597.055 Repealed ............................................................................................................................. 322

SUBTITLE E. SPECIAL PROVISIONS RELATING TO MENTAL ILLNESS AND MENTAL RETARDATION

CHAPTER 611. Mental Health Records

Section
611.001 Definitions ........................................................................................................................... 322
611.002 Confidentiality of Information and Prohibition Against Disclosure ....................................... 322
611.003 Persons Who May Claim Privilege of Confidentiality ............................................................. 322
611.004 Authorized Disclosure of Confidential Information Other Than in a Judicial or Administrative Proceeding .................................................................................................................... 322
611.0045 Right to Mental Health Record ........................................................................................... 323
611.005 Legal Remedies for Improper Disclosure or Failure to Disclose ........................................... 323
611.006 Authorized Disclosure of Confidential Information in Judicial or Administrative Proceeding .......................................................................................................................... 324
611.007 Revocation of Consent ......................................................................................................... 324
611.008 Request by Patient ................................................................................................................ 324

CHAPTER 612. Interstate Compact on Mental Health

Section
612.001 Execution of Interstate Compact .......................................................................................... 325
612.002 Compact Administrator ........................................................................................................ 328
612.003 Repealed ............................................................................................................................... 328
612.004 General Powers and Duties of Administrator ...................................................................... 328
612.005 Supplementary Agreements .................................................................................................. 328
612.006 Financial Arrangements ......................................................................................................... 328
612.007 Requirements Affecting Transfers of Certain Patients .......................................................... 328

CHAPTER 613. Kidney Donation by Ward with Mental Retardation

Section
613.001 Definition ............................................................................................................................. 329
613.002 Court Order Authorizing Kidney Donation .......................................................................... 329
613.003 Petition for Court Order ....................................................................................................... 329
613.004 Court Hearing ....................................................................................................................... 329
613.005 Interview and Evaluation Order by Court ............................................................................. 329
CHAPTER 614. Texas Correctional Office on Offenders with Medical or Mental Impairments

Section
614.001 Definitions .............................................................................................................................330
614.002 Composition of Committee; Duties ..........................................................................................330
614.003 Texas Correctional Office on Offenders with Medical or Mental Impairments; Director .........332
614.0031 Training Program ..................................................................................................................332
614.0032 Special Duties Related to Medically Recommended Supervision; Determinations Regarding Competency or Fitness to Proceed ........................................................................................332
614.004 Terms .....................................................................................................................................333
614.005 Officers; Meetings ..................................................................................................................333
614.007 Powers and Duties ................................................................................................................333
614.008 Community-Based Diversion Program for Offenders with Medical or Mental Impairments ....334
614.009 Biennial Report .......................................................................................................................334
614.010 Repealed..................................................................................................................................334
614.0101 Public Access .........................................................................................................................334
614.0102 Complaints ............................................................................................................................334
614.011 Repealed..................................................................................................................................334
614.012 Repealed..................................................................................................................................334
614.013 Continuity of Care for Offenders with Mental Impairments .....................................................335
614.014 Continuity of Care for Elderly Offenders ................................................................................335
614.015 Continuity of Care for Physically Disabled, Terminally Ill, or Significantly Ill Offenders .......335
614.016 Continuity of Care for Certain Offenders by Law Enforcement and Jails .................................336
614.017 Exchange of Information ........................................................................................................336
614.018 Expired ....................................................................................................................................337
614.019 Programs for Juveniles ............................................................................................................337
614.020 Youth Assertive Community Treatment Program ....................................................................337

CHAPTER 615. Miscellaneous Provisions

Section
615.001 County Responsibility ..............................................................................................................339
615.002 Access to Mental Health Records by Protection and Advocacy System ..............................339
HEALTH & SAFETY CODE

CHAPTER 142. HOME AND COMMUNITY SUPPORT SERVICES

SUBCHAPTER A. HOME AND COMMUNITY SUPPORT SERVICES LICENSE

DEFINITIONS

Sec. 142.001. In this chapter:

(1) "Administrative support site" means a facility or site where a home and community support services agency performs administrative and other support functions but does not provide direct home health, hospice, or personal assistance services.

(2) "Alternate delivery site" means a facility or site, including a residential unit or an inpatient unit:
   (A) that is owned or operated by a hospice;
   (B) that is not the hospice's principal place of business;
   (C) that is located in the geographical area served by the hospice; and
   (D) from which the hospice provides hospice services.

(3) "Bereavement" means the process by which a survivor of a deceased person mourns and experiences grief.

(4) "Bereavement services" means support services offered to a family during bereavement.

(5) "Branch office" means a facility or site in the geographical area served by a home and community support agency where home health or personal assistance services are delivered or active client records are maintained.

(6) "Certified agency" means a home and community support services agency, or a portion of the agency, that:
   (A) provides a home health service; and
   (B) is certified by an official of the Department of Health and Human Services as in compliance with conditions of participation in Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.).

(7) "Certified home health services" means home health services that are provided by a certified agency.

(8) "Chief financial officer" means an individual who is responsible for supervising and managing all financial activities for a home and community support services agency.

(9) "Controlling person" means a person who controls a home and community support services agency or other person as described by Section 142.0012.

(10) "Council" means the Home and Community Support Services Advisory Council.

(11) "Counselor" means an individual qualified under Medicare standards to provide counseling services, including bereavement, dietary, spiritual, and other counseling services, to both the client and the family.

(12) "Home and community support services agency" means a person who provides home health, hospice, or personal assistance services for pay or other consideration in a client's residence, an independent living environment, or another appropriate location.

(13) "Home health service" means the provision of one or more of the following health services required by an individual in a residence or independent living environment:
   (A) nursing, including blood pressure monitoring and diabetes treatment;
   (B) physical, occupational, speech, or respiratory therapy;
   (C) medical social service;
   (D) intravenous therapy;
   (E) dialysis;
   (F) service provided by unlicensed personnel under the delegation or supervision of a licensed health professional;
   (G) the furnishing of medical equipment and supplies, excluding drugs and medicines;
   or
   (H) nutritional counseling.

(14) "Hospice" means a person licensed under this chapter to provide hospice services, including a person who owns or operates a residential unit or an inpatient unit.
(15) "Hospice services" means services, including services provided by unlicensed personnel under the delegation of a registered nurse or physical therapist, provided to a client or a client's family as part of a coordinated program consistent with the standards and rules adopted under this chapter. These services include palliative care for terminally ill clients and support services for clients and their families that:

(A) are available 24 hours a day, seven days a week, during the last stages of illness, during death, and during bereavement;

(B) are provided by a medically directed interdisciplinary team; and

(C) may be provided in a home, nursing home, residential unit, or inpatient unit according to need. These services do not include inpatient care normally provided in a licensed hospital to a terminally ill person who has not elected to be a hospice client.

(16) "Inpatient unit" means a facility that provides a continuum of medical or nursing care and other hospice services to clients admitted into the unit and that is in compliance with:

(A) the conditions of participation for inpatient units adopted under Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.); and

(B) standards adopted under this chapter.

(17) "Independent living environment" means:

(A) a client's individual residence, which may include a group home or foster home; or

(B) other settings where a client participates in activities, including school, work, or church.

(18) "Interdisciplinary team" means a group of individuals who work together in a coordinated manner to provide hospice services and must include a physician, registered nurse, social worker, and counselor.

(19) "Investigation" means an inspection or survey conducted by a representative of the department to determine if a licensee is in compliance with this chapter.

(20) "Palliative care" means intervention services that focus primarily on the reduction or abatement of physical, psychosocial, and spiritual symptoms of a terminal illness.

(21) "Person" means an individual, corporation, or association.

(22) "Personal assistance service" means routine ongoing care or services required by an individual in a residence or independent living environment that enable the individual to engage in the activities of daily living or to perform the physical functions required for independent living, including respite services. The term includes:

(A) personal care;

(B) health-related services performed under circumstances that are defined as not constituting the practice of professional nursing by the Texas Board of Nursing through a memorandum of understanding with the department in accordance with Section 142.016; and

(C) health-related tasks provided by unlicensed personnel under the delegation of a registered nurse or that a registered nurse determines do not require delegation.

(22-a) "Personal care" means the provision of one or more of the following services required by an individual in a residence or independent living environment:

(A) bathing;

(B) dressing;

(C) grooming;

(D) feeding;

(E) exercising;

(F) toileting;

(G) positioning;

(H) assisting with self-administered medications;

(I) routine hair and skin care; and

(J) transfer or ambulation.

(23) "Place of business" means an office of a home and community support services agency that maintains client records or directs home health, hospice, or personal assistance services. The term does not include an administrative support site.

(24) "Residence" means a place where a person resides and includes a home, a nursing home, a convalescent home, or a residential unit.

(25) "Residential unit" means a facility that provides living quarters and hospice services to clients admitted into the unit and that is in compliance with standards adopted under this chapter.
(26) "Respite services" means support options that are provided temporarily for the purpose of relief for a primary caregiver in providing care to individuals of all ages with disabilities or at risk of abuse or neglect.

(27) "Social worker" means an individual licensed as a social worker under Chapter 505, Occupations Code.

(28) "Support services" means social, spiritual, and emotional care provided to a client and a client's family by a hospice.

(29) "Terminal illness" means an illness for which there is a limited prognosis if the illness runs its usual course.

(30) "Volunteer" means an individual who provides assistance to a home and community support services agency without compensation other than reimbursement for actual expenses.

SCOPE, PURPOSE, AND IMPLEMENTATION

Sec. 142.0011. (a) The purpose of this chapter is to ensure that home and community support services agencies in this state deliver the highest possible quality of care. This chapter and the rules adopted under this chapter establish minimum standards for acceptable quality of care, and a violation of a minimum standard established or adopted under this chapter is a violation of law. For purposes of this chapter, components of quality of care include:

(1) client independence and self-determination;
(2) humane treatment;
(3) continuity of care;
(4) coordination of services;
(5) professionalism of service providers;
(6) quality of life; and
(7) client satisfaction with services.

(b) The department shall protect clients of home and community support services agencies by regulating those agencies and:

(1) adopting rules relating to quality of care and quality of life;
(2) strictly monitoring factors relating to the health, safety, welfare, and dignity of each client;
(3) imposing prompt and effective remedies for violations of this chapter and rules and standards adopted under this chapter;
(4) enabling agencies to provide services that allow clients to maintain the highest possible degree of independence and self-determination; and
(5) providing the public with helpful and understandable information relating to agencies in this state.

CONTROLLING PERSON

Sec. 142.0012. (a) A person is a controlling person if the person, acting alone or with others, has the ability to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of a home and community support services agency or other person.

(b) For purposes of this chapter, "controlling person" includes:

(1) a management company or other business entity that operates or contracts with others for the operation of a home and community support services agency;
(2) a person who is a controlling person of a management company or other business entity that operates a home and community support services agency or that contracts with another person for the operation of a home and community support services agency; and
(3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, or provider of a home and community support services agency, is in a position of actual control or authority with respect to the agency, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the agency.

(c) A controlling person described by Subsection (b)(3) does not include an employee, lender, secured creditor, or other person who does not exercise formal or actual influence or control over the operation of a home and community support services agency.

(d) The department may adopt rules that specify the ownership interests and other relationships that qualify a person as a controlling person.
LICENSE REQUIRED

Sec. 142.002. (a) Except as provided by Section 142.003, a person, including a health care facility licensed under this code, may not engage in the business of providing home health, hospice, or personal assistance services, or represent to the public that the person is a provider of home health, hospice, or personal assistance services for pay without a home and community support services agency license authorizing the person to perform those services issued by the department for each place of business from which home health, hospice, or personal assistance services are directed. A certified agency must have a license to provide certified home health services.

(b) A person who is not licensed to provide home health services under this chapter may not indicate or imply that the person is licensed to provide home health services by the use of the words "home health services" or in any other manner.

(c) A person who is not licensed to provide hospice services under this chapter may not use the word "hospice" in a title or description of a facility, organization, program, service provider, or services or use any other words, letters, abbreviations, or insignia indicating or implying that the person holds a license to provide hospice services under this chapter.

(d) A license to provide hospice services issued under this chapter authorizes a hospice to own or operate a residential unit or inpatient unit at the licensed site in compliance with the standards and rules adopted under this chapter.

(e) A license issued under this chapter may not be transferred to another person, but may be transferred from one location to another location. A change of ownership or location shall be reported to the department.

(f) A person who is not licensed to provide personal assistance services under this chapter may not indicate or imply that the person is licensed to provide personal assistance services by the use of the words "personal assistance services" or in any other manner.

TEMPORARY LICENSE

Sec. 142.0025. If a person is in the process of becoming certified by the Department of Health and Human Services to qualify as a certified agency, the department may issue a temporary home and community support services agency license to the person authorizing the person to provide certified home health services. A temporary license is effective as provided by board rules.

EXEMPTIONS FROM LICENSING REQUIREMENT

Sec. 142.003. (a) The following persons need not be licensed under this chapter:

(1) a physician, dentist, registered nurse, occupational therapist, or physical therapist licensed under the laws of this state who provides home health services to a client only as a part of and incidental to that person's private office practice;

(2) a registered nurse, licensed vocational nurse, physical therapist, occupational therapist, speech therapist, medical social worker, or any other health care professional as determined by the department who provides home health services as a sole practitioner;

(3) a registry that operates solely as a clearinghouse to put consumers in contact with persons who provide home health, hospice, or personal assistance services and that does not maintain official client records, direct client services, or compensate the person who is providing the service;

(4) an individual whose permanent residence is in the client's residence;

(5) an employee of a person licensed under this chapter who provides home health, hospice, or personal assistance services only as an employee of the license holder and who receives no benefit for providing the services, other than wages from the license holder;

(6) a home, nursing home, convalescent home, assisted living facility, special care facility, or other institution for individuals who are elderly or who have disabilities that provides home health or personal assistance services only to residents of the home or institution;

(7) a person who provides one health service through a contract with a person licensed under this chapter;

(8) a durable medical equipment supply company;

(9) a pharmacy or wholesale medical supply company that does not furnish services, other than supplies, to a person at the person's house;

(10) a hospital or other licensed health care facility that provides home health or personal assistance services only to inpatient residents of the hospital or facility;
(11) a person providing home health or personal assistance services to an injured employee under Title 5, Labor Code;
(12) a visiting nurse service that:
    (A) is conducted by and for the adherents of a well-recognized church or religious denomination; and
    (B) provides nursing services by a person exempt from licensing by Section 301.004, Occupations Code, because the person furnishes nursing care in which treatment is only by prayer or spiritual means;
(13) an individual hired and paid directly by the client or the client's family or legal guardian to provide home health or personal assistance services;
(14) a business, school, camp, or other organization that provides home health or personal assistance services, incidental to the organization's primary purpose, to individuals employed by or participating in programs offered by the business, school, or camp that enable the individual to participate fully in the business's, school's, or camp's programs;
(15) a person or organization providing sitter-companion services or chore or household services that do not involve personal care, health, or health-related services;
(16) a licensed health care facility that provides hospice services under a contract with a hospice;
(17) a person delivering residential acquired immune deficiency syndrome hospice care who is licensed and designated as a residential AIDS hospice under Chapter 248;
(18) the Texas Department of Criminal Justice;
(19) a person that provides home health, hospice, or personal assistance services only to persons enrolled in a program funded wholly or partly by the Texas Department of Mental Health and Mental Retardation and monitored by the Texas Department of Mental Health and Mental Retardation or its designated local authority in accordance with standards set by the Texas Department of Mental Health and Mental Retardation; or
(20) an individual who provides home health or personal assistance services as the employee of a consumer or an entity or employee of an entity acting as a consumer's fiscal agent under Section 531.051, Government Code.

(b) A home and community support services agency that owns or operates an administrative support site is not required to obtain a separate license under this chapter for the administrative support site.

(c) A hospice that operates or provides hospice services to an inpatient unit under a contract with a licensed health care facility is not required to obtain an alternate delivery site license for that inpatient unit.

LICENSE APPLICATION

Sec. 142.004. (a) An applicant for a license to provide home health, hospice, or personal assistance services must:

(1) file a written application on a form prescribed by the department indicating the type of service the applicant wishes to provide;
(2) cooperate with any surveys required by the department for a license; and
(3) pay the license fee prescribed by this chapter.

(b) In addition to the requirements of Subsection (a), if the applicant is a certified agency when the application for a license to provide certified home health services is filed, the applicant must maintain its Medicare certification. If the applicant is not a certified agency when the application for a license to provide certified home health services is filed, the applicant must establish that it is in the process of receiving its certification from the United States Department of Health and Human Services.

(c) The board by rule shall require that, at a minimum, before the department may approve a license application, the applicant must provide to the department:

(1) documentation establishing that, at a minimum, the applicant has sufficient financial resources to provide the services required by this chapter and by the department during the term of the license;
(2) a list of the management personnel for the proposed home and community support services agency, a description of personnel qualifications, and a plan for providing continuing training and education for the personnel during the term of the license;
(3) documentation establishing that the applicant is capable of meeting the minimum standards established by the board relating to the quality of care;
(4) a plan that provides for the orderly transfer of care of the applicant's clients if the applicant cannot maintain or deliver home health, hospice, or personal assistance services under the license;
(5) identifying information on the home and community support services agency owner, administrator, and chief financial officer to enable the department to conduct criminal background checks on those persons;
(6) identification of any controlling person with respect to the applicant; and
(7) documentation relating to any controlling person identified under Subdivision (6), if requested by the department and relevant to the controlling person's compliance with any applicable licensing standard required or adopted by the board under this chapter.
(d) Information received by the department relating to the competence and financial resources of the applicant or a controlling person with respect to the applicant is confidential and may not be disclosed to the public.
(e) A home and community support services agency owned or operated by a state agency directly providing services is not required to provide the information described in Subsections (c)(1) and (5).
(f) The department shall evaluate and consider all information collected during the application process.

COMPLIANCE RECORD IN OTHER STATES

Sec. 142.005. The department may require an applicant or license holder to provide the department with information relating to compliance by the applicant, the license holder, or a controlling person with respect to the applicant or license holder with regulatory requirements in any other state in which the applicant, license holder, or controlling person operates or operated a home and community support services agency.

LICENSE ISSUANCE; TERM

Sec. 142.006. (a) The department shall issue a home and community support services agency license to provide home health, hospice, or personal assistance services for each place of business to an applicant if:
(1) the applicant:
   (A) qualifies for the license to provide the type of service that is to be offered by the applicant;
   (B) submits an application and license fee as required by this chapter; and
   (C) complies with all applicable licensing standards required or adopted by the board under this chapter; and
(2) any controlling person with respect to the applicant complies with all applicable licensing standards required or adopted by the board under this chapter.
(b) A license issued under this chapter expires two years after the date of issuance. The executive commissioner of the Health and Human Services Commission by rule may adopt a system under which licenses expire on various dates during the two-year period. For the year in which a license expiration date is changed, the department shall prorate the license fee on a monthly basis. Each license holder shall pay only that portion of the license fee allocable to the number of months for which the license is valid. A license holder shall pay the total license renewal fee at the time of renewal. The department may issue an initial license for a shorter term to conform expiration dates for a locality or an applicant. The department may issue a temporary license to an applicant for an initial license.
(c) The department may find that a home and community support services agency has satisfied the requirements for licensing if the agency is accredited by an accreditation organization, such as the Joint Commission on Accreditation of Healthcare Organizations or the Community Health Accreditation Program, and the department finds that the accreditation organization has standards that meet or exceed the requirements for licensing under this chapter. A license fee is required of the home and community support services agency at the time of a license application.
(d) to (f) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1).
(g) The license must designate the types of services that the home and community support services agency is authorized to provide at or from the designated place of business.

POSSSESSION OF STERILE WATER OR SALINE

Sec. 142.0061. A home and community support services agency or its employees who are registered nurses or licensed vocational nurses may purchase, store, or transport for the purpose of administering to their home health or hospice patients under physician's orders:
(1) sterile water for injection and irrigation; and
(2) sterile saline for injection and irrigation.
POSSSESSION OF CERTAIN VACCINES OR TUBERCULIN
Sec. 142.0062. (a) A home and community support services agency or its employees who are registered nurses or licensed vocational nurses may purchase, store, or transport for the purpose of administering to the agency's employees, home health or hospice patients, or patient family members under physician's standing orders the following dangerous drugs:

(1) hepatitis B vaccine;
(2) influenza vaccine;
(3) tuberculin purified protein derivative for tuberculosis testing; and
(4) pneumococcal polysaccharide vaccine.

(b) A home and community support services agency that purchases, stores, or transports a vaccine or tuberculin under this section shall ensure that any standing order for the vaccine or tuberculin:

(1) is signed and dated by the physician;
(2) identifies the vaccine or tuberculin covered by the order;
(3) indicates that the recipient of the vaccine or tuberculin has been assessed as an appropriate candidate to receive the vaccine or tuberculin and has been assessed for the absence of any contraindication;
(4) indicates that appropriate procedures are established for responding to any negative reaction to the vaccine or tuberculin; and
(5) orders that a specific medication or category of medication be administered if the recipient has a negative reaction to the vaccine or tuberculin.

POSSSESSION OF CERTAIN DANGEROUS DRUGS
Sec. 142.0063. (a) A home and community support services agency in compliance with this section or its employees who are registered nurses or licensed vocational nurses may purchase, store, or transport for the purpose of administering to their home health or hospice patients in accordance with Subsection (c) the following dangerous drugs:

(1) any of the following items in a sealed portable container of a size determined by the dispensing pharmacist:
   (A) 1,000 milliliters of 0.9 percent sodium chloride intravenous infusion;
   (B) 1,000 milliliters of five percent dextrose in water injection; or
   (C) sterile saline; or
(2) not more than five dosage units of any of the following items in an individually sealed, unused portable container:
   (A) heparin sodium lock flush in a concentration of 10 units per milliliter or 100 units per milliliter;
   (B) epinephrine HCl solution in a concentration of 1 to 1,000;
   (C) diphenhydramine HCl solution in a concentration of 50 milligrams per milliliter;
   (D) methylprednisolone in a concentration of 125 milligrams per two milliliters;
   (E) naloxone in a concentration of one milligram per milliliter in a two-milliliter vial;
   (F) promethazine in a concentration of 25 milligrams per milliliter;
   (G) glucagon in a concentration of one milligram per milliliter;
   (H) furosemide in a concentration of 10 milligrams per milliliter;
   (I) lidocaine 2.5 percent and prilocaine 2.5 percent cream in a five-gram tube; or
   (J) lidocaine HCl solution in a concentration of one percent in a two-milliliter vial.

(b) A home and community support services agency or the agency's authorized employees may purchase, store, or transport dangerous drugs in a sealed portable container under this section only if the agency has established policies and procedures to ensure that:

(1) the container is handled properly with respect to storage, transportation, and temperature stability;
(2) a drug is removed from the container only on a physician's written or oral order;
(3) the administration of any drug in the container is performed in accordance with a specific treatment protocol; and
(4) the agency maintains a written record of the dates and times the container is in the possession of a registered nurse or licensed vocational nurse.

(c) A home and community support services agency or the agency's authorized employee who administers a drug listed in Subsection (a) may administer the drug only in the patient's residence under physician's orders in connection with the provision of emergency treatment or the adjustment of:
(1) parenteral drug therapy; or
(2) vaccine or tuberculin administration.

(d) If a home and community support services agency or the agency's authorized employee administers a drug listed in Subsection (a) pursuant to a physician's oral order, the physician shall promptly send a signed copy of the order to the agency, and the agency shall:
(1) not later than 24 hours after receipt of the order, reduce the order to written form and send a copy of the form to the dispensing pharmacy by mail or facsimile transmission; and
(2) not later than 20 days after receipt of the order, send a copy of the order as signed by and received from the physician to the dispensing pharmacy.

(e) A pharmacist that dispenses a sealed portable container under this section shall ensure that the container:
(1) is designed to allow access to the contents of the container only if a tamper-proof seal is broken;
(2) bears a label that lists the drugs in the container and provides notice of the container's expiration date, which is the earlier of:
   (A) the date that is six months after the date on which the container is dispensed; or
   (B) the earliest expiration date of any drug in the container; and
(3) remains in the pharmacy or under the control of a pharmacist, registered nurse, or licensed vocational nurse.

(f) If a home and community support services agency or the agency's authorized employee purchases, stores, or transports a sealed portable container under this section, the agency shall deliver the container to the dispensing pharmacy for verification of drug quality, quantity, integrity, and expiration dates not later than the earlier of:
(1) the seventh day after the date on which the seal on the container is broken; or
(2) the date for which notice is provided on the container label.

(g) A pharmacy that dispenses a sealed portable container under this section shall take reasonable precautionary measures to ensure that the home and community support services agency receiving the container complies with Subsection (f). On receipt of a container under Subsection (f), the pharmacy shall perform an inventory of the drugs used from the container and shall restock and reseal the container before delivering the container to the agency for reuse.

**DISPLAY OF LICENSE**

Sec. 142.0065. A license issued under this chapter shall be displayed in a conspicuous place in the designated place of business and must show:
(1) the name and address of the licensee;
(2) the name of the owner or owners, if different from the information provided under Subdivision (1);
(3) the license expiration date; and
(4) the types of services authorized to be provided under the license.

**NOTICE OF DRUG TESTING POLICY**

Sec. 142.007. An agency licensed under this chapter shall provide to the following persons a written statement describing the agency's policy for the drug testing of employees who have direct contact with clients:
(1) each person applying for services from the agency; and
(2) any person requesting the information.

**BRANCH OFFICE**

Sec. 142.008. (a) The department may issue a branch office license to a person who holds a license to provide home health or personal assistance services.
(b) The board by rule shall establish eligibility requirements for a branch office license.
(c) A branch office license expires on the same date as the license to provide home health or personal assistance services held by the applicant for the branch office license.

**ALTERNATE DELIVERY SITE LICENSE**

Sec. 142.0085. (a) The department shall issue an alternate delivery site license to a qualified hospice.
(b) The board by rule shall establish standards required for the issuance of an alternate delivery site license.

(c) An alternate delivery site license expires on the same date as the license to provide hospice services held by the hospice.

SURVEYS; CONSUMER COMPLAINTS

Sec. 142.009. (a) The department or its representative may enter the premises of a license applicant or license holder at reasonable times to conduct a survey incidental to the issuance of a license and at other times as the department considers necessary to ensure compliance with this chapter and the rules adopted under this chapter.

(b) A home and community support services agency shall provide each person who receives home health, hospice, or personal assistance services with a written statement that contains the name, address, and telephone number of the department and a statement that informs the recipient that a complaint against a home and community support services agency may be directed to the department.

(c) The department or its authorized representative shall investigate each complaint received regarding the provision of home health, hospice, or personal assistance services, including any allegation of abuse, neglect, or exploitation of a child under the age of 18, and may, as a part of the investigation:

(1) conduct an unannounced survey of a place of business, including an inspection of medical and personnel records, if the department has reasonable cause to believe that the place of business is in violation of this chapter or a rule adopted under this chapter;

(2) conduct an interview with a recipient of home health, hospice, or personal assistance services, which may be conducted in the recipient's home if the recipient consents;

(3) conduct an interview with a family member of a recipient of home health, hospice, or personal assistance services who is deceased or other person who may have knowledge of the care received by the deceased recipient of the home health, hospice, or personal assistance services; or

(4) interview a physician or other health care practitioner, including a member of the personnel of a home and community support services agency, who cares for a recipient of home health, hospice, or personal assistance services.

(d) The reports, records, and working papers used or developed in an investigation made under this section are confidential and may not be released or made public except:

(1) to a state or federal agency;

(2) to federal, state, or local law enforcement personnel;

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

(4) in civil or criminal litigation matters or licensing proceedings as otherwise allowed by law or judicial rule;

(5) on a form developed by the department that identifies any deficiencies found without identifying a person, other than the home and community support services agency;

(6) on a form required by a federal agency if:

(A) the information does not reveal the identity of an individual, including a patient or a physician or other medical practitioner;

(B) the service provider subject to the investigation had a reasonable opportunity to review the information and offer comments to be included with the information released or made public; and

(C) the release of the information complies with any other federal requirement; or

(7) as provided by Section 142.0092.

(e) The department's representative shall hold a conference with the person in charge of the home and community support services agency before beginning the on-site survey to explain the nature and scope of the survey. When the survey is completed, the department's representative shall hold a conference with the person who is in charge of the agency and shall identify any records that were duplicated. Agency records may be removed from an agency only with the agency's consent.

(f) At the conclusion of a survey or complaint investigation, the department shall fully inform the person who is in charge of the home and community support services agency of the preliminary findings of the survey at an exit conference and shall give the person a reasonable opportunity to submit additional facts or other information to the department's authorized representative in response to those findings. The response shall be made a part of the record of the survey for all purposes. The department’s representative shall leave a written list of the preliminary findings with the agency at the exit conference.

(g) After a survey of a home and community support services agency by the department, the department shall provide to the chief executive officer of the agency:
(1) specific and timely written notice of the official findings of the survey, including:
   (A) the specific nature of the survey;
   (B) any alleged violations of a specific statute or rule;
   (C) the specific nature of any finding regarding an alleged violation or deficiency; and
   (D) if a deficiency is alleged, the severity of the deficiency;
(2) information on the identity, including the signature, of each department representative conducting, reviewing, or approving the results of the survey and the date on which the department representative acted on the matter; and
(3) if requested by the agency, copies of all documents relating to the survey maintained by the department or provided by the department to any other state or federal agency that are not confidential under state law.

(g-1) If the department or the department’s authorized representative discovers any additional violations during the review of field notes or preparation of the official statement of deficiencies for a home and community support services agency, the department or the department’s representative shall conduct an additional exit conference regarding the additional violations. The additional exit conference must be held in person and may not be held over the telephone, by e-mail, or by facsimile transmission.

(h) Except for the investigation of complaints, a home and community support services agency licensed by the department under this chapter is not subject to additional surveys relating to home health, hospice, or personal assistance services while the agency maintains accreditation for the applicable service from the Joint Commission for Accreditation of Healthcare Organizations, the Community Health Accreditation Program, or other accreditation organizations that meet or exceed the regulations adopted under this chapter. Each provider must submit to the department documentation from the accrediting body indicating that the provider is accredited when the provider is applying for the initial license and annually when the license is renewed.

(i) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1).

(j) Except as provided by Subsections (h) and (l), an on-site survey must be conducted within 18 months after a survey for an initial license. After that time, an on-site survey must be conducted at least every 36 months.

(k) If a person is renewing or applying for a license to provide more than one type of service under this chapter, the surveys required for each of the services the license holder or applicant seeks to provide shall be completed during the same surveyor visit.

(l) The department and other state agencies that are under the Health and Human Services Commission and that contract with home and community support services agencies to deliver services for which a license is required under this chapter shall execute a memorandum of understanding that establishes procedures to eliminate or reduce duplication of standards or conflicts between standards and of functions in license, certification, or compliance surveys and complaint investigations. The Health and Human Services Commission shall review the recommendation of the council relating to the memorandum of understanding before considering approval. The memorandum of understanding must be approved by the commission.

SURVEYOR TRAINING

Sec. 142.0091. (a) The department shall provide specialized training to representatives of the department who survey home and community support services agencies. The training must include information relating to:
   (1) the conduct of appropriate surveys that do not focus exclusively on medical standards under an acute care model; and
   (2) acceptable delegation of nursing tasks.
   (b) In developing and updating the training required by this section, the department shall consult with and include providers of home health, hospice, and personal assistance services, recipients of those services and their family members, and representatives of appropriate advocacy organizations.

CONSUMER COMPLAINT DATA

Sec. 142.0092. (a) The department shall maintain records or documents relating to complaints directed to the department by consumers of home health, hospice, or personal assistance services. The department shall organize the records or documents according to standard, statewide categories as determined by the department. In determining appropriate categories, the department shall make distinctions based on factors useful to the public in assessing the quality of services provided by a home and community support services agency, including whether the complaint:
   (1) was determined to be valid or invalid;
   (2) involved significant physical harm or death to a patient;
(3) involved financial exploitation of a patient; or
(4) resulted in any sanction imposed against the agency.

(b) The department shall make the information maintained under this section available to the public in a useful format that does not identify individuals implicated in the complaints.

RETRALIATION PROHIBITED

Sec. 142.0093. (a) A person licensed under this chapter may not retaliate against another person for filing a complaint, presenting a grievance, or providing in good faith information relating to home health, hospice, or personal assistance services provided by the license holder.

(b) This section does not prohibit a license holder from terminating an employee for a reason other than retaliation.

USE OF REGULATORY SURVEY REPORTS AND OTHER DOCUMENTS

Sec. 142.0094. (a) Except as otherwise provided by this section, a survey report or other document prepared by the department that relates to regulation of a home and community support services agency is not admissible as evidence in a civil action to prove that the agency violated a standard prescribed under this chapter.

(b) Subsection (a) does not:
(1) bar the admission into evidence of department survey reports or other documents in an enforcement action in which the state or an agency or political subdivision of the state is a party, including:
(A) an action seeking injunctive relief under Section 142.013;
(B) an action seeking imposition of a civil penalty under Section 142.014;
(C) a contested case hearing involving imposition of an administrative penalty under Section 142.017; and
(D) a contested case hearing involving denial, suspension, or revocation of a license issued under this chapter;
(2) bar the admission into evidence of department survey reports or other documents that are offered:
(A) to establish warning or notice to a home and community support services agency of a relevant department determination; or
(B) under any rule or evidentiary predicate of the Texas Rules of Evidence;
(3) prohibit or limit the testimony of a department employee, in accordance with the Texas Rules of Evidence, as to observations, factual findings, conclusions, or determinations that a home and community support services agency violated a standard prescribed under this chapter if the observations, factual findings, conclusions, or determinations were made in the discharge of the employee's official duties for the department; or
(4) prohibit or limit the use of department survey reports or other documents in depositions or other forms of discovery conducted in connection with a civil action if use of the survey reports or other documents appears reasonably calculated to lead to the discovery of admissible evidence.

FEES

Sec. 142.010. (a) The department shall set license fees for home and community support services agencies in amounts that are reasonable to meet the costs of administering this chapter, except that the fees may not be less than $600 or more than $2,000 for a license to provide home health, hospice, or personal assistance services.

(b) The board shall consider the size of the home and community support services agency, the number of clients served, the number of services provided, and the necessity for review of other accreditation documentation in determining the amount of initial and renewal license fees.

(c) A fee charged under this section is nonrefundable.

LICENSE RENEWAL

Sec. 142.0105. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by submitting a completed application for renewal and paying the required renewal fee to the department not later than the 45th day before the expiration date of the license. A person whose license has expired may not engage in activities that require a license.

(b) An applicant for a license renewal who submits an application later than the 45th day before the expiration date of the license is subject to a late fee in accordance with department rules.

(c) Not later than the 120th day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to

- 77 -
the records of the department. The written notice must include an application for license renewal and instructions for completing the application.

**DENIAL, SUSPENSION, OR REVOCATION OF LICENSE**

Sec. 142.011. (a) The department may deny a license application or suspend or revoke the license of a person who:

1. fails to comply with the rules or standards for licensing required by this chapter; or
2. engages in conduct that violates Section 161.091.

(b) The department may immediately suspend or revoke a license when the health and safety of persons are threatened. If the department issues an order of immediate suspension or revocation, the department shall immediately give the chief executive officer of the home and community support services agency adequate notice of the action taken, the legal grounds for the action, and the procedure governing appeal of the action. A person whose license is suspended or revoked under this subsection is entitled to a hearing not later than the seventh day after the effective date of the suspension or revocation.

(c) The department may suspend or revoke a home and community support services agency's license to provide certified home health services if the agency fails to maintain its certification qualifying the agency as a certified agency. A home and community support services agency that is licensed to provide certified home health services and that submits a request for a hearing as provided by Subsection (d) is subject to the requirements of this chapter relating to a home and community support services agency that is licensed to provide home health services, but not certified home health services, until the suspension or revocation is finally determined by the department or, if the license is suspended or revoked, until the last day for seeking review of the department order or a later date fixed by order of the reviewing court.

(d) A person whose application is denied or whose license is suspended or revoked is entitled to a hearing before the department if the person submits a written request to the department. Chapter 2001, Government Code and the department's rules for contested case hearings apply to hearings conducted under this section and to appeals from department decisions.

**POWERS AND DUTIES**

Sec. 142.012. (a) The board, with the recommendations of the council, shall adopt rules necessary to implement this chapter.

(b) The board by rule shall set minimum standards for home and community support services agencies licensed under this chapter that relate to:

1. qualifications for professional and nonprofessional personnel, including volunteers;
2. supervision of professional and nonprofessional personnel, including volunteers;
3. the provision and coordination of treatment and services, including support and bereavement services, as appropriate;
4. the management, ownership, and organizational structure, including lines of authority and delegation of responsibility and, as appropriate, the composition of an interdisciplinary team;
5. clinical and business records;
6. financial ability to carry out the functions as proposed;
7. safety, fire prevention, and sanitary standards for residential units and inpatient units; and
8. any other aspects of home health, hospice, or personal assistance services as necessary to protect the public.

(c) The initial minimum standards adopted by the board under Subsection (b) for hospice services must be at least as stringent as the conditions of participation for a Medicare certified provider of hospice services in effect on April 30, 1993, under Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.).

(d) The department shall prescribe forms necessary to perform its duties.

(e) The department shall require each person or home and community support services agency providing home health, hospice, or personal assistance services to implement and enforce the applicable provisions of Chapter 102, Human Resources Code.

**INJUNCTION**

Sec. 142.013. (a) A district court, on petition of the department and on a finding by the court that a person is violating this chapter, may by injunction:

1. prohibit the person from continuing the violation; or
2. grant any other injunctive relief warranted by the facts.
(b) The attorney general shall institute and conduct a suit authorized by this section at the request of the department and in the name of the state.

(c) A suit for injunctive relief must be brought in Travis County.

CIVIL PENALTY

Sec. 142.014. (a) A person who engages in the business of providing home health, hospice, or personal assistance service, or represents to the public that the person is a provider of home health, hospice, and personal assistance services for pay, without a license issued under this chapter authorizing the services that are being provided is liable for a civil penalty of not less than $1,000 or more than $2,500 for each day of violation. Penalties may be appropriated only to the department and to administer this chapter.

(b) An action to recover a civil penalty is in addition to an action brought for injunctive relief under Section 142.013 or any other remedy provided by law. The attorney general shall bring suit on behalf of the state to collect the civil penalty.

VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES

Sec. 142.0145. (a) The department shall assess an administrative penalty against a home and community support services agency that violates Section 166.004.

(b) A penalty assessed under this section shall be $500.

(c) The penalty shall be assessed in accordance with department rules. The rules must provide for notice and an opportunity for a hearing.

ADVISORY COUNCIL

Sec. 142.015. (a) The Home and Community Support Services Advisory Council is composed of the following 13 members, appointed by the governor:

(1) three consumer representatives;
(2) two representatives of agencies that are licensed to provide certified home health services;
(3) two representatives of agencies that are licensed to provide home health services but are not certified home health services;
(4) three representatives of agencies that are licensed to provide hospice services, with one representative appointed from:
   (A) a community-based non-profit provider of hospice services;
   (B) a community-based proprietary provider of hospice services; and
   (C) a hospital-based provider of hospice services; and
(5) three representatives of agencies that are licensed to provide personal assistance services.

(b) Repealed by Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 7.01(18), eff. Nov. 12, 1991.

(c) The council shall advise the department on licensing standards and on the implementation of this chapter. At each meeting of the council, the department shall provide an analysis of enforcement actions taken under this chapter, including the type of enforcement action, the results of the action, and the basis for the action. The council may advise the department on its implementation of the enforcement provisions of this chapter.

(d) Members of the council serve staggered two-year terms, with the terms of seven members expiring on January 31 of each even-numbered year and the terms of six members expiring on January 31 of each odd-numbered year.

(e) The council shall elect a presiding officer from among its members to preside at meetings and to notify members of meetings. The presiding officer shall serve for one year and may not serve in that capacity for more than two years.

(f) The council shall meet at least once a year and may meet at other times at the call of the presiding officer, any three members of the council, or the commissioner.

(g) Members of the council serve without compensation.

MEMORANDUM OF UNDERSTANDING RELATING TO NURSING SERVICES; GUIDELINES

Sec. 142.016. (a) The Texas Board of Nursing and the department shall adopt a memorandum of understanding governing the circumstances under which the provision of health-related tasks or services do not constitute the practice of professional nursing. The agencies periodically shall review and shall renew or modify the memorandum as necessary.
(b) The Texas Board of Nursing and the department shall consult with an advisory committee in developing, modifying, or renewing the memorandum of understanding. The advisory committee shall be appointed by the Board of Nurse Examiners and the department and at a minimum shall include:
   (1) one representative from the Texas Board of Nursing and one representative from the department to serve as cochairmen;
   (2) one representative from the Texas Department of Mental Health and Mental Retardation;
   (3) one representative from the Texas Nurses Association;
   (4) one representative from the Texas Association for Home Care, Incorporated, or its successor;
   (5) one representative from the Texas Hospice Organization, Incorporated, or its successor;
   (6) one representative of the Texas Respite Resource Network or its successor; and
   (7) two representatives of organizations such as the Personal Assistance Task Force or the Disability Consortium that advocate for clients in community-based settings.

(c) The department shall prepare guidelines according to the memorandum of understanding required by Subsection (a) for licensed home and community support services agencies in providing personal assistance services to clients.

ADMINISTRATIVE PENALTY

Sec. 142.017. (a) The department may assess an administrative penalty against a person who violates:
   (1) this chapter or a rule adopted under this chapter; or
   (2) Section 102.001, Occupations Code, if the violation relates to the provision of home health, hospice, or personal assistance services.

(b) The penalty shall be not less than $100 or more than $1,000 for each violation. Each day of a violation that occurs before the day on which the person receives written notice of the violation from the department does not constitute a separate violation and shall be considered to be one violation. Each day of a continuing violation that occurs after the day on which the person receives written notice of the violation from the department constitutes a separate violation.

(c) The department by rule shall specify each violation for which an administrative penalty may be assessed. In determining which violations warrant penalties, the department shall consider:
   (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients; and
   (2) whether the affected home and community support services agency had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction.

(d) The department by rule shall establish a schedule of appropriate and graduated penalties for each violation based on:
   (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or safety of clients;
   (2) the history of previous violations by the person or a controlling person with respect to that person;
   (3) whether the affected home and community support services agency had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction;
   (4) the amount necessary to deter future violations;
   (5) efforts made to correct the violation; and
   (6) any other matters that justice may require.

(e) Except as provided by Subsection (j), the department by rule shall provide the home and community support services agency with a reasonable period of time following the first day of a violation to correct the violation before assessing an administrative penalty if a plan of correction has been implemented.

(f) An administrative penalty may not be assessed for minor violations unless those violations are of a continuing nature or are not corrected.

(g) The department shall establish a system to ensure standard and consistent application of penalties regardless of the home and community support services agency location.

(h) All proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001, Government Code.

(i) The department may not assess an administrative penalty against a state agency.

(j) The department may assess an administrative penalty without providing a reasonable period of time to the agency to correct the violation if the violation:
   (1) results in serious harm or death;
(2) constitutes a serious threat to health or safety;
(3) substantially limits the agency’s capacity to provide care;
(4) is a violation in which a person:
   (A) makes a false statement, that the person knows or should know is false, of a material fact:
      (i) on an application for issuance or renewal of a license or in an attachment to the application; or
      (ii) with respect to a matter under investigation by the department;
   (B) refuses to allow a representative of the department to inspect a book, record, or file required to be maintained by an agency;
   (C) willfully interferes with the work of a representative of the department or the
   enforcement of this chapter;
   (D) willfully interferes with a representative of the department preserving evidence of a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter;
   (E) fails to pay a penalty assessed by the department under this chapter not later than the 10th day after the date the assessment of the penalty becomes final; or
   (F) fails to submit:
      (i) a plan of correction not later than the 10th day after the date the person receives a statement of licensing violations; or
      (ii) an acceptable plan of correction not later than the 30th day after the date the person receives notification from the department that the previously submitted plan of correction is not acceptable;
(5) is a violation of Section 142.0145; or
(6) involves the rights of the elderly under Chapter 102, Human Resources Code.

NOTICE; REQUEST FOR HEARING

Sec. 142.0171. (a) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department shall give written notice of the violation to the person alleged to have committed the violation. The notice shall include:
   (1) a brief summary of the alleged violation;
   (2) a statement of the amount of the proposed penalty based on the factors listed in Section 142.017(d); and
   (3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.
(b) Not later than the 20th day after the date on which the notice is received, the person notified may accept the determination of the department made under this section, including the proposed penalty, or may make a written request for a hearing on that determination.
(c) If the person notified of the violation accepts the determination of the department or if the person fails to respond in a timely manner to the notice, the commissioner or the commissioner's designee shall issue an order approving the determination and ordering that the person pay the proposed penalty.

HEARING; ORDER

Sec. 142.0172. (a) If the person notified requests a hearing, the department shall:
   (1) set a hearing;
   (2) give written notice of the hearing to the person; and
   (3) designate a hearings examiner to conduct the hearing.
(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commissioner or the commissioner's designee a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.
(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commissioner or the commissioner's designee by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND

Sec. 142.0173. (a) The department shall give notice of the order under Section 142.0172(c) to the person alleged to have committed the violation. The notice must include:
(1) separate statements of the findings of fact and conclusions of law;
(2) the amount of any penalty assessed; and
(3) a statement of the right of the person to judicial review of the order.

(b) Not later than the 30th day after the date on which the decision is final as provided by Chapter 2001, Government Code, the person shall:
(1) pay the penalty;
(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or
(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a person who acts under Subsection (b)(3) may:
(1) stay enforcement of the penalty by:
   (A) paying the penalty to the court for placement in an escrow account; or
   (B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final; or
(2) request the court to stay enforcement of the penalty by:
   (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and
   (B) giving a copy of the affidavit to the department by certified mail.

(d) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within 10 days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

(e) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the penalty.

(f) Judicial review of the order:
(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and
(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty under Subsection (b)(2) and if that amount is reduced or is not upheld by the court, the court shall order that the department pay the appropriate amount plus accrued interest to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person paid the penalty under Subsection (c)(1)(A), or gave a supersedeas bond, and if the amount of the penalty is not upheld by the court, the court shall order the release of the escrow account or bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order that the amount of the penalty be paid to the department from the escrow account and that the remainder of the account be released. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

USE OF ADMINISTRATIVE PENALTY

Sec. 142.0174. An administrative penalty collected under this subchapter may be appropriated for the purpose of funding the grant program established under Section 161.074, Human Resources Code.

EXPENSES AND COSTS FOR COLLECTION OF CIVIL OR ADMINISTRATIVE PENALTY

Sec. 142.0175. (a) If the attorney general brings an action against a person under Section 142.013 or 142.014 or to enforce an administrative penalty assessed under Section 142.0173 and an injunction is granted against the person or the person is found liable for a civil or administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.
For purposes of this section, reasonable expenses and costs include expenses incurred by the department and the attorney general in the investigation, initiation, and prosecution of an action, including reasonable investigative costs, attorney's fees, witness fees, and deposition expenses.

REPORTS OF ABUSE, EXPLOITATION, OR NEGLECT
Sec. 142.018. (a) In this section, "abuse," "exploitation," and "neglect" have the meanings assigned by Section 48.002, Human Resources Code.
(b) A home and community support services agency that has cause to believe that a person receiving services from the agency has been abused, exploited, or neglected by an employee of the agency shall report the information to:
   (1) the department; and
   (2) the Department of Protective and Regulatory Services or other appropriate state agency as required by Section 48.051, Human Resources Code.
(c) This section does not affect the duty or authority of any state agency to conduct an investigation of alleged abuse, exploitation, or neglect as provided by other law. An investigation of alleged abuse, exploitation, or neglect may be conducted without an on-site survey, as appropriate.

CERTAIN PHYSICIAN REFERRALS PROHIBITED
Sec. 142.019. A physician may not refer a patient to a home and community support services agency if the referral violates 42 U.S.C. Section 1395nn and its subsequent amendments.

DISPOSAL OF SPECIAL OR MEDICAL WASTE
(a) A home and community support services agency that generates special or medical waste while providing home health services must dispose of the waste in the same manner that the home and community support services agency disposes of special or medical waste generated in the agency's office location.
(b) A home and community support services agency shall provide both verbal and written instructions to the agency's client regarding the proper procedure for disposing of sharps. Sharps include hypodermic needles; hypodermic syringes with attached needles; scalpel blades; razor blades, disposable razors, and disposable scissors used in medical procedures; and intravenous stylets and rigid introducers.

SUBCHAPTER B. PERMITS TO ADMINISTER MEDICATION
ADMINISTRATION OF MEDICATION
Sec. 142.021. A person may not administer medication to a client of a home and community support services agency unless the person:
   (1) holds a license under state law that authorizes the person to administer medication;
   (2) holds a permit issued under Section 142.025 and acts under the delegated authority of a person who holds a license under state law that authorizes the person to administer medication;
   (3) administers a medication to a client of a home and community support service agency in accordance with rules of the Texas Board of Nursing that permit delegation of the administration of medication to a person not holding a permit under Section 142.025; or
   (4) administers noninjectable medication under circumstances authorized by the memorandum of understanding adopted under Section 142.016.

EXEMPTIONS FOR NURSING STUDENTS AND MEDICATION AIDE TRAINEES
Sec. 142.022. (a) Sections 142.021 and 142.029 do not apply to:
   (1) a graduate nurse holding a temporary permit issued by the Texas Board of Nursing;
   (2) a student enrolled in an accredited school of nursing or program for the education of registered nurses who is administering medications as part of the student's clinical experience;
   (3) a graduate vocational nurse holding a temporary permit issued by the Texas Board of Nursing;
   (4) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or
   (5) a trainee in a medication aide training program approved by the department under Section 142.024 who is administering medications as part of the trainee's clinical experience.
(b) The administration of medications by persons exempted under Subdivisions (1) through (4) of Subsection (a) is governed by the terms of the memorandum of understanding executed by the department and the Texas Board of Nursing.

RULES FOR ADMINISTRATION OF MEDICATION
Sec. 142.023. The board by rule shall establish:
(1) minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to a home health medication aide;
(2) curricula to train a home health medication aide;
(3) minimum standards for the approval of home health medication aide training programs and for rescinding approval;
(4) the acts and practices that are allowed or prohibited to a permit holder; and
(5) minimum standards for on-site supervision of a permit holder by a registered nurse.

HOME HEALTH MEDICATION AIDE TRAINING PROGRAMS
Sec. 142.024. (a) An application for the approval of a home health medication aide training program must be made to the department on a form and under rules prescribed by the board.
(b) The department shall approve a home health medication aide training program that meets the minimum standards adopted under Section 142.023. The department may review the approval annually.

ISSUANCE AND RENEWAL OF HOME HEALTH MEDICATION AIDE PERMIT
Sec. 142.025. (a) To be issued or to have renewed a home health medication aide permit, a person shall apply to the department on a form prescribed and under rules adopted by the board.
(b) The department shall prepare and conduct an examination for the issuance of a permit.
(c) The department shall require a permit holder to satisfactorily complete a continuing education course approved by the department for renewal of the permit.
(d) The department shall issue a permit or renew a permit to an applicant who:
   (1) meets the minimum requirements adopted under Section 142.023;
   (2) successfully completes the examination or the continuing education requirements; and
   (3) pays a nonrefundable application fee determined by the board.
(e) A permit is valid for one year and is not transferable.

FEES FOR ISSUANCE AND RENEWAL OF HOME HEALTH MEDICATION AIDE PERMIT
Sec. 142.026. (a) The board shall set the fees in amounts reasonable and necessary to recover the amount projected by the department as required to administer its functions under this subchapter. The fees may not exceed:
   (1) $25 for a combined permit application and examination fee; and
   (2) $15 for a renewal permit application fee.
(b) Fees received under this section may only be appropriated to the department to administer this subchapter.

VIOLATION OF HOME HEALTH MEDICATION AIDE PERMITS
Sec. 142.027. (a) For the violation of this subchapter or a rule adopted under this subchapter, the department may:
   (1) deny, suspend, revoke, or refuse to renew a permit;
   (2) suspend a permit in an emergency; or
   (3) rescind training program approval.
(b) Except as provided by Section 142.028, the procedure by which the department takes a disciplinary action and the procedure by which a disciplinary action is appealed are governed by the department's rules for a formal hearing and by Chapter 2001, Government Code.

EMERGENCY SUSPENSION OF HOME HEALTH MEDICATION AIDE PERMITS
Sec. 142.028. (a) The department shall issue an order to suspend a permit issued under Section 142.025 if the department has reasonable cause to believe that the conduct of the permit holder creates an imminent danger to the public health or safety.
(b) An emergency suspension is effective immediately without a hearing on notice to the permit holder.
(c) If requested in writing by a permit holder whose permit is suspended, the department shall conduct a hearing to continue, modify, or rescind the emergency suspension.

(d) The hearing must be held not earlier than the 10th day or later than the 30th day after the date on which the hearing request is received.

(e) The hearing and an appeal from a disciplinary action related to the hearing are governed by the department's rules for a formal hearing and Chapter 2001, Government Code.

ADMINISTRATION OF MEDICATION; CRIMINAL PENALTY
Sec. 142.029. (a) A person commits an offense if the person knowingly administers medication to a client of a home and community support services agency and the person is not authorized to administer the medication under Section 142.021 or 142.022.

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

DISPENSING DANGEROUS DRUGS OR CONTROLLED Substances; CRIMINAL PENALTY
Sec. 142.030. (a) A person authorized by this subchapter to administer medication to a client of a home and community support services agency may not dispense dangerous drugs or controlled substances without complying with Subtitle J, Title 3, Occupations Code.

(b) An offense under this section is a Class A misdemeanor.
CHAPTER 166. ADVANCE DIRECTIVES

SUBCHAPTER A. GENERAL PROVISIONS

SHORT TITLE

Sec. 166.001. This chapter may be cited as the Advance Directives Act.

DEFINITIONS

Sec. 166.002. In this chapter:

(1) "Advance directive" means:
   (A) a directive, as that term is defined by Section 166.031;
   (B) an out-of-hospital DNR order, as that term is defined by Section 166.081; or
   (C) a medical power of attorney under Subchapter D.

(2) "Artificial nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

(3) "Attending physician" means a physician selected by or assigned to a patient who has primary responsibility for a patient's treatment and care.

(4) "Competent" means possessing the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

(5) "Declarant" means a person who has executed or issued a directive under this chapter.

(6) "Ethics or medical committee" means a committee established under Sections 161.031-161.033.

(7) "Health care or treatment decision" means consent, refusal to consent, or withdrawal of consent to health care, treatment, service, or a procedure to maintain, diagnose, or treat an individual's physical or mental condition, including such a decision on behalf of a minor.

(8) "Incompetent" means lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

(9) "Irreversible condition" means a condition, injury, or illness:
   (A) that may be treated but is never cured or eliminated;
   (B) that leaves a person unable to care for or make decisions for the person's own self; and
   (C) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

(10) "Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

(11) "Medical power of attorney" means a document delegating to an agent authority to make health care decisions executed or issued under Subchapter D.

(12) "Physician" means:
   (A) a physician licensed by the Texas State Board of Medical Examiners; or
   (B) a properly credentialed physician who holds a commission in the uniformed services of the United States and who is serving on active duty in this state.

(13) "Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care. A patient who has been admitted to a program under which the person receives hospice services provided by a home and community support services agency licensed under Chapter 142 is presumed to have a terminal condition for purposes of this chapter.

(14) "Witness" means a person who may serve as a witness under Section 166.003.
"Cardiopulmonary resuscitation" means any medical intervention used to restore circulatory or respiratory function that has ceased.

**WITNESSES**

Sec. 166.003. In any circumstance in which this chapter requires the execution of an advance directive or the issuance of a nonwritten advance directive to be witnessed:

1. each witness must be a competent adult; and
2. at least one of the witnesses must be a person who is not:
   A. a person designated by the declarant to make a treatment decision;
   B. a person related to the declarant by blood or marriage;
   C. a person entitled to any part of the declarant's estate after the declarant's death under a will or codicil executed by the declarant or by operation of law;
   D. the attending physician;
   E. an employee of the attending physician;
   F. an employee of a health care facility in which the declarant is a patient if the employee is providing direct patient care to the declarant or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or
   G. a person who, at the time the written advance directive is executed or, if the directive is a nonwritten directive issued under this chapter, at the time the nonwritten directive is issued, has a claim against any part of the declarant's estate after the declarant's death.

**STATEMENT RELATING TO ADVANCE DIRECTIVE**

Sec. 166.004. (a) In this section, "health care provider" means:

1. a hospital;
2. an institution licensed under Chapter 242, including a skilled nursing facility;
3. a home and community support services agency;
4. a personal care facility; and
5. a special care facility.

(b) A health care provider shall maintain written policies regarding the implementation of advance directives. The policies must include a clear and precise statement of any procedure the health care provider is unwilling or unable to provide or withhold in accordance with an advance directive.

(c) Except as provided by Subsection (g), the health care provider shall provide written notice to an individual of the written policies described by Subsection (b). The notice must be provided at the earlier of:

1. the time the individual is admitted to receive services from the health care provider; or
2. the time the health care provider begins providing care to the individual.

(d) If, at the time notice is to be provided under Subsection (c), the individual is incompetent or otherwise incapacitated and unable to receive the notice required by this section, the provider shall provide the required written notice, in the following order of preference, to:

1. the individual's legal guardian;
2. a person responsible for the health care decisions of the individual;
3. the individual's spouse;
4. the individual's adult child;
5. the individual's parent; or
6. the person admitting the individual.

(e) If Subsection (d) applies and except as provided by Subsection (f), if a health care provider is unable, after diligent search, to locate an individual listed by Subsection (d), the health care provider is not required to provide the notice.

(f) If an individual who was incompetent or otherwise incapacitated and unable to receive the notice required by this section at the time notice was to be provided under Subsection (c) later becomes able to receive the notice, the health care provider shall provide the written notice at the time the individual becomes able to receive the notice.

(g) This section does not apply to outpatient hospital services, including emergency services.
ENFORCEABILITY OF ADVANCE DIRECTIVES EXECUTED IN ANOTHER JURISDICTION
Sec. 166.005. An advance directive or similar instrument validly executed in another state or jurisdiction shall be given the same effect as an advance directive validly executed under the law of this state. This section does not authorize the administration, withholding, or withdrawal of health care otherwise prohibited by the laws of this state.

EFFECT OF ADVANCE DIRECTIVE ON INSURANCE POLICY AND PREMIUMS
Sec. 166.006. (a) The fact that a person has executed or issued an advance directive does not:
   (1) restrict, inhibit, or impair in any manner the sale, procurement, or issuance of a life insurance policy to that person; or
   (2) modify the terms of an existing life insurance policy.
   (b) Notwithstanding the terms of any life insurance policy, the fact that life-sustaining treatment is withheld or withdrawn from an insured qualified patient under this chapter does not legally impair or invalidate that person's life insurance policy and may not be a factor for the purpose of determining, under the life insurance policy, whether benefits are payable or the cause of death.
   (c) The fact that a person has executed or issued or failed to execute or issue an advance directive may not be considered in any way in establishing insurance premiums.

EXECUTION OF ADVANCE DIRECTIVE MAY NOT BE REQUIRED
Sec. 166.007. A physician, health facility, health care provider, insurer, or health care service plan may not require a person to execute or issue an advance directive as a condition for obtaining insurance for health care services or receiving health care services.

CONFLICT BETWEEN ADVANCE DIRECTIVES
Sec. 166.008. To the extent that a treatment decision or an advance directive validly executed or issued under this chapter conflicts with another treatment decision or an advance directive executed or issued under this chapter, the treatment decision made or instrument executed later in time controls.

CERTAIN LIFE-SUSTAINING TREATMENT NOT REQUIRED
Sec. 166.009. This chapter may not be construed to require the provision of life-sustaining treatment that cannot be provided to a patient without denying the same treatment to another patient.

APPLICABILITY OF FEDERAL LAW RELATING TO CHILD ABUSE AND NEGLECT
Sec. 166.010. This chapter is subject to applicable federal law and regulations relating to child abuse and neglect to the extent applicable to the state based on its receipt of federal funds.

SUBCHAPTER B. DIRECTIVE TO PHYSICIANS

DEFINITIONS
Sec. 166.031. In this subchapter:
   (1) "Directive" means an instruction made under Section 166.032, 166.034, or 166.035 to administer, withhold, or withdraw life-sustaining treatment in the event of a terminal or irreversible condition.
   (2) "Qualified patient" means a patient with a terminal or irreversible condition that has been diagnosed and certified in writing by the attending physician.

WRITTEN DIRECTIVE BY COMPETENT ADULT; NOTICE TO PHYSICIAN
Sec. 166.032. (a) A competent adult may at any time execute a written directive.
   (b) The declarant must sign the directive in the presence of two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2). The witnesses must sign the directive.
   (c) A declarant may include in a directive directions other than those provided by Section 166.033 and may designate in a directive a person to make a treatment decision for the declarant in the event the declarant becomes incompetent or otherwise mentally or physically incapable of communication.
   (d) A declarant shall notify the attending physician of the existence of a written directive. If the declarant is incompetent or otherwise mentally or physically incapable of communication, another person may notify the
attending physician of the existence of the written directive. The attending physician shall make the directive a part of the declarant's medical record.

FORM OF WRITTEN DIRECTIVE

Sec. 166.033. A written directive may be in the following form:

DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES

Instructions for completing this document:
This is an important legal document known as an Advance Directive. It is designed to help you communicate your wishes about medical treatment at some time in the future when you are unable to make your wishes known because of illness or injury. These wishes are usually based on personal values. In particular, you may want to consider what burdens or hardships of treatment you would be willing to accept for a particular amount of benefit obtained if you were seriously ill.

You are encouraged to discuss your values and wishes with your family or chosen spokesperson, as well as your physician. Your physician, other health care provider, or medical institution may provide you with various resources to assist you in completing your advance directive. Brief definitions are listed below and may aid you in your discussions and advance planning. Initial the treatment choices that best reflect your personal preferences. Provide a copy of your directive to your physician, usual hospital, and family or spokesperson. Consider a periodic review of this document. By periodic review, you can best assure that the directive reflects your preferences.

In addition to this advance directive, Texas law provides for two other types of directives that can be important during a serious illness. These are the Medical Power of Attorney and the Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss these with your physician, family, hospital representative, or other advisers. You may also wish to complete a directive related to the donation of organs and tissues.

DIRECTIVE

I, __________, recognize that the best health care is based upon a partnership of trust and communication with my physician. My physician and I will make health care decisions together as long as I am of sound mind and able to make my wishes known. If there comes a time that I am unable to make medical decisions about myself because of illness or injury, I direct that the following treatment preferences be honored:

If, in the judgment of my physician, I am suffering with a terminal condition from which I am expected to die within six months, even with available life-sustaining treatment provided in accordance with prevailing standards of medical care:

__________ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR
__________ I request that I be kept alive in this terminal condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

If, in the judgment of my physician, I am suffering with an irreversible condition so that I cannot care for myself or make decisions for myself and am expected to die without life-sustaining treatment provided in accordance with prevailing standards of care:

__________ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR
__________ I request that I be kept alive in this irreversible condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

Additional requests: (After discussion with your physician, you may wish to consider listing particular treatments in this space that you do or do not want in specific circumstances, such as artificial nutrition and fluids, intravenous antibiotics, etc. Be sure to state whether you do or do not want the particular treatment.)

________________________________________________________________
________________________________________________________________
________________________________________________________________

After signing this directive, if my representative or I elect hospice care, I understand and agree that only those treatments needed to keep me comfortable would be provided and I would not be given available life-sustaining treatments.

If I do not have a Medical Power of Attorney, and I am unable to make my wishes known, I designate the following person(s) to make treatment decisions with my physician compatible with my personal values:
1. __________
2. __________
(If a Medical Power of Attorney has been executed, then an agent already has been named and you should not list additional names in this document.)

If the above persons are not available, or if I have not designated a spokesperson, I understand that a spokesperson will be chosen for me following standards specified in the laws of Texas. If, in the judgment of my physician, my death is imminent within minutes to hours, even with the use of all available medical treatment provided within the prevailing standard of care, I acknowledge that all treatments may be withheld or removed except those needed to maintain my comfort. I understand that under Texas law this directive has no effect if I have been diagnosed as pregnant. This directive will remain in effect until I revoke it. No other person may do so.

Signed__________ Date__________ City, County, State of Residence __________

Two competent adult witnesses must sign below, acknowledging the signature of the declarant. The witness designated as Witness 1 may not be a person designated to make a treatment decision for the patient and may not be related to the patient by blood or marriage. This witness may not be entitled to any part of the estate and may not have a claim against the estate of the patient. This witness may not be the attending physician or an employee of the attending physician. If this witness is an employee of a health care facility in which the patient is being cared for, this witness may not be involved in providing direct patient care to the patient. This witness may not be an officer, director, partner, or business office employee of a health care facility in which the patient is being cared for or of any parent organization of the health care facility.

Witness 1 __________ Witness 2 __________

Definitions:

"Artificial nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

"Irreversible condition" means a condition, injury, or illness:

(1) that may be treated, but is never cured or eliminated;
(2) that leaves a person unable to care for or make decisions for the person's own self; and
(3) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

Explanation: Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer's dementia may be considered irreversible early on. There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments. Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the patient is expected to die. You may wish to consider which burdens of treatment you would be willing to accept in an effort to achieve a particular outcome. This is a very personal decision that you may wish to discuss with your physician, family, or other important persons in your life.

"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificial hydration and nutrition. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

"Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

Explanation: Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced. In thinking about terminal illness and its treatment, you again may wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important persons in your life.

**ISSUANCE OF NONWRITTEN DIRECTIVE BY COMPETENT ADULT QUALIFIED PATIENT**

Sec. 166.034. (a) A competent qualified patient who is an adult may issue a directive by a nonwritten means of communication.

(b) A declarant must issue the nonwritten directive in the presence of the attending physician and two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2).

(c) The physician shall make the fact of the existence of the directive a part of the declarant's medical record, and the names of the witnesses shall be entered in the medical record.
EXECUTION OF DIRECTIVE ON BEHALF OF PATIENT YOUNGER THAN 18 YEARS OF AGE

Sec. 166.035. The following persons may execute a directive on behalf of a qualified patient who is younger than 18 years of age:

1. the patient's spouse, if the spouse is an adult;
2. the patient's parents; or
3. the patient's legal guardian.

NOTARIZED DOCUMENT NOT REQUIRED; REQUIREMENT OF SPECIFIC FORM PROHIBITED

Sec. 166.036. (a) A written directive executed under Section 166.033 or 166.035 is effective without regard to whether the document has been notarized.

(b) A physician, health care facility, or health care professional may not require that:

1. a directive be notarized; or
2. a person use a form provided by the physician, health care facility, or health care professional.

PATIENT DESIRE SUPERSEDES DIRECTIVE

Sec. 166.037. The desire of a qualified patient, including a qualified patient younger than 18 years of age, supersedes the effect of a directive.

PROCEDURE WHEN DECLARANT IS INCOMPETENT OR INCAPABLE OF COMMUNICATION

Sec. 166.038. (a) This section applies when an adult qualified patient has executed or issued a directive and is incompetent or otherwise mentally or physically incapable of communication.

(b) If the adult qualified patient has designated a person to make a treatment decision as authorized by Section 166.032(c), the attending physician and the designated person may make a treatment decision in accordance with the declarant's directions.

(c) If the adult qualified patient has not designated a person to make a treatment decision, the attending physician shall comply with the directive unless the physician believes that the directive does not reflect the patient's present desire.

PROCEDURE WHEN PERSON HAS NOT EXECUTED OR ISSUED A DIRECTIVE AND IS INCOMPETENT OR INCAPABLE OF COMMUNICATION

Sec. 166.039. (a) If an adult qualified patient has not executed or issued a directive and is incompetent or otherwise mentally or physically incapable of communication, the attending physician and the patient's legal guardian or an agent under a medical power of attorney may make a treatment decision that may include a decision to withhold or withdraw life-sustaining treatment from the patient.

(b) If the patient does not have a legal guardian or an agent under a medical power of attorney, the attending physician and one person, if available, from one of the following categories, in the following priority, may make a treatment decision that may include a decision to withhold or withdraw life-sustaining treatment:

1. the patient's spouse;
2. the patient's reasonably available adult children;
3. the patient's parents; or
4. the patient's nearest living relative.

(c) A treatment decision made under Subsection (a) or (b) must be based on knowledge of what the patient would desire, if known.

(d) A treatment decision made under Subsection (b) must be documented in the patient's medical record and signed by the attending physician.

(e) If the patient does not have a legal guardian and a person listed in Subsection (b) is not available, a treatment decision made under Subsection (b) must be conurred in by another physician who is not involved in the treatment of the patient or who is a representative of an ethics or medical committee of the health care facility in which the person is a patient.

(f) The fact that an adult qualified patient has not executed or issued a directive does not create a presumption that the patient does not want a treatment decision to be made to withhold or withdraw life-sustaining treatment.

(g) A person listed in Subsection (b) who wishes to challenge a treatment decision made under this section must apply for temporary guardianship under Section 875, Texas Probate Code. The court may waive applicable fees in that proceeding.
PATIENT CERTIFICATION AND PREREQUISITES FOR COMPLYING WITH DIRECTIVE
Sec. 166.040. (a) An attending physician who has been notified of the existence of a directive shall provide for the declarant's certification as a qualified patient on diagnosis of a terminal or irreversible condition.
(b) Before withholding or withdrawing life-sustaining treatment from a qualified patient under this subchapter, the attending physician must determine that the steps proposed to be taken are in accord with this subchapter and the patient's existing desires.

DURATION OF DIRECTIVE
Sec. 166.041. A directive is effective until it is revoked as prescribed by Section 166.042.

REVOCATION OF DIRECTIVE
Sec. 166.042. (a) A declarant may revoke a directive at any time without regard to the declarant's mental state or competency. A directive may be revoked by:
(1) the declarant or someone in the declarant's presence and at the declarant's direction canceling, defacing, obliterating, burning, tearing, or otherwise destroying the directive;
(2) the declarant signing and dating a written revocation that expresses the declarant's intent to revoke the directive; or
(3) the declarant orally stating the declarant's intent to revoke the directive.
(b) A written revocation executed as prescribed by Subsection (a)(2) takes effect only when the declarant or a person acting on behalf of the declarant notifies the attending physician of its existence or mails the revocation to the attending physician. The attending physician or the physician's designee shall record in the patient's medical record the time and date when the physician received notice of the written revocation and shall enter the word "VOID" on each page of the copy of the directive in the patient's medical record.
(c) An oral revocation issued as prescribed by Subsection (a)(3) takes effect only when the declarant or a person acting on behalf of the declarant notifies the attending physician of the revocation. The attending physician or the physician's designees shall also enter the word "VOID" on each page of the copy of the directive in the patient's medical record.
(d) Except as otherwise provided by this subchapter, a person is not civilly or criminally liable for failure to act on a revocation made under this section unless the person has actual knowledge of the revocation.

REEXECUTION OF DIRECTIVE
Sec. 166.043. A declarant may at any time reexecute a directive in accordance with the procedures prescribed by Section 166.032, including reexecution after the declarant is diagnosed as having a terminal or irreversible condition.

LIMITATION OF LIABILITY FOR WITHHOLDING OR WITHDRAWING LIFE-SUSTAINING PROCEDURES
Sec. 166.044. (a) A physician or health care facility that causes life-sustaining treatment to be withheld or withdrawn from a qualified patient in accordance with this subchapter is not civilly liable for that action unless the physician or health care facility fails to exercise reasonable care when applying the patient's advance directive.
(b) A health professional, acting under the direction of a physician, who participates in withholding or withdrawing life-sustaining treatment from a qualified patient in accordance with this subchapter is not civilly liable for that action unless the health professional fails to exercise reasonable care when applying the patient's advance directive.
(c) A physician, or a health professional acting under the direction of a physician, who participates in withholding or withdrawing life-sustaining treatment from a qualified patient in accordance with this subchapter is not criminally liable or guilty of unprofessional conduct as a result of that action unless the physician or health professional fails to exercise reasonable care when applying the patient's advance directive.
(d) The standard of care that a physician, health care facility, or health care professional shall exercise under this section is that degree of care that a physician, health care facility, or health care professional, as applicable, of ordinary prudence and skill would have exercised under the same or similar circumstances in the same or a similar community.
LIABILITY FOR FAILURE TO EFFECTUATE DIRECTIVE

Sec. 166.045. (a) A physician, health care facility, or health care professional who has no knowledge of a directive is not civilly or criminally liable for failing to act in accordance with the directive.

(b) A physician, or a health professional acting under the direction of a physician, is subject to review and disciplinary action by the appropriate licensing board for failing to effectuate a qualified patient's directive in violation of this subchapter or other laws of this state. This subsection does not limit remedies available under other laws of this state.

(c) If an attending physician refuses to comply with a directive or treatment decision and does not wish to follow the procedure established under Section 166.046, life-sustaining treatment shall be provided to the patient, but only until a reasonable opportunity has been afforded for the transfer of the patient to another physician or health care facility willing to comply with the directive or treatment decision.

(d) A physician, health professional acting under the direction of a physician, or health care facility is not civilly or criminally liable or subject to review or disciplinary action by the person's appropriate licensing board if the person has complied with the procedures outlined in Section 166.046.

PROCEDURE IF NOT EFFECTUATING A DIRECTIVE OR TREATMENT DECISION

Sec. 166.046. (a) If an attending physician refuses to honor a patient's advance directive or a health care or treatment decision made by or on behalf of a patient, the physician's refusal shall be reviewed by an ethics or medical committee. The attending physician may not be a member of that committee. The patient shall be given life-sustaining treatment during the review.

(b) The patient or the person responsible for the health care decisions of the individual who has made the decision regarding the directive or treatment decision:
(1) may be given a written description of the ethics or medical committee review process and any other policies and procedures related to this section adopted by the health care facility;
(2) shall be informed of the committee review process not less than 48 hours before the meeting called to discuss the patient's directive, unless the time period is waived by mutual agreement;
(3) at the time of being so informed, shall be provided:
   (A) a copy of the appropriate statement set forth in Section 166.052; and
   (B) a copy of the registry list of health care providers and referral groups that have volunteered their readiness to consider accepting transfer or to assist in locating a provider willing to accept transfer that is posted on the website maintained by the Texas Health Care Information Council under Section 166.053; and
(4) is entitled to:
   (A) attend the meeting; and
   (B) receive a written explanation of the decision reached during the review process.

(c) The written explanation required by Subsection (b)(2)(B) must be included in the patient's medical record.

(d) If the attending physician, the patient, or the person responsible for the health care decisions of the individual does not agree with the decision reached during the review process under Subsection (b), the physician shall make a reasonable effort to transfer the patient to a physician who is willing to comply with the directive. If the patient is a patient in a health care facility, the facility's personnel shall assist the physician in arranging the patient's transfer to:
(1) another physician;
(2) an alternative care setting within that facility; or
(3) another facility.

(e) If the patient or the person responsible for the health care decisions of the patient is requesting life-sustaining treatment that the attending physician has decided and the review process has affirmed is inappropriate treatment, the patient shall be given available life-sustaining treatment pending transfer under Subsection (d). The patient is responsible for any costs incurred in transferring the patient to another facility. The physician and the health care facility are not obligated to provide life-sustaining treatment after the 10th day after the written decision required under Subsection (b) is provided to the patient or the person responsible for the health care decisions of the patient unless ordered to do so under Subsection (g).

(e-1) If during a previous admission to a facility a patient's attending physician and the review process under Subsection (b) have determined that life-sustaining treatment is inappropriate, and the patient is readmitted to the same facility within six months from the date of the decision reached during the review process conducted upon the previous admission, Subsections (b) through (e) need not be followed if the patient's attending physician and a consulting physician who is a member of the ethics or medical committee of the facility document on the patient's...
readmission that the patient's condition either has not improved or has deteriorated since the review process was conducted.

(f) Life-sustaining treatment under this section may not be entered in the patient's medical record as medically unnecessary treatment until the time period provided under Subsection (e) has expired.

(g) At the request of the patient or the person responsible for the health care decisions of the patient, the appropriate district or county court shall extend the time period provided under Subsection (e) only if the court finds, by a preponderance of the evidence, that there is a reasonable expectation that a physician or health care facility that will honor the patient's directive will be found if the time extension is granted.

(h) This section may not be construed to impose an obligation on a facility or a home and community support services agency licensed under Chapter 142 or similar organization that is beyond the scope of the services or resources of the facility or agency. This section does not apply to hospice services provided by a home and community support services agency licensed under Chapter 142.

**HONORING DIRECTIVE DOES NOT CONSTITUTE OFFENSE OF AIDING SUICIDE**

Sec. 166.047. A person does not commit an offense under Section 22.08, Penal Code, by withholding or withdrawing life-sustaining treatment from a qualified patient in accordance with this subchapter.

**CRIMINAL PENALTY; PROSECUTION**

Sec. 166.048. (a) A person commits an offense if the person intentionally conceals, cancels, defaces, obliterates, or damages another person's directive without that person's consent. An offense under this subsection is a Class A misdemeanor.

(b) A person is subject to prosecution for criminal homicide under Chapter 19, Penal Code, if the person, with the intent to cause life-sustaining treatment to be withheld or withdrawn from another person contrary to the other person's desires, falsifies or forges a directive or intentionally conceals or withholds personal knowledge of a revocation and thereby directly causes life-sustaining treatment to be withheld or withdrawn from the other person with the result that the other person's death is hastened.

**PREGNANT PATIENTS**

Sec. 166.049. A person may not withdraw or withhold life-sustaining treatment under this subchapter from a pregnant patient.

**MERCY KILLING NOT CONDONED**

Sec. 166.050. This subchapter does not condone, authorize, or approve mercy killing or permit an affirmative or deliberate act or omission to end life except to permit the natural process of dying as provided by this subchapter.

**LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED**

Sec. 166.051. This subchapter does not impair or supersede any legal right or responsibility a person may have to effect the withholding or withdrawal of life-sustaining treatment in a lawful manner, provided that if an attending physician or health care facility is unwilling to honor a patient's advance directive or a treatment decision to provide life-sustaining treatment, life-sustaining treatment is required to be provided the patient, but only until a reasonable opportunity has been afforded for transfer of the patient to another physician or health care facility willing to comply with the advance directive or treatment decision.

**STATEMENTS EXPLAINING PATIENT'S RIGHT TO TRANSFER**

Sec. 166.052. (a) In cases in which the attending physician refuses to honor an advance directive or treatment decision requesting the provision of life-sustaining treatment, the statement required by Section 166.046(b)(2)(A) shall be in substantially the following form:

You have been given this information because you have requested life-sustaining treatment,* which the attending physician believes is not appropriate. This information is being provided to help you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families, and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166 of the Texas Health and Safety Code.

When There Is A Disagreement About Medical Treatment: The Physician Recommends Against Life-Sustaining Treatment That You Wish To Continue

- 94 -
When an attending physician refuses to comply with an advance directive or other request for life-sustaining treatment because of the physician's judgment that the treatment would be inappropriate, the case will be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review.

You will receive notification of this review at least 48 hours before a meeting of the committee related to your case. You are entitled to attend the meeting. With your agreement, the meeting may be held sooner than 48 hours, if possible.

You are entitled to receive a written explanation of the decision reached during the review process.

If after this review process both the attending physician and the ethics or medical committee conclude that life-sustaining treatment is inappropriate and yet you continue to request such treatment, then the following procedure will occur:

1. The physician, with the help of the health care facility, will assist you in trying to find a physician and facility willing to provide the requested treatment.
2. You are being given a list of health care providers and referral groups that have volunteered their readiness to consider accepting transfer, or to assist in locating a provider willing to accept transfer, maintained by the Texas Health Care Information Council. You may wish to contact providers or referral groups on the list or others of your choice to get help in arranging a transfer.
3. The patient will continue to be given life-sustaining treatment until he or she can be transferred to a willing provider for up to 10 days from the time you were given the committee's written decision that life-sustaining treatment is not appropriate.
4. If a transfer can be arranged, the patient will be responsible for the costs of the transfer.
5. If a provider cannot be found willing to give the requested treatment within 10 days, life-sustaining treatment may be withdrawn unless a court of law has granted an extension.
6. You may ask the appropriate district or county court to extend the 10-day period if the court finds that there is a reasonable expectation that a physician or health care facility willing to provide life-sustaining treatment will be found if the extension is granted.

*a*Life-sustaining treatment* means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

(b) In cases in which the attending physician refuses to comply with an advance directive or treatment decision requesting the withholding or withdrawal of life-sustaining treatment, the statement required by Section 166.046(b)(3)(A) shall be in substantially the following form:

You have been given this information because you have requested the withdrawal or withholding of life-sustaining treatment* and the attending physician refuses to comply with that request. The information is being provided to help you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families, and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166 of the Texas Health and Safety Code.

When There Is A Disagreement About Medical Treatment: The Physician Recommends Life-Sustaining Treatment That You Wish To Stop

When an attending physician refuses to comply with an advance directive or other request for withdrawal or withholding of life-sustaining treatment for any reason, the case will be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review.

You will receive notification of this review at least 48 hours before a meeting of the committee related to your case. You are entitled to attend the meeting. With your agreement, the meeting may be held sooner than 48 hours, if possible.

You are entitled to receive a written explanation of the decision reached during the review process.

If you or the attending physician do not agree with the decision reached during the review process, and the attending physician still refuses to comply with your request to withhold or withdraw life-sustaining treatment, then the following procedure will occur:

1. The physician, with the help of the health care facility, will assist you in trying to find a physician and facility willing to withdraw or withhold the life-sustaining treatment.
2. You are being given a list of health care providers and referral groups that have volunteered their readiness to consider accepting transfer, or to assist in locating a provider willing to accept transfer, maintained by the Texas Health Care Information Council. You may wish to contact providers or referral groups on the list or others of your choice to get help in arranging a transfer.

**"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.**

(c) An attending physician or health care facility may, if it chooses, include any additional information concerning the physician's or facility's policy, perspective, experience, or review procedure.

REGISTRY TO ASSIST TRANSFERS

Sec. 166.053. (a) The Texas Health Care Information Council shall maintain a registry listing the identity of and contact information for health care providers and referral groups, situated inside and outside this state, that have voluntarily notified the council they may consider accepting or may assist in locating a provider willing to accept transfer of a patient under Section 166.045 or 166.046.

(b) The listing of a provider or referral group in the registry described in this section does not obligate the provider or group to accept transfer of or provide services to any particular patient.

(c) The Texas Health Care Information Council shall post the current registry list on its website in a form appropriate for easy comprehension by patients and persons responsible for the health care decisions of patients and shall provide a clearly identifiable link from its home page to the registry page. The list shall separately indicate those providers and groups that have indicated their interest in assisting the transfer of:

1. those patients on whose behalf life-sustaining treatment is being sought;
2. those patients on whose behalf the withholding or withdrawal of life-sustaining treatment is being sought; and
3. patients described in both Subdivisions (1) and (2).

(d) The registry list described in this section shall include the following disclaimer:

"This registry lists providers and groups that have indicated to the Texas Health Care Information Council their interest in assisting the transfer of patients in the circumstances described, and is provided for information purposes only. Neither the Texas Health Care Information Council nor the State of Texas endorses or assumes any responsibility for any representation, claim, or act of the listed providers or groups."

SUBCHAPTER C. OUT-OF-HOSPITAL DO-NOT-RESUSCITATE ORDERS

DEFINITIONS

Sec. 166.081. In this subchapter:

(1) Repealed by Acts 2003, 78th Leg., ch. 1228, Sec. 8.
(2) "DNR identification device" means an identification device specified by the board under Section 166.101 that is worn for the purpose of identifying a person who has executed or issued an out-of-hospital DNR order or on whose behalf an out-of-hospital DNR order has been executed or issued under this subchapter.
(3) "Emergency medical services" has the meaning assigned by Section 773.003.
(4) "Emergency medical services personnel" has the meaning assigned by Section 773.003.
(5) "Health care professionals" means physicians, physician assistants, nurses, and emergency medical services personnel and, unless the context requires otherwise, includes hospital emergency personnel.
(6) "Out-of-hospital DNR order":
  (A) means a legally binding out-of-hospital do-not-resuscitate order, in the form specified by the board under Section 166.083, prepared and signed by the attending physician of a person, that documents the instructions of a person or the person's legally authorized representative and directs health care professionals acting in an out-of-hospital setting not to initiate or continue the following life-sustaining treatment:
  (i) cardiopulmonary resuscitation;
  (ii) advanced airway management;
  (iii) artificial ventilation;
  (iv) defibrillation;
  (v) transcutaneous cardiac pacing; and
other life-sustaining treatment specified by the board under Section 166.101(a); and

(B) does not include authorization to withhold medical interventions or therapies considered necessary to provide comfort care or to alleviate pain or to provide water or nutrition.

(7) "Out-of-hospital setting" means a location in which health care professionals are called for assistance, including long-term care facilities, in-patient hospice facilities, private homes, hospital outpatient or emergency departments, physician's offices, and vehicles during transport.

(8) "Proxy" means a person designated and authorized by a directive executed or issued in accordance with Subchapter B to make a treatment decision for another person in the event the other person becomes incompetent or otherwise mentally or physically incapable of communication.

(9) "Qualified relatives" means those persons authorized to execute or issue an out-of-hospital DNR order on behalf of a person who is incompetent or otherwise mentally or physically incapable of communication under Section 166.088.

(10) "Statewide out-of-hospital DNR protocol" means a set of statewide standardized procedures adopted by the board under Section 166.101(a) for withholding cardiopulmonary resuscitation and certain other life-sustaining treatment by health care professionals acting in out-of-hospital settings.

**OUT-OF-HOSPITAL DNR ORDER; DIRECTIVE TO PHYSICIANS**

**Sec. 166.082.** (a) A competent person may at any time execute a written out-of-hospital DNR order directing health care professionals acting in an out-of-hospital setting to withhold cardiopulmonary resuscitation and certain other life-sustaining treatment designated by the board.

(b) The declarant must sign the out-of-hospital DNR order in the presence of two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2). The witnesses must sign the order. The attending physician of the declarant must sign the order and shall make the fact of the existence of the order and the reasons for execution of the order a part of the declarant's medical record.

(c) If the person is incompetent but previously executed or issued a directive to physicians in accordance with Subchapter B, the physician may rely on the directive as the person's instructions to issue an out-of-hospital DNR order and shall place a copy of the directive in the person's medical record. The physician shall sign the order in lieu of the person signing under Subsection (b).

(d) If the person is incompetent but previously executed or issued a directive to physicians in accordance with Subchapter B designating a proxy, the proxy may make any decisions required of the designating person as to an out-of-hospital DNR order and shall sign the order in lieu of the person signing under Subsection (b).

(e) If the person is now incompetent but previously executed or issued a medical power of attorney designating an agent, the agent may make any decisions required of the designating person as to an out-of-hospital DNR order and shall sign the order in lieu of the person signing under Subsection (b).

(f) The board, on the recommendation of the department, shall by rule adopt procedures for the disposition and maintenance of records of an original out-of-hospital DNR order and any copies of the order.

(g) An out-of-hospital DNR order is effective on its execution.

**FORM OF OUT-OF-HOSPITAL DNR ORDER**

**Sec. 166.083.** (a) A written out-of-hospital DNR order shall be in the standard form specified by board rule as recommended by the department.

(b) The standard form of an out-of-hospital DNR order specified by the board must, at a minimum, contain the following:

1. a distinctive single-page format that readily identifies the document as an out-of-hospital DNR order;

2. a title that readily identifies the document as an out-of-hospital DNR order;

3. the printed or typed name of the person;

4. a statement that the physician signing the document is the attending physician of the person and that the physician is directing health care professionals acting in out-of-hospital settings, including a hospital emergency department, not to initiate or continue certain life-sustaining treatment on behalf of the person, and a listing of those procedures not to be initiated or continued;

5. a statement that the person understands that the person may revoke the out-of-hospital DNR order at any time by destroying the order and removing the DNR identification device, if any, or by communicating to health care professionals at the scene the person's desire to revoke the out-of-hospital DNR order;
(6) places for the printed names and signatures of the witnesses and attending physician of the person and the medical license number of the attending physician;

(7) a separate section for execution of the document by the legal guardian of the person, the person's proxy, an agent of the person having a medical power of attorney, or the attending physician attesting to the issuance of an out-of-hospital DNR order by nonwritten means of communication or acting in accordance with a previously executed or previously issued directive to physicians under Section 166.082(c) that includes the following:

(A) a statement that the legal guardian, the proxy, the agent, the person by nonwritten means of communication, or the physician directs that each listed life-sustaining treatment should not be initiated or continued in behalf of the person; and

(B) places for the printed names and signatures of the witnesses and, as applicable, the legal guardian, proxy, agent, or physician;

(8) a separate section for execution of the document by at least one qualified relative of the person when the person does not have a legal guardian, proxy, or agent having a medical power of attorney and is incompetent or otherwise mentally or physically incapable of communication, including:

(A) a statement that the relative of the person is qualified to make a treatment decision to withhold cardiopulmonary resuscitation and certain other designated life-sustaining treatment under Section 166.088 and, based on the known desires of the person or a determination of the best interest of the person, directs that each listed life-sustaining treatment should not be initiated or continued in behalf of the person; and

(B) places for the printed names and signatures of the witnesses and qualified relative of the person;

(9) a place for entry of the date of execution of the document;

(10) a statement that the document is in effect on the date of its execution and remains in effect until the death of the person or until the document is revoked;

(11) a statement that the document must accompany the person during transport;

(12) a statement regarding the proper disposition of the document or copies of the document, as the board determines appropriate; and

(13) a statement at the bottom of the document, with places for the signature of each person executing the document, that the document has been properly completed.

(c) The board may, by rule and as recommended by the department, modify the standard form of the out-of-hospital DNR order described by Subsection (b) in order to accomplish the purposes of this subchapter.

(d) A photocopy or other complete facsimile of the original written out-of-hospital DNR order executed under this subchapter may be used for any purpose for which the original written order may be used under this subchapter.

ISSUANCE OF OUT-OF-HOSPITAL DNR ORDER BY NONWRITTEN COMMUNICATION
Sec. 166.084. (a) A competent person who is an adult may issue an out-of-hospital DNR order by nonwritten communication.

(b) A declarant must issue the nonwritten out-of-hospital DNR order in the presence of the attending physician and two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2).

(c) The attending physician and witnesses shall sign the out-of-hospital DNR order in the place of the document provided by Section 166.083(b)(7) and the attending physician shall sign the document in the place required by Section 166.083(b)(13). The physician shall make the fact of the existence of the out-of-hospital DNR order a part of the declarant's medical record and the names of the witnesses shall be entered in the medical record.

(d) An out-of-hospital DNR order issued in the manner provided by this section is valid and shall be honored by responding health care professionals as if executed in the manner provided by Section 166.082.

EXECUTION OF OUT-OF-HOSPITAL DNR ORDER ON BEHALF OF A MINOR
Sec. 166.085. (a) The following persons may execute an out-of-hospital DNR order on behalf of a minor:

(1) the minor's parents;

(2) the minor's legal guardian; or

(3) the minor's managing conservator.

(b) A person listed under Subsection (a) may not execute an out-of-hospital DNR order unless the minor has been diagnosed by a physician as suffering from a terminal or irreversible condition.
DESIREE OF PERSON SUPERSEDES OUT-OF-HOSPITAL DNR ORDER

Sec. 166.086. The desire of a competent person, including a competent minor, supersedes the effect of an out-of-hospital DNR order executed or issued by or on behalf of the person when the desire is communicated to responding health care professionals as provided by this subchapter.

PROCEDURE WHEN DECLARANT IS INCOMPETENT OR INCAPABLE OF COMMUNICATION

Sec. 166.087. (a) This section applies when a person 18 years of age or older has executed or issued an out-of-hospital DNR order and subsequently becomes incompetent or otherwise mentally or physically incapable of communication.

(b) If the adult person has designated a person to make a treatment decision as authorized by Section 166.032(c), the attending physician and the designated person shall comply with the out-of-hospital DNR order.

(c) If the adult person has not designated a person to make a treatment decision as authorized by Section 166.032(c), the attending physician shall comply with the out-of-hospital DNR order unless the physician believes that the order does not reflect the person's present desire.

PROCEDURE WHEN PERSON HAS NOT EXECUTED OR ISSUED OUT-OF-HOSPITAL DNR ORDER AND IS INCOMPETENT OR INCAPABLE OF COMMUNICATION

Sec. 166.088. (a) If an adult person has not executed or issued an out-of-hospital DNR order and is incompetent or otherwise mentally or physically incapable of communication, the attending physician and the person's legal guardian, proxy, or agent having a medical power of attorney may execute an out-of-hospital DNR order on behalf of the person.

(b) If the person does not have a legal guardian, proxy, or agent under a medical power of attorney, the attending physician and at least one qualified relative from a category listed by Section 166.039(b), subject to the priority established under that subsection, may execute an out-of-hospital DNR order in the same manner as a treatment decision made under Section 166.039(b).

(c) A decision to execute an out-of-hospital DNR order made under Subsection (a) or (b) must be based on knowledge of what the person would desire, if known.

(d) An out-of-hospital DNR order executed under Subsection (b) must be made in the presence of at least two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2).

(e) The fact that an adult person has not executed or issued an out-of-hospital DNR order does not create a presumption that the person does not want a treatment decision made to withhold cardiopulmonary resuscitation and certain other designated life-sustaining treatment designated by the board.

(f) If there is not a qualified relative available to act for the person under Subsection (b), an out-of-hospital DNR order must be concurred in by another physician who is not involved in the treatment of the patient or who is a representative of the ethics or medical committee of the health care facility in which the person is a patient.

(g) A person listed in Section 166.039(b) who wishes to challenge a decision made under this section must apply for temporary guardianship under Section 875, Texas Probate Code. The court may waive applicable fees in that proceeding.

COMPLIANCE WITH OUT-OF-HOSPITAL DNR ORDER

Sec. 166.089. (a) When responding to a call for assistance, health care professionals shall honor an out-of-hospital DNR order in accordance with the statewide out-of-hospital DNR protocol and, where applicable, locally adopted out-of-hospital DNR protocols not in conflict with the statewide protocol if:

(1) the responding health care professionals discover an executed or issued out-of-hospital DNR order form on their arrival at the scene; and

(2) the responding health care professionals comply with this section.

(b) If the person is wearing a DNR identification device, the responding health care professionals must comply with Section 166.090.

(c) The responding health care professionals must establish the identity of the person as the person who executed or issued the out-of-hospital DNR order or for whom the out-of-hospital DNR order was executed or issued.

(d) The responding health care professionals must determine that the out-of-hospital DNR order form appears to be valid in that it includes:

(1) written responses in the places designated on the form for the names, signatures, and other information required of persons executing or issuing, or witnessing the execution or issuance of, the order;
(2) a date in the place designated on the form for the date the order was executed or issued; and
(3) the signature of the declarant or persons executing or issuing the order and the attending
physician in the appropriate places designated on the form for indicating that the order form has been properly
completed.

(e) If the conditions prescribed by Subsections (a) through (d) are not determined to apply by the
responding health care professionals at the scene, the out-of-hospital DNR order may not be honored and life-
sustaining procedures otherwise required by law or local emergency medical services protocols shall be initiated or
continued. Health care professionals acting in out-of-hospital settings are not required to accept or interpret an out-
of-hospital DNR order that does not meet the requirements of this subchapter.

(f) The out-of-hospital DNR order form or a copy of the form, when available, must accompany the person
during transport.

(g) A record shall be made and maintained of the circumstances of each emergency medical services
response in which an out-of-hospital DNR order or DNR identification device is encountered, in accordance with the
statewide out-of-hospital DNR protocol and any applicable local out-of-hospital DNR protocol not in conflict with
the statewide protocol.

(h) An out-of-hospital DNR order executed or issued and documented or evidenced in the manner
prescribed by this subchapter is valid and shall be honored by responding health care professionals unless the person
or persons found at the scene:
(1) identify themselves as the declarant or as the attending physician, legal guardian, qualified
relative, or agent of the person having a medical power of attorney who executed or issued the out-of-hospital DNR
order on behalf of the person; and
(2) request that cardiopulmonary resuscitation or certain other life-sustaining treatment designated
by the board be initiated or continued.

(i) If the policies of a health care facility preclude compliance with the out-of-hospital DNR order of a
person or an out-of-hospital DNR order issued by an attending physician on behalf of a person who is admitted to or
a resident of the facility, or if the facility is unwilling to accept DNR identification devices as evidence of the
existence of an out-of-hospital DNR order, that facility shall take all reasonable steps to notify the person or, if the
person is incompetent, the person's guardian or the person or persons having authority to make health care treatment
decisions on behalf of the person, of the facility's policy and shall take all reasonable steps to effect the transfer of
the person to the person's home or to a facility where the provisions of this subchapter can be carried out.

DNR IDENTIFICATION DEVICE
Sec. 166.090. (a) A person who has a valid out-of-hospital DNR order under this subchapter may wear a
DNR identification device around the neck or on the wrist as prescribed by board rule adopted under Section
166.101.

(b) The presence of a DNR identification device on the body of a person is conclusive evidence that the
person has executed or issued a valid out-of-hospital DNR order or has a valid out-of-hospital DNR order executed
or issued on the person's behalf. Responding health care professionals shall honor the DNR identification device as
if a valid out-of-hospital DNR order form executed or issued by the person were found in the possession of the
person.

DURATION OF OUT-OF-HOSPITAL DNR ORDER
Sec. 166.091. An out-of-hospital DNR order is effective until it is revoked as prescribed by Section
166.092.

REVOCATION OF OUT-OF-HOSPITAL DNR ORDER
Sec. 166.092. (a) A declarant may revoke an out-of-hospital DNR order at any time without regard to the
declarant's mental state or competency. An order may be revoked by:
(1) the declarant or someone in the declarant's presence and at the declarant's direction destroying
the order form and removing the DNR identification device, if any;
(2) a person who identifies himself or herself as the legal guardian, as a qualified relative, or as
the agent of the declarant having a medical power of attorney who executed the out-of-hospital DNR order or
another person in the person's presence and at the person's direction destroying the order form and removing the
DNR identification device, if any;
(3) the declarant communicating the declarant's intent to revoke the order; or
(4) a person who identifies himself or herself as the legal guardian, a qualified relative, or the agent of the declarant having a medical power of attorney who executed the out-of-hospital DNR order orally stating the person's intent to revoke the order.

(b) An oral revocation under Subsection (a)(3) or (a)(4) takes effect only when the declarant or a person who identifies himself or herself as the legal guardian, a qualified relative, or the agent of the declarant having a medical power of attorney who executed the out-of-hospital DNR order communicates the intent to revoke the order to the responding health care professionals or the attending physician at the scene. The responding health care professionals shall record the time, date, and place of the revocation in accordance with the statewide out-of-hospital DNR protocol and rules adopted by the board and any applicable local out-of-hospital DNR protocol. The attending physician or the physician's designee shall record in the person's medical record the time, date, and place of the revocation and, if different, the time, date, and place that the physician received notice of the revocation. The attending physician or the physician's designee shall also enter the word "VOID" on each page of the copy of the order in the person's medical record.

(c) Except as otherwise provided by this subchapter, a person is not civilly or criminally liable for failure to act on a revocation made under this section unless the person has actual knowledge of the revocation.

REEXECUTION OF OUT-OF-HOSPITAL DNR ORDER

Sec. 166.093. A declarant may at any time reexecute or reissue an out-of-hospital DNR order in accordance with the procedures prescribed by Section 166.082, including reexecution or reissuance after the declarant is diagnosed as having a terminal or irreversible condition.

LIMITATION ON LIABILITY FOR WITHHOLDING CARDIOPULMONARY RESUSCITATION AND CERTAIN OTHER LIFE-SUSTAINING PROCEDURES

Sec. 166.094. (a) A health care professional or health care facility or entity that in good faith causes cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board to be withheld from a person in accordance with this subchapter is not civilly liable for that action.

(b) A health care professional or health care facility or entity that in good faith participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board from a person in accordance with this subchapter is not civilly liable for that action.

(c) A health care professional or health care facility or entity that in good faith participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board from a person in accordance with this subchapter is not criminally liable or guilty of unprofessional conduct as a result of that action.

(d) A health care professional or health care facility or entity that in good faith causes or participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board from a person in accordance with this subchapter and rules adopted under this subchapter is not in violation of any other licensing or regulatory laws or rules of this state and is not subject to any disciplinary action or sanction by any licensing or regulatory agency of this state as a result of that action.

LIMITATION ON LIABILITY FOR FAILURE TO EFFECTUATE OUT-OF-HOSPITAL DNR ORDER

Sec. 166.095. (a) A health care professional or health care facility or entity that has no actual knowledge of an out-of-hospital DNR order is not civilly or criminally liable for failing to act in accordance with the order.

(b) A health care professional or health care facility or entity is subject to review and disciplinary action by the appropriate licensing board for failing to effectuate an out-of-hospital DNR order. This subsection does not limit remedies available under other laws of this state.

(c) If an attending physician refuses to execute or comply with an out-of-hospital DNR order, the physician shall inform the person, the legal guardian or qualified relatives of the person, or the agent of the person having a medical power of attorney and, if the person or another authorized to act on behalf of the person so directs, shall make a reasonable effort to transfer the person to another physician who is willing to execute or comply with an out-of-hospital DNR order.

HONORING OUT-OF-HOSPITAL DNR ORDER DOES NOT CONSTITUTE OFFENSE OF AIDING SUICIDE

Sec. 166.096. A person does not commit an offense under Section 22.08, Penal Code, by withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board from a person in accordance with this subchapter.
CRIMINAL PENALTY; PROSECUTION

Sec. 166.097. (a) A person commits an offense if the person intentionally conceals, cancels, defaces, obliterates, or damages another person's out-of-hospital DNR order or DNR identification device without that person's consent or the consent of the person or persons authorized to execute or issue an out-of-hospital DNR order on behalf of the person under this subchapter. An offense under this subsection is a Class A misdemeanor.

(b) A person is subject to prosecution for criminal homicide under Chapter 19, Penal Code, if the person, with the intent to cause cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board to be withheld from another person contrary to the other person's desires, falsifies or forges an out-of-hospital DNR order or intentionally conceals or withholds personal knowledge of a revocation and thereby directly causes cardiopulmonary resuscitation and certain other life-sustaining treatment designated by the board to be withheld from the other person with the result that the other person's death is hastened.

PREGNANT PERSONS

Sec. 166.098. A person may not withhold cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board under this subchapter from a person known by the responding health care professionals to be pregnant.

MERCY KILLING NOT CONDONED

Sec. 166.099. This subchapter does not condone, authorize, or approve mercy killing or permit an affirmative or deliberate act or omission to end life except to permit the natural process of dying as provided by this subchapter.

LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED

Sec. 166.100. This subchapter does not impair or supersede any legal right or responsibility a person may have under a constitution, other statute, regulation, or court decision to effect the withholding of cardiopulmonary resuscitation or certain other life-sustaining treatment designated by the board.

DUTIES OF DEPARTMENT AND BOARD

Sec. 166.101. (a) The board shall, on the recommendation of the department, adopt all reasonable and necessary rules to carry out the purposes of this subchapter, including rules:

1. adopting a statewide out-of-hospital DNR order protocol that sets out standard procedures for the withholding of cardiopulmonary resuscitation and certain other life-sustaining treatment by health care professionals acting in out-of-hospital settings;
2. designating life-sustaining treatment that may be included in an out-of-hospital DNR order, including all procedures listed in Sections 166.081(6)(A)(i) through (v); and
3. governing recordkeeping in circumstances in which an out-of-hospital DNR order or DNR identification device is encountered by responding health care professionals.

(b) The rules adopted by the board under Subsection (a) are not effective until approved by the Texas State Board of Medical Examiners.

(c) Local emergency medical services authorities may adopt local out-of-hospital DNR order protocols if the local protocols do not conflict with the statewide out-of-hospital DNR order protocol adopted by the board.

(d) The board by rule shall specify a distinctive standard design for a necklace and a bracelet DNR identification device that signifies, when worn by a person, that the possessor has executed or issued a valid out-of-hospital DNR order under this subchapter or is a person for whom a valid out-of-hospital DNR order has been executed or issued.

(e) The department shall report to the board from time to time regarding issues identified in emergency medical services responses in which an out-of-hospital DNR order or DNR identification device is encountered. The report may contain recommendations to the board for necessary modifications to the form of the standard out-of-hospital DNR order or the designated life-sustaining procedures listed in the standard out-of-hospital DNR order, the statewide out-of-hospital DNR order protocol, or the DNR identification devices.

PHYSICIAN'S DNR ORDER MAY BE HONORED BY HEALTH CARE PERSONNEL OTHER THAN EMERGENCY MEDICAL SERVICES PERSONNEL

Sec. 166.102. (a) Except as provided by Subsection (b), a licensed nurse or person providing health care services in an out-of-hospital setting may honor a physician's do-not-resuscitate order.
(b) When responding to a call for assistance, emergency medical services personnel shall honor only a properly executed or issued out-of-hospital DNR order or prescribed DNR identification device in accordance with this subchapter.

SUBCHAPTER D. MEDICAL POWER OF ATTORNEY

DEFINITIONS

Sec. 166.151. In this subchapter:
(1) "Adult" means a person 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed.
(2) "Agent" means an adult to whom authority to make health care decisions is delegated under a medical power of attorney.
(3) "Health care provider" means an individual or facility licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice and includes a physician.
(4) "Principal" means an adult who has executed a medical power of attorney.
(5) "Residential care provider" means an individual or facility licensed, certified, or otherwise authorized to operate, for profit or otherwise, a residential care home.

SCOPE AND DURATION OF AUTHORITY

Sec. 166.152. (a) Subject to this subchapter or any express limitation on the authority of the agent contained in the medical power of attorney, the agent may make any health care decision on the principal's behalf that the principal could make if the principal were competent.
(b) An agent may exercise authority only if the principal's attending physician certifies in writing and files the certification in the principal's medical record that, based on the attending physician's reasonable medical judgment, the principal is incompetent.
(c) Notwithstanding any other provisions of this subchapter, treatment may not be given to or withheld from the principal if the principal objects regardless of whether, at the time of the objection:
   (1) a medical power of attorney is in effect; or
   (2) the principal is competent.
(d) The principal's attending physician shall make reasonable efforts to inform the principal of any proposed treatment or of any proposal to withdraw or withhold treatment before implementing an agent's advance directive.
(e) After consultation with the attending physician and other health care providers, the agent shall make a health care decision:
   (1) according to the agent's knowledge of the principal's wishes, including the principal's religious and moral beliefs; or
   (2) if the agent does not know the principal's wishes, according to the agent's assessment of the principal's best interests.
(f) Notwithstanding any other provision of this subchapter, an agent may not consent to:
   (1) voluntary inpatient mental health services;
   (2) convulsive treatment;
   (3) psychosurgery;
   (4) abortion; or
   (5) neglect of the principal through the omission of care primarily intended to provide for the comfort of the principal.
(g) The power of attorney is effective indefinitely on execution as provided by this subchapter and delivery of the document to the agent, unless it is revoked as provided by this subchapter or the principal becomes competent. If the medical power of attorney includes an expiration date and on that date the principal is incompetent, the power of attorney continues to be effective until the principal becomes competent unless it is revoked as provided by this subchapter.

PERSONS WHO MAY NOT EXERCISE AUTHORITY OF AGENT

Sec. 166.153. A person may not exercise the authority of an agent while the person serves as:
(1) the principal's health care provider;
(2) an employee of the principal's health care provider unless the person is a relative of the principal;
(3) the principal's residential care provider; or
(4) an employee of the principal's residential care provider unless the person is a relative of the principal.

EXECUTION AND WITNESSES

Sec. 166.154. (a) The medical power of attorney must be signed by the principal in the presence of two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2). The witnesses must sign the document.
(b) If the principal is physically unable to sign, another person may sign the medical power of attorney with the principal's name in the principal's presence and at the principal's express direction.

REVOCATION

Sec. 166.155. (a) A medical power of attorney is revoked by:
(1) oral or written notification at any time by the principal to the agent or a licensed or certified health or residential care provider or by any other act evidencing a specific intent to revoke the power, without regard to whether the principal is competent or the principal's mental state;
(2) execution by the principal of a subsequent medical power of attorney; or
(3) the divorce of the principal and spouse, if the spouse is the principal's agent, unless the medical power of attorney provides otherwise.
(b) A principal's licensed or certified health or residential care provider who is informed of or provided with a revocation of a medical power of attorney shall immediately record the revocation in the principal's medical record and give notice of the revocation to the agent and any known health and residential care providers currently responsible for the principal's care.

APPOINTMENT OF GUARDIAN

Sec. 166.156. (a) On motion filed in connection with a petition for appointment of a guardian or, if a guardian has been appointed, on petition of the guardian, a probate court shall determine whether to suspend or revoke the authority of the agent.
(b) The court shall consider the preferences of the principal as expressed in the medical power of attorney.
(c) During the pendency of the court's determination under Subsection (a), the guardian has the sole authority to make any health care decisions unless the court orders otherwise. If a guardian has not been appointed, the agent has the authority to make any health care decisions unless the court orders otherwise.
(d) A person, including any attending physician or health or residential care provider, who does not have actual knowledge of the appointment of a guardian or an order of the court granting authority to someone other than the agent to make health care decisions is not subject to criminal or civil liability and has not engaged in unprofessional conduct for implementing an agent's health care decision.

DISCLOSURE OF MEDICAL INFORMATION

Sec. 166.157. Subject to any limitations in the medical power of attorney, an agent may, for the purpose of making a health care decision:
(1) request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including medical and hospital records;
(2) execute a release or other document required to obtain the information; and
(3) consent to the disclosure of the information.

DUTY OF HEALTH OR RESIDENTIAL CARE PROVIDER

Sec. 166.158. (a) A principal's health or residential care provider and an employee of the provider who knows of the existence of the principal's medical power of attorney shall follow a directive of the principal's agent to the extent it is consistent with the desires of the principal, this subchapter, and the medical power of attorney.
(b) The attending physician does not have a duty to verify that the agent's directive is consistent with the principal's wishes or religious or moral beliefs.
(c) A principal's health or residential care provider who finds it impossible to follow a directive by the agent because of a conflict with this subchapter or the medical power of attorney shall inform the agent as soon as is reasonably possible. The agent may select another attending physician. The procedures established under Sections
166.045 and 166.046 apply if the agent's directive concerns providing, withholding, or withdrawing life-sustaining treatment.

(d) This subchapter may not be construed to require a health or residential care provider who is not a physician to act in a manner contrary to a physician's order.

**DISCRIMINATION RELATING TO EXECUTION OF MEDICAL POWER OF ATTORNEY**

Sec. 166.159. A health or residential care provider, health care service plan, insurer issuing disability insurance, self-insured employee benefit plan, or nonprofit hospital service plan may not:

(1) charge a person a different rate solely because the person has executed a medical power of attorney;

(2) require a person to execute a medical power of attorney before:
   (A) admitting the person to a hospital, nursing home, or residential care home;
   (B) insuring the person; or
   (C) allowing the person to receive health or residential care; or

(3) refuse health or residential care to a person solely because the person has executed a medical power of attorney.

**LIMITATION ON LIABILITY**

Sec. 166.160. (a) An agent is not subject to criminal or civil liability for a health care decision if the decision is made in good faith under the terms of the medical power of attorney and the provisions of this subchapter.

(b) An attending physician, health or residential care provider, or a person acting as an agent for or under the physician's or provider's control is not subject to criminal or civil liability and has not engaged in unprofessional conduct for an act or omission if the act or omission:

(1) is done in good faith under the terms of the medical power of attorney, the directives of the agent, and the provisions of this subchapter; and

(2) does not constitute a failure to exercise reasonable care in the provision of health care services.

(c) The standard of care that the attending physician, health or residential care provider, or person acting as an agent for or under the physician's or provider's control shall exercise under Subsection (b) is that degree of care that an attending physician, health or residential care provider, or person acting as an agent for or under the physician's or provider's control, as applicable, of ordinary prudence and skill would have exercised under the same or similar circumstances in the same or similar community.

(d) An attending physician, health or residential care provider, or person acting as an agent for or under the physician's or provider's control has not engaged in unprofessional conduct for:

(1) failure to act as required by the directive of an agent or a medical power of attorney if the physician, provider, or person was not provided with a copy of the medical power of attorney or had no knowledge of a directive; or

(2) acting as required by an agent's directive if the medical power of attorney has expired or been revoked but the physician, provider, or person does not have knowledge of the expiration or revocation.

**LIABILITY FOR HEALTH CARE COSTS**

Sec. 166.161. Liability for the cost of health care provided as a result of the agent's decision is the same as if the health care were provided as a result of the principal's decision.

**DISCLOSURE STATEMENT**

Sec. 166.162. A medical power of attorney is not effective unless the principal, before executing the medical power of attorney, signs a statement that the principal has received a disclosure statement and has read and understood its contents.

**FORM OF DISCLOSURE STATEMENT**

Sec. 166.163. The disclosure statement must be in substantially the following form:

INFORMATION CONCERNING THE MEDICAL POWER OF ATTORNEY
THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU
SHOULD KNOW THESE IMPORTANT FACTS:
Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself. Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority begins when your doctor certifies that you lack the competence to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have had.

It is important that you discuss this document with your physician or other health care provider before you sign it to make sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing home, or residential care home, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not permit a person to do both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions who have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing or by your execution of a subsequent medical power of attorney. Unless you state otherwise, your appointment of a spouse dissolves on divorce.

This document may not be changed or modified. If you want to make changes in the document, you must make an entirely new one.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority to make health care decisions for you.

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS SIGNED IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES. THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:

(1) the person you have designated as your agent;
(2) a person related to you by blood or marriage;
(3) a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law;
(4) your attending physician;
(5) an employee of your attending physician;
(6) an employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or
(7) a person who, at the time this power of attorney is executed, has a claim against any part of your estate after your death.

FORM OF MEDICAL POWER OF ATTORNEY

Sec. 166.164. The medical power of attorney must be in substantially the following form:

MEDICAL POWER OF ATTORNEY DESIGNATION OF HEALTH CARE AGENT.

I, ____________________________ (insert your name) appoint:

Name: ____________________________
as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This medical power of attorney takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE AS FOLLOWS:

DESIGNATION OF ALTERNATE AGENT.
(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the designation is automatically revoked by law if your marriage is dissolved.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

A. First Alternate Agent

Name:_____________________________________________
Address:__________________________________________
Phone________________________________________

B. Second Alternate Agent

Name:_____________________________________________
Address:__________________________________________
Phone________________________________________

The original of this document is kept at:
__________________________________________________
__________________________________________________
__________________________________________________

The following individuals or institutions have signed copies:

Name:_____________________________________________
Address:__________________________________________

Name:_____________________________________________
Address:__________________________________________

DURATION.
I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

(IF APPLICABLE) This power of attorney ends on the following date: __________

PRIOR DESIGNATIONS REVOKED.
I revoke any prior medical power of attorney.

ACKNOWLEDGMENT OF DISCLOSURE STATEMENT.
I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY.)
I sign my name to this medical power of attorney on __________ day of __________ (month, year) at
STATEMENT OF FIRST WITNESS.

I am not the person appointed as agent by this document. I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death. Furthermore, if I am an employee of a health care facility in which the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility.

Signature: __________________________________________        Date:________
Print Name: __________________________________________
Address: ________________________________________________

SIGNATURE OF SECOND WITNESS.

Signature: __________________________________________        Date:________
Print Name: __________________________________________
Address: ________________________________________________

CIVIL ACTION

Sec. 166.165. (a) A person who is a near relative of the principal or a responsible adult who is directly interested in the principal, including a guardian, social worker, physician, or clergyman, may bring an action in district court to request that the medical power of attorney be revoked because the principal, at the time the medical power of attorney was signed:

(1) was not competent; or
(2) was under duress, fraud, or undue influence.

(b) The action may be brought in the county of the principal's residence or the residence of the person bringing the action.

(c) During the pendency of the action, the authority of the agent to make health care decisions continues in effect unless the district court orders otherwise.

OTHER RIGHTS OR RESPONSIBILITIES NOT AFFECTED

Sec. 166.166. This subchapter does not limit or impair any legal right or responsibility that any person, including a physician or health or residential care provider, may have to make or implement health care decisions on behalf of a person, provided that if an attending physician or health care facility is unwilling to honor a patient's advance directive or a treatment decision to provide life-sustaining treatment, life-sustaining treatment is required to be provided the patient, but only until a reasonable opportunity has been afforded for transfer of the patient to another physician or health care facility willing to comply with the advance directive or treatment decision.
CHAPTER 222. HEALTH CARE FACILITY SURVEY, CONSTRUCTION, INSPECTION, AND REGULATION

SUBCHAPTER A. SURVEY AND CONSTRUCTION OF HOSPITALS [not included]

SUBCHAPTER B. LIMITATION ON INSPECTION AND OTHER REGULATION OF HEALTH CARE FACILITIES

PURPOSE

Sec. 222.021. The purpose of this subchapter is to require that state agencies that perform inspections of health care facilities, including the Texas Department of Health, the Texas Department of Human Services, the Texas Department of Mental Health and Mental Retardation, and other agencies with which each of those agencies contracts, do not duplicate their procedures or subject health care facilities to duplicative rules.

DEFINITIONS

Sec. 222.022. In this subchapter:
(1) "Health care facility" has the meaning assigned by Section 104.002, except that the term does not include a treatment facility licensed by the Texas Commission on Alcohol and Drug Abuse.
(2) "Inspection" includes a survey, inspection, investigation, or other procedure necessary for a state agency to carry out an obligation imposed by federal and state laws, rules, and regulations.

LIMITATION ON INSPECTIONS

Sec. 222.023. (a) A state agency may make or require only those inspections necessary to carry out obligations imposed on the agency by federal and state laws, rules, and regulations.
(b) Instead of making an on-site inspection, a state agency shall accept an on-site inspection by another state agency charged with making an inspection if the inspection substantially complies with the accepting agency's inspection requirements.
(c) A state agency shall coordinate its inspections within the agency and with inspections required of other agencies to ensure compliance with this section.

CERTIFICATION OR ACCREDITATION INSTEAD OF INSPECTION

Sec. 222.024. (a) Except as provided by Subsection (c), a hospital licensed by the Texas Department of Health is not subject to additional annual licensing inspections before the department issues the hospital a license while the hospital maintains:
(1) certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.); or
(2) accreditation from the Joint Commission on Accreditation of Healthcare Organizations, the American Osteopathic Association, or other national accreditation organization for the offered services.
(b) If the department licenses a hospital exempt from an annual licensing inspection under Subsection (a), the department shall issue a renewal license to the hospital if the hospital annually:
(1) submits a complete application required by the department;
(2) remits any applicable fees;
(3) submits a copy of documentation from the certification or accreditation body showing that the hospital is certified or accredited; and
(4) submits a copy of the most recent fire safety inspection report from the fire marshal in whose jurisdiction the hospital is located.
(c) The department may conduct an inspection of a hospital exempt from an annual licensing inspection under Subsection (a) before issuing a renewal license to the hospital if the certification or accreditation body has not conducted an on-site inspection of the hospital in the preceding three years and the department determines that an inspection of the hospital by the certification or accreditation body is not scheduled within 60 days.
LIMITATION OF OTHER REGULATION

Sec. 222.025. (a) The Texas Department of Human Services, the Texas Department of Health, and the Texas Department of Mental Health and Mental Retardation each by rule shall execute a memorandum of understanding that establishes procedures to eliminate or reduce duplication of functions in certifying or licensing hospitals, nursing homes, or other facilities under their jurisdiction for payments under the requirements of Chapter 32, Human Resources Code, and federal law and regulations relating to Titles XVIII and XIX of the Social Security Act (42 U.S.C. Sections 1395 et seq. and 1396 et seq.). The procedures must provide for use by each agency of information collected by the agencies in making inspections for certification purposes and in investigating complaints regarding matters that would affect the certification of a nursing home or other facility under their jurisdiction.

(b) The Texas Department of Health shall coordinate all licensing or certification procedures conducted by the state agencies covered by this section.

NURSING HOMES

Sec. 222.0255. (a) The Texas Department of Human Services shall develop one set of standards for nursing homes that apply to licensing and to certification for participation in the medical assistance program under Chapter 32, Human Resources Code.

(b) The standards must comply with federal regulations. If the federal regulations at the time of adoption are less stringent than the state standards, the department shall keep and comply with the state standards.

(c) The department by rule shall adopt the standards and any amendments to the standards.

(d) The department shall maintain a set of standards for nursing homes that are licensed only.

(e) Chapter 242 establishes the minimum licensing standards for an institution. The licensing standards adopted by the department under this chapter shall be adopted subject to Section 242.037(b) and must comply with Section 242.037(c) and the other provisions of Chapter 242.

COMPLAINT INVESTIGATIONS AND ENFORCEMENT AUTHORITY

Sec. 222.026. (a) Sections 222.024, 222.025, and 222.0255 do not affect the authority of the Texas Department of Health to implement and enforce the provisions of Chapter 241 (Texas Hospital Licensing Law) to:

(1) reinspect a hospital if a hospital applies for the reissuance of its license after a final ruling upholding the suspension or revocation of a hospital's license, the assessment of administrative or civil penalties, or the issuance of an injunction against the hospital for violations of provisions of the licensing law, rules adopted under the licensing law, special license conditions, or orders of the commissioner of health; or

(2) investigate a complaint against a hospital and, if appropriate, enforce the provisions of the licensing law on a finding by the department that reasonable cause exists to believe that the hospital has violated provisions of the licensing law, rules adopted under the licensing law, special license conditions, or orders of the commissioner of health; provided, however, that the department shall coordinate with the federal Health Care Financing Administration and its agents responsible for the inspection of hospitals to determine compliance with the conditions of participation under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.), so as to avoid duplicate investigations.

(b) The department shall by rule establish a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection.

PHYSICIAN ON SURVEY TEAM

Sec. 222.027. The Texas Department of Health shall ensure that a licensed physician involved in direct patient care as defined by the Texas State Board of Medical Examiners is included on a survey team sent under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) when surveying the quality of services provided by physicians in hospitals.

SUBCHAPTER C. SURVEYS OF INTERMEDIATE CARE FACILITIES FOR MENTALLY RETARDED

DEFINITIONS

Sec. 222.041. In this subchapter:

(1) "Board" means the Texas Board of Human Services.
(2) "Commissioner" means the commissioner of human services.
(3) "Department" means the Texas Department of Human Services.
(4) "ICF-MR" means the medical assistance program serving persons receiving care in intermediate care facilities for mentally retarded persons.

LICENSING OF ICF-MR BEDS AND FACILITIES

Sec. 222.042. The department may not license or approve as meeting licensing standards new ICF-MR beds or the expansion of an existing ICF-MR facility unless the new beds or the expansion was included in the plan approved by the Health and Human Services Commission in accordance with Section 533.062.

REVIEW OF ICF-MR SURVEYS

Sec. 222.043. (a) The board by rule shall establish policies and procedures as prescribed by this section to conduct an informal review of ICF-MR surveys when the survey findings are disputed by the provider. The board shall provide that the procedure may be used only if the deficiencies cited in the survey report do not pose an imminent threat of danger to the health or safety of a resident.

(b) The department shall designate at least one employee to conduct on a full-time basis the review provided by this section. The person must be impartial and may not be directly involved in or supervise any initial or recertification surveys. The person may participate in or direct follow-up surveys for quality assurance purposes only at the discretion of the commissioner or the commissioner's designated representative or under Chapter 242.

(c) The employee designated under Subsection (b) should have current knowledge of applicable federal laws and survey processes. The employee reports directly to the commissioner or the commissioner's designated representative.

(d) If a provider disputes the findings of a survey team or files a complaint relating to the conduct of the survey, the employee designated under Subsection (b) shall conduct an informal review as soon as possible, but before the 45th day after the date of receiving the request for a review or the expiration of the period during which the provider is required to correct the alleged deficiency, whichever is sooner.

(e) The employee conducting the review shall sustain, alter, or reverse the original findings of the survey team after consulting with the commissioner or the commissioner's designated representative.

FOLLOW-UP SURVEYS

Sec. 222.044. (a) The department shall conduct follow-up surveys of ICF-MR facilities to:
(1) evaluate and monitor the findings of the certification or licensing survey teams; and
(2) ensure consistency in deficiencies cited and in punitive actions recommended throughout the state.

(b) A provider shall correct any additional deficiency cited by the department. The department may not impose an additional punitive action for the deficiency unless the provider fails to correct the deficiency within the period during which the provider is required to correct the deficiency.

SURVEYS OF ICF-MR FACILITIES

Sec. 222.046. (a) The department shall ensure that each survey team sent to survey an ICF-MR facility includes a qualified mental retardation professional, as that term is defined by federal law.

(b) The department shall require that each survey team sent to survey an ICF-MR facility conduct a final interview with the provider to ensure that the survey team informs the provider of the survey findings and that the survey team has requested the necessary information from the provider. The survey team shall allow the provider to record the interview. The provider shall immediately give the survey team a copy of any recording.
CHAPTER 242. CONVALESCENT AND NURSING HOMES AND RELATED INSTITUTIONS

SUBCHAPTER A. GENERAL PROVISIONS

SCOPE, PURPOSE, AND IMPLEMENTATION

Sec. 242.001. (a) It is the goal of this chapter to ensure that institutions in this state deliver the highest possible quality of care. This chapter, and the rules and standards adopted under this chapter, establish minimum acceptable levels of care. A violation of a minimum acceptable level of care established under this chapter or a rule or standard adopted under this chapter is forbidden by law. Each institution licensed under this chapter shall, at a minimum, provide quality care in accordance with this chapter and the rules and standards. Components of quality of care addressed by these rules and standards include:

1. quality of life;
2. access to care;
3. continuity of care;
4. comprehensiveness of care;
5. coordination of services;
6. humaneness of treatment;
7. conservatism in intervention;
8. safety of the environment;
9. professionalism of caregivers; and
10. participation in useful studies.

(b) The rules and standards adopted under this chapter may be more stringent than the standards imposed by federal law for certification for participation in the state Medicaid program. The rules and standards may not be less stringent than the Medicaid certification standards imposed under the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub.L. No. 100-203.

(c) The rules and standards adopted under this chapter apply to each licensed institution. The rules and standards are intended for use in state surveys of the facilities and any investigation and enforcement action and are designed to be useful to consumers and providers in assessing the quality of care provided in an institution.

(d) The legislature finds that the construction, maintenance, and operation of institutions shall be regulated in a manner that protects the residents of the institutions by:

1. providing the highest possible quality of care;
2. strictly monitoring all factors relating to the health, safety, welfare, and dignity of each resident;
3. imposing prompt and effective remedies for noncompliance with licensing standards; and
4. providing the public with information concerning the operation of institutions in this state.

(e) It is the legislature's intent that this chapter accomplish the goals listed in Subsection (d).

(f) This chapter shall be construed broadly to accomplish the purposes set forth in this section.

DEFINITIONS

Sec. 242.002. In this chapter:

1. "Board" means the Texas Board of Human Services.
2. "Commissioner" means the commissioner of human services.
3. "Controlling person" means a person who controls an institution or other person as described by Section 242.0021.
4. "Department" means the Texas Department of Human Services.
5. "Elderly person" means an individual who is 65 years of age or older.
6. "Facility" means an institution.
7. "Governmental unit" means the state or a political subdivision of the state, including a county or municipality.
8. "Home" means an institution.
9. "Hospital" has the meaning assigned by Chapter 241 (Texas Hospital Licensing Law).
10. "Institution" means:

   (A) an establishment that:
       (i) furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment; and
(ii) provides minor treatment under the direction and supervision of a physician licensed by the Texas Medical Board, or other services that meet some need beyond the basic provision of food, shelter, and laundry; or

(B) a foster care type residential facility that provides room and board to fewer than five persons who:

(i) are not related within the second degree of consanguinity or affinity, as determined under Chapter 573, Government Code, to the proprietor; and

(ii) because of their physical or mental limitation, or both, require a level of care and services suitable to their needs that contributes to their health, comfort, and welfare.

(11) "Person" means an individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity and includes a legal successor of those entities.

(12) "Resident" means an individual, including a patient, who resides in an institution.

CONTROLLING PERSON

Sec. 242.0021. (a) A person is a controlling person if the person has the ability, acting alone or in concert with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an institution or other person.

(b) For purposes of this chapter, "controlling person" includes:

(1) a management company, landlord, or other business entity that operates or contracts with others for the operation of an institution;

(2) any person who is a controlling person of a management company or other business entity that operates an institution or that contracts with another person for the operation of an institution; and

(3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an institution, is in a position of actual control or authority with respect to the institution, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(c) A controlling person described by Subsection (b)(3) does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of an institution.

(d) The department may adopt rules that define the ownership interests and other relationships that qualify a person as a controlling person.

EXEMPTIONS

Sec. 242.003. Except as otherwise provided, this chapter does not apply to:

(1) a hotel or other similar place that furnishes only food, lodging, or both, to its guests;

(2) a hospital;

(3) an establishment conducted by or for the adherents of a well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend exclusively on prayer or spiritual means for healing, without the use of any drug or material remedy, if the establishment complies with safety, sanitary, and quarantine laws and rules;

(4) an establishment that furnishes, in addition to food, shelter, and laundry, only baths and massages;

(5) an institution operated by a person licensed by the Texas Board of Chiropractic Examiners;

(6) a facility that:

(A) primarily engages in training, habilitation, rehabilitation, or education of clients or residents;

(B) is operated under the jurisdiction of a state or federal agency, including the Texas Rehabilitation Commission, Texas Department of Mental Health and Mental Retardation, Texas Department of Human Services, Texas Commission for the Blind, Texas Commission on Alcohol and Drug Abuse, institutional division of the Texas Department of Criminal Justice, and the Veteran's Administration; and

(C) is certified through inspection or evaluation as meeting the standards established by the state or federal agency;

(7) a foster care type residential facility that serves fewer than five persons and operates under rules adopted by the Texas Department of Human Services; and

(8) a facility licensed under Chapter 252 or exempt from licensure under Section 252.003.
SIMULTANEOUS CARE FOR PREGNANT WOMEN AND OTHER WOMEN
Sec. 242.004. This chapter does not prohibit an institution defined by Section 242.002(6)(B) from simultaneously caring for pregnant women and other women younger than 50 years of age.

PERFORMANCE REPORTS
Sec. 242.005. (a) The department and the attorney general each shall prepare annually a full report of the operation and administration of their respective responsibilities under this chapter, including recommendations and suggestions considered advisable.
(b) The Legislative Budget Board and the state auditor shall jointly prescribe the form and content of reports required under this section, provided, however, that the state auditor's participation under this section is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c), Government Code.
(c) The department and the attorney general shall submit the required reports to the governor and the legislature not later than October 1 of each year.

DIRECTORY OF LICENSED INSTITUTIONS
Sec. 242.006. (a) The department shall prepare and publish annually a directory of all licensed institutions.
(b) The directory must contain:
(1) the name and address of the institution;
(2) the name of the proprietor or sponsoring organization; and
(3) other pertinent data that the department considers useful and beneficial to those persons interested in institutions operated in accordance with this chapter.
(c) The department shall make copies of the directory available to the public.

CONSULTATION AND COOPERATION
Sec. 242.007. (a) Whenever possible, the department shall use the services of and consult with state and local agencies in carrying out its responsibility under this chapter.
(b) The department may cooperate with local public health officials of a county or municipality in carrying out this chapter and may delegate to those officials the power to make inspections and recommendations to the department in accordance with this chapter.
(c) The department may coordinate its personnel and facilities with a local agency of a municipality or county and may provide advice to the municipality or county if the municipality or county decides to supplement the state program with additional rules required to meet local conditions.

EMPLOYMENT OF PERSONNEL
Sec. 242.008. The department may employ the personnel necessary to administer this chapter properly. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

FEDERAL FUNDS
Sec. 242.009. The department may accept and use any funds allocated by the federal government to the department for administrative expenses.

CHANGE OF ADMINISTRATORS
Sec. 242.010. An institution that hires a new administrator or person designated as chief manager shall:
(1) notify the department in writing not later than the 30th day after the date on which the change becomes effective; and
(2) pay a $20 administrative fee to the department.

LANGUAGE REQUIREMENTS PROHIBITED
Sec. 242.011. An institution may not prohibit a resident or employee from communicating in the person's native language with another resident or employee for the purpose of acquiring or providing medical treatment, nursing care, or institutional services.

PAPERWORK REDUCTION RULES
Sec. 242.013. (a) The department shall:
(1) adopt rules to reduce the amount of paperwork an institution must complete and retain; and
(2) attempt to reduce the amount of paperwork to the minimum amount required by state and federal law unless the reduction would jeopardize resident safety.

(b) The department, the contracting agency, and providers shall work together to review rules and propose changes in paperwork requirements so that additional time is available for direct resident care.

PROHIBITION OF REMUNERATION

Sec. 242.014. (a) An institution may not receive monetary or other remuneration from a person or agency that furnishes services or materials to the institution or its occupants for a fee.

(b) The department may revoke the license of an institution that violates Subsection (a).

LICENSED ADMINISTRATOR

Sec. 242.015. (a) Each institution must have a licensed nursing facility administrator.

(b) The administrator shall:

(1) manage the institution;
(2) be responsible for:
   (A) delivery of quality care to all residents; and
   (B) implementation of the policies and procedures of the institution; and
(3) work at least 40 hours per week on administrative duties.

FEES AND PENALTIES

Sec. 242.016. Except as expressly provided by this chapter, a fee or penalty collected by or on behalf of the department under this chapter must be deposited to the credit of the general revenue fund and may be appropriated only to the department to administer and enforce this chapter. Investigation and attorney’s fees may not be assessed or collected by or on behalf of the department or other state agency unless the department or other state agency assesses and collects a penalty described under this chapter.

ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTIONS

Sec. 242.017. (a) The following are not admissible as evidence in a civil action:

(1) any finding by the department that an institution has violated this chapter or a rule adopted under this chapter; or
(2) the fact of the assessment of a penalty against an institution under this chapter or the payment of the penalty by an institution.

(b) This section does not apply in an enforcement action in which the state or an agency or political subdivision of the state is a party.

(c) Notwithstanding any other provision of this section, evidence described by Subsection (a) is admissible as evidence in a civil action only if:

(1) the evidence relates to a material violation of this chapter or a rule adopted under this chapter or assessment of a monetary penalty with respect to:
   (A) the particular incident and the particular individual whose personal injury is the basis of the claim being brought in the civil action; or
   (B) a finding by the department that directly involves substantially similar conduct that occurred at the institution within a period of one year before the particular incident that is the basis of the claim being brought in the civil action; and
(2) the evidence of a material violation has been affirmed by the entry of a final adjudicated and unappealable order of the department after formal appeal; and
(3) the record is otherwise admissible under the Texas Rules of Evidence.

SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

LICENSE REQUIRED

Sec. 242.031. A person or governmental unit, acting severally or jointly with any other person or governmental unit, may not establish, conduct, or maintain an institution in this state without a license issued under this chapter.
LICENSE OR RENEWAL APPLICATION

Sec. 242.032. (a) An application for a license or renewal of a license is made to the department on a form provided by the department and must be accompanied by the license fee.

(b) The application must contain information that the department requires.

(c) The applicant or license holder must furnish evidence to affirmatively establish the applicant's or license holder's ability to comply with:
   (1) minimum standards of medical care, nursing care, and financial condition; and
   (2) any other applicable state or federal standard.

(d) The department shall consider the background and qualifications of:
   (1) the applicant or license holder;
   (2) a partner, officer, director, or managing employee of the applicant or license holder;
   (3) a person who owns or who controls the owner of the physical plant of a facility in which the institution operates or is to operate; and
   (4) a controlling person with respect to the institution for which a license or license renewal is requested.

(e) In making the evaluation required by Subsection (d), the department shall require the applicant or license holder to file a sworn affidavit of a satisfactory compliance history and any other information required by the department to substantiate a satisfactory compliance history relating to each state or other jurisdiction in which the applicant or license holder and any other person described by Subsection (d) operated an institution during the five-year period preceding the date on which the application is made. The department by rule shall determine what constitutes a satisfactory compliance history. The department may also require the applicant or license holder to file information relating to the history of the financial condition of the applicant or license holder and any other person described by Subsection (d) with respect to an institution operated in another state or jurisdiction at any time during the five-year period preceding the date on which the application is made.

(f) Information obtained under this section regarding an applicant’s or license holder’s financial condition is confidential and may not be disclosed to the public.

ISSUANCE AND RENEWAL OF LICENSE

Sec. 242.033. (a) After receiving an application for a license, the department shall issue the license if, after inspection and investigation, it finds that the applicant or license holder, and any other person described by Section 242.032(d), meet the requirements established under each provision of this chapter and any rule or standard adopted under this chapter.

(b) The department may issue a license only for:
   (1) the premises and persons or governmental unit named in the application; and
   (2) the maximum number of beds specified in the application.

(c) A license may not be transferred or assigned.

(d) Except as provided by Subsection (f), a license is renewable every two years after:
   (1) an inspection, unless an inspection is not required as provided by Section 242.047;
   (2) payment of the license fee; and
   (3) department approval of the report filed every two years by the licensee.

(e) The report required for license renewal under Subsection (d)(3) must comply with rules adopted by the board that specify the date of submission of the report, the information it must contain, and its form.

(f) The initial license issued to a license holder who has not previously held a license under this subchapter is a probationary license. A probationary license is valid for only one year. At the end of the one-year period, a license under Subsection (a) shall be issued but only after:
   (1) the department finds that the license holder and any other person described by Section 242.032(d) continue to meet the requirements established under each provision of this chapter and any rule or standard adopted under this chapter;
   (2) an inspection, unless an inspection is not required as provided by Section 242.047;
   (3) payment of the license fee; and
   (4) department approval of the report required for license renewal that complies with rules adopted under Subsection (e).
EXPEDITED ISSUANCE OF CHANGE OF OWNERSHIP LICENSE TO CERTAIN CURRENT LICENSE HOLDERS

Sec. 242.0335.  (a) The department shall maintain, and keep current, a list of license holders that operate an institution in this state and that have excellent operating records according to the information available to the department. The department by rule shall establish specific criteria for designating a license holder as eligible for the list.

(b) The department shall establish a procedure under which a listed license holder may be granted expedited approval in obtaining a change of ownership license to operate another existing institution in this state. The procedure may involve allowing a listed license holder to submit an affidavit demonstrating that the license holder continues to meet the criteria for being listed and continues to meet the requirements described by Subsection (c).

(c) An applicant for a change of ownership license must meet all applicable requirements that an applicant for renewal of a license must meet under this subchapter, including under Section 242.032(d), and under rules that the department has adopted under this subchapter. Any requirement relating to inspections or to an accreditation review applies only to institutions operated by the license holder at the time the application is made for the change of ownership license.

(d) Subsection (c) applies only to a license holder designated as eligible for and placed on the list maintained under Subsection (a).

TEMPORARY CHANGE OF OWNERSHIP LICENSE

Sec. 242.0336.  (a) For purposes of this section, a temporary change of ownership license is a temporary 90 day license issued to an applicant who proposes to become the new operator of an institution existing on the date the application is filed.

(b) After receiving an application for a temporary change of ownership license, the department shall issue a temporary license to the applicant if, after investigation, the department finds that the applicant and any other person described by Section 242.032(d) meet:

(1) the requirements established under Section 242.032(c); and
(2) the department's standards for background and qualifications under Sections 242.032(d) and (e).

(b-1) Except as provided by Subsection (b-2), the department may not issue a temporary change of ownership license before the 31st day after the date the department has received both:

(1) the application for the license; and
(2) notification, in writing, of the intent of the institution’s existing license holder to transfer operation of the institution to the applicant beginning on a date specified by the applicant.

(b-2) Notwithstanding Section 242.0335, the department shall establish criteria under which the department may waive the 30-day requirement or the notification requirement of Subsection (b-1). The criteria may include the occurrence of forcible entry and detainer, death, or divorce or other events that affect the ownership of the institution by the existing license holder.

(b-3) After receipt of an application or written notification described by Subsection (b-1), the department may place a hold on payments to the existing license holder in an amount not to exceed the average of the monthly vendor payments paid to the facility, as determined by the department. The department shall release funds to the previous license holder not later than the 120th day after the date on which the final reporting requirements are met and any resulting informal reviews or formal appeals are resolved. The department may reduce the amount of funds released to the previous license holder by the amount owed to the department or the Health and Human Services Commission under the previous license holder’s Medicaid contract or license.

(b-4) The executive commissioner of the Health and Human Services Commission shall adopt rules for the department that define a change of ownership. In adopting the rules, the executive commissioner shall consider:

(1) the proportion of ownership interest that is being transferred to another person;
(2) the addition or removal of a stockholder, partner, owner, or other controlling person;
(3) the reorganization of the license holder into a different type of business entity; and
(4) the death or incapacity of a stockholder, partner, or owner.

(b-5) The executive commissioner may adopt rules for the department that require a license holder to notify the department of any change, including a change that is not a change of ownership, as that term is defined by rules adopted under Subsection (b-4). Nothing in this section prevents the department from acting under Section 242.061 or any other provision of this chapter.
(c) The department shall issue or deny a temporary change of ownership license not later than the 31st day after the date of receipt of the completed application. The effective date of a temporary change of ownership license issued under this section is the date requested in the application unless:

(1) the department does not receive the application and written notification described by Subsection (b-1) at least 30 days before that date; and

(2) no waiver under Subsection (b-2) applies.

(c-1) If the department does not receive the application and written notification required by Subsection (b-1) at least 30 days before the effective date requested in the application and Subsection (b-2) does not apply, the effective date of the temporary change of ownership license is the 31st day after the date the department receives both the application and the notification.

(d) Except as provided in Subsection (d-1) after the department issues a temporary change of ownership license to the applicant, the department shall conduct an inspection or survey of the nursing facility under Section 242.043 as soon as reasonably possible. During the period between the issuance of the temporary license and the inspection or survey of the nursing facility or desk review under Subsection (d-1), the department may not place a hold on vendor payments to the temporary license holder.

(d-1) The department shall establish criteria under which a desk review of the facility’s compliance with applicable requirements may be substituted for the on-site inspection or survey under Subsection (d).

(e) After conducting an inspection or survey under Subsection (d) or a desk review under Subsection (d-1), the department shall issue a license under Section 242.033 to the temporary change of ownership license holder if the nursing facility passes the desk review, inspection or survey and the applicant meets the requirements of Section 242.033. If the nursing facility fails to pass the desk review, inspection or survey or the applicant fails to meet the requirements of Section 242.033, the department may:

(1) place a hold on vendor payments to the temporary change of ownership license holder; and

(2) take any other action authorized under this chapter.

(f) If the applicant meets the requirements of Section 242.033 and the nursing facility passes a desk review, initial inspection or subsequent inspection before the temporary change of ownership license expires, the license issued under Section 242.033 is considered effective on the date the department determines under Subsection (c) or (c-1).

(g) A temporary change of ownership license issued under Subsection (b) expires on the 90th day after the effective date established under Subsection (c) or (c-1).

LICENSE FEES

Sec. 242.034. (a) The board may establish by rule license fees for institutions licensed by the department under this chapter. The license fee may not exceed $250 plus:

(1) $10 for each unit of capacity or bed space for which a license is sought; and

(2) a background examination fee imposed under Subsection (d).

(b) The license fee for a probationary license issued under Section 242.033(f) may not exceed $125 plus:

(1) $5 for each unit of capacity or bed space for which the license is sought; and

(2) a background examination fee imposed under Subsection (d).

(c) An additional license fee may be charged as provided by Section 242.097.

(d) The board may establish a background examination fee in an amount necessary to defray the department's expenses in administering its duties under Sections 242.032(d) and (e).

(e) The applicable license fee must be paid with each application for a probationary license, an initial license, a renewal license, or a change of ownership license.

(f) The state is not required to pay the license fee.

(g) An approved increase in bed space is subject to an additional fee.

(h) The license fees established under this chapter are an allowable cost for reimbursement under the medical assistance program administered by the Texas Department of Human Services under Chapter 32, Human Resources Code. Any fee increases shall be reflected in reimbursement rates prospectively.

(i) An applicant for license renewal who submits an application later than the 45th day before the expiration date of a current license is subject to a late fee in accordance with department rules.

LICENSING CATEGORIES

Sec. 242.035. (a) The department shall determine the rank of licensing categories.
Unless prohibited by another state or federal requirement, the department shall allow a licensed institution to operate a portion of the institution under the standards of a lower licensing category. The board shall establish procedures and standards to accommodate an institution's operation under the lower category.

**GRADING**

**Sec. 242.036.** (a) The board may adopt, publish, and enforce minimum standards relating to the grading of an institution, other than an institution that provides maternity care, in order to recognize those institutions that provide more than the minimum level of services and personnel as established by the board.

(b) An institution that has a superior grade shall prominently display the grade for public view.

(c) As an incentive to attain the superior grade, an institution may advertise its grade, except that it may not advertise a superior grade that has been canceled.

(d) The department may not award a superior grade to an institution that, during the year preceding the grading inspection, violated state or federal law, rules, or regulations relating to:

1. the health, safety, or welfare of its residents;
2. resident funds;
3. the confidentiality of a resident's records;
4. the financial practices of the institution; or
5. the control of medication in the institution.

(e) The department shall cancel an institution's superior grade if the institution:

1. does not meet the criteria established for a superior grade; or
2. violates a state or federal law, rule, or regulation described by Subsection (d).

**RULES; MINIMUM STANDARDS**

**Sec. 242.037.** (a) The department shall make and enforce rules and minimum standards to implement this chapter, including rules and minimum standards relating to quality of life, quality of care, and residents' rights.

(b) The rules and standards adopted under this chapter may be more stringent than the standards imposed by federal law for certification for participation in the state Medicaid program.

(c) The rules and standards adopted by the department may not be less stringent than the Medicaid certification standards and regulations imposed under the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub.L. No. 100-203.

(d) To implement Sections 242.032(d) and (e), the department by rule shall adopt minimum standards for the background and qualifications of any person described by Section 242.032(d). The department may not issue or renew a license if a person described by Section 242.032 does not meet the minimum standards adopted under this section.

(e) In addition to standards or rules required by other provisions of this chapter, the board shall adopt, publish, and enforce minimum standards relating to:

1. the construction of an institution, including plumbing, heating, lighting, ventilation, and other housing conditions, to ensure the residents' health, safety, comfort, and protection from fire hazard;
2. the regulation of the number and qualification of all personnel, including management and nursing personnel, responsible for any part of the care given to the residents;
3. requirements for in-service education of all employees who have any contact with the residents;
4. training on the care of persons with Alzheimer's disease and related disorders for employees who work with those persons;
5. sanitary and related conditions in an institution and its surroundings, including water supply, sewage disposal, food handling, and general hygiene in order to ensure the residents' health, safety, and comfort;
6. the nutritional needs of each resident according to good nutritional practice or the recommendations of the physician attending the resident;
7. equipment essential to the residents' health and welfare;
8. the use and administration of medication in conformity with applicable law and rules;
9. care and treatment of residents and any other matter related to resident health, safety, and welfare;
10. licensure of institutions; and
11. implementation of this chapter.

(f) The board shall adopt, publish, and enforce minimum standards requiring appropriate training in geriatric care for each individual who provides services to geriatric residents in an institution and who holds a...
license or certificate issued by an agency of this state that authorizes the person to provide the services. The
minimum standards may require that each licensed or certified individual complete an appropriate program of
continuing education or in-service training, as determined by board rule, on a schedule determined by board rule.

(g) To administer the surveys for provider certification provided for by federal law and regulation, the
department must identify each area of care that is subject to both state licensing requirements and federal
certification requirements. For each area of care that is subject to the same standard under both federal certification
and state licensing requirements, an institution that is in compliance with the federal certification standard is
considered to be in compliance with the same state licensing requirement.

(h) The board shall adopt each rule adopted by the Texas Board of Health under Section 161.0051 as part
of the rules and standards adopted under this chapter that apply to institutions serving residents who are elderly
persons.

(i) The minimum standards adopted by the board under this section must require that each institution, as
part of an existing training program, provide each registered nurse, licensed vocational nurse, nurse aide, and
nursing assistant who provides nursing services in the institution at least one hour of training each year in caring for
people with dementia.

NOTICE OF CERTAIN EMPLOYMENT POLICIES

Sec. 242.0371. (a) An institution licensed under this chapter shall prepare a written statement describing
the institution's policy for:

(1) the drug testing of employees who have direct contact with residents; and

(2) the conducting of criminal history record checks of employees and applicants for employment
in accordance with Chapter 250.

(b) The institution shall provide the statement to:

(1) each person applying for services from the institution or the person's next of kin or guardian; and

(2) any person requesting the information.

RERAINT AND SECLUSION

Sec. 242.0373. A person providing services to a resident of an institution shall comply with Chapter 322
and the rules adopted under that chapter.

REASONABLE TIME TO COMPLY

Sec. 242.038. The board by rule shall give an institution that is in operation when a rule or standard is
adopted under this chapter a reasonable time to comply with the rule or standard.

EARLY COMPLIANCE REVIEW

Sec. 242.0385. (a) The department by rule shall adopt a procedure under which a person proposing to
construct or modify an institution may submit building plans to the department for review for compliance with the
department's architectural requirements before beginning construction or modification. In adopting the procedure,
the department shall set reasonable deadlines by which the department must complete review of submitted plans.

(b) The department shall, within 30 days, review plans submitted under this section for compliance with
the department's architectural requirements and inform the person in writing of the results of the review. If the plans
comply with the department's architectural requirements, the department may not subsequently change the
architectural requirements applicable to the project unless:

(1) the change is required by federal law; or

(2) the person fails to complete the project within a reasonable time.

(c) The department may charge a reasonable fee for conducting a review under this section.

(d) A fee collected under this section shall be deposited in the general revenue fund and may be
appropriated only to the department to conduct reviews under this section.

(e) The review procedure provided by this section does not include review of building plans for
compliance with the Texas Accessibility Standards as administered and enforced.

FIRE SAFETY REQUIREMENTS

Sec. 242.039. (a) The board shall adopt rules necessary to specify the edition of the Life Safety Code of the
National Fire Protection Association that will be used to establish the life safety requirements for an institution
licensed under this chapter.
(b) The board shall adopt the edition of the Life Safety Code of the National Fire Protection Association for fire safety as designated by federal law and regulations for an institution or portion of an institution that is constructed after September 1, 1993, and for an institution or portion of an institution that was operating or approved for construction on or before September 1, 1993.

(c) The board may not require more stringent fire safety standards than those required by federal law and regulation. The rules adopted under this section may not prevent an institution licensed under this chapter from voluntarily conforming to fire safety standards that are compatible with, equal to, or more stringent than those adopted by the board.

(d) Licensed health care facilities in existence at the time of the effective date of this subsection may have their existing use or occupancy continued if such facilities comply with fire safety standards and ordinances in existence at the time of the effective date of this subsection.

(e) Notwithstanding any other provision of this section, a municipality shall have the authority to enact additional and higher fire safety standards applicable to new construction beginning on or after the effective date of this subsection.

(f)(1) An advisory committee is created to propose rules for adoption by the department concerning the applicability of municipal ordinances and regulations to the remodeling and renovation of existing structures to be used as health care facilities licensed under this chapter.

(2) The advisory committee shall be appointed by the board and composed as follows:
(A) two municipal fire marshals;
(B) four individuals representing the nursing home industry;
(C) the commissioner of human services or a designee;
(D) one building official from a municipality that has adopted the Uniform Building Code;
(E) one building official from a municipality that has adopted the Standard Building Code;
(F) one architect licensed under state law;
(G) one member of the Texas Board of Human Services; and
(H) one state Medicaid director or designee.

(3) The advisory committee shall serve without compensation or remuneration of any kind.

CERTIFICATION OF INSTITUTIONS THAT CARE FOR PERSONS WITH ALZHEIMER'S DISEASE AND RELATED DISORDERS

Sec. 242.040. (a) The department shall establish a system for certifying institutions that meet standards adopted by the board concerning the specialized care and treatment of persons with Alzheimer's disease and related disorders.

(b) An institution is not required to be certified under this section in order to provide care and treatment of persons with Alzheimer's disease and related disorders.

(c) The board by rule may adopt standards for the specialized care and treatment of persons with Alzheimer's disease and related disorders and provide procedures for institutions applying for certification under this section. The rules must provide for annual certification.

(d) The board may establish and charge fees for the certification in an amount necessary to administer this section.

(e) An institution may not advertise or otherwise communicate that the institution is certified by the department to provide specialized care for persons with Alzheimer's disease or related disorders unless the institution is certified under this section.

FALSE COMMUNICATION CONCERNING CERTIFICATION; CRIMINAL PENALTY

Sec. 242.041. (a) An institution commits an offense if the institution violates Section 242.040(e).

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

POSTING

Sec. 242.042. (a) Each institution shall prominently and conspicuously post for display in a public area of the institution that is readily available to residents, employees, and visitors:
(1) the license issued under this chapter;
(2) a sign prescribed by the department that specifies complaint procedures established under this chapter or rules adopted under this chapter and that specifies how complaints may be registered with the department;
(3) a notice in a form prescribed by the department stating that licensing inspection reports and other related reports which show deficiencies cited by the department are available at the institution for public inspection and providing the department's toll-free telephone number that may be used to obtain information concerning the institution;

(4) a concise summary of the most recent inspection report relating to the institution;

(5) notice that the department can provide summary reports relating to the quality of care, recent investigations, litigation, and other aspects of the operation of the institution;

(6) notice that the Texas Board of Nursing Facility Administrators can provide information about the nursing facility administrator;

(7) any notice or written statement required to be posted under Section 242.072(c);

(8) notice that informational materials relating to the compliance history of the institution are available for inspection at a location in the institution specified by the sign; and

(9) notice that employees, other staff, residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by Sections 242.133 and 242.1335.

(b) The notice required by Subsection (a)(8) must also be posted at each door providing ingress to and egress from the institution.

(c) The informational materials required to be maintained for public inspection by an institution under Subsection (a)(8) must be maintained in a well-lighted accessible location and must include:

(1) any information required to be included under Section 242.504; and

(2) a statement of the institution's record of compliance with this chapter and the rules and standards adopted under this chapter that is updated not less frequently than bi-monthly and that reflects the record of compliance during the period beginning one year before the date the statement is last updated, in the form required by the department.

(d) The notice required by Subsection (a)(9) must be posted in English and a second language as required by department rule.

INSPECTIONS

Sec. 242.043. (a) The department or the department's representative may make any inspection, survey, or investigation that it considers necessary and may enter the premises of an institution at reasonable times to make an inspection, survey, or investigation in accordance with board rules.

(b) The department is entitled to access to books, records, and other documents maintained by or on behalf of an institution to the extent necessary to enforce this chapter and the rules adopted under this chapter.

(c) A license holder or an applicant for a license is considered to have consented to entry and inspection of the institution by a representative of the department in accordance with this chapter.

(d) The department shall establish procedures to preserve all relevant evidence of conditions found during an inspection, survey, or investigation that the department reasonably believes threaten the health and safety of a resident, including photography and photocopying of relevant documents, such as a license holder's notes, a physician's orders, and pharmacy records, for use in any legal proceeding.

(e) When photographing a resident, the department:

(1) shall respect the privacy of the resident to the greatest extent possible; and

(2) may not make public the identity of the resident.

(f) An institution, an officer or employee of an institution, and a resident's attending physician are not civilly liable for surrendering confidential or private material under this section, including physician's orders, pharmacy records, notes and memoranda of a state office, and resident files.

(g) The department shall establish in clear and concise language a form to summarize each inspection report and complaint investigation report.

(h) The department shall establish proper procedures to ensure that copies of all forms and reports under this section are made available to consumers, service recipients, and the relatives of service recipients as the department considers proper.

UNANNOUNCED INSPECTIONS

Sec. 242.044. (a) Each licensing period, the department shall conduct at least two unannounced inspections of each institution.

(b) For at least two unannounced inspections each licensing period of an institution other than one that provides maternity care, the department shall invite at least one person as a citizen advocate from:

(1) the American Association of Retired Persons;
(2) the Texas Senior Citizen Association;
(3) the Texas Retired Federal Employees;
(4) the department’s Certified Long Term Care Ombudsman; or
(5) another statewide organization for the elderly.

(b-1) Not later than the fifth working day after the date the facility receives the final statement of violations under this section, the facility shall provide a copy of the statement to a representative of the facility’s family council.

(c) In order to ensure continuous compliance, the department shall randomly select a sufficient percentage of institutions for unannounced inspections to be conducted between 5 p.m. and 8 a.m. Those inspections must be cursory to avoid to the greatest extent feasible any disruption of the residents.

(d) The department may require additional inspections.

REPORTING OF VIOLATIONS

Sec. 242.0445. (a) The department or the department's representative conducting an inspection, survey, or investigation under Section 242.043 or 242.044 shall:

(1) list each violation of a law or rule on a form designed by the department for inspections; and
(2) identify the specific law or rule the facility violated.

(b) At the conclusion of an inspection, survey, or investigation under Section 242.043 or 242.044, the department or the department's representative conducting the inspection, survey, or investigation shall discuss the violations with the facility's management in an exit conference. The department or the department's representative shall leave a written list of the violations with the facility at the time of the exit conference. If the department or the department's representative discovers any additional violations during the review of field notes or preparation of the official final list, the department or the department's representative shall give the facility an additional exit conference regarding the additional violations. An additional exit conference must be held in person and may not be held by telephone, e-mail, or facsimile transmission.

(b-1) Not later than the fifth working day after the date the facility receives the final statement of violations under this section, the facility shall provide a copy of the statement to a representative of the facility’s family council.

(c) The facility shall submit a plan to correct the violations to the regional director not later than the 10th working day after the date the facility receives the final official statement of violations.

DISCLOSURE OF UNANNOUNCED INSPECTIONS; CRIMINAL PENALTY

Sec. 242.045. (a) Except as expressly provided by this chapter, a person commits an offense if the person intentionally, knowingly, or recklessly discloses to an unauthorized person the date, time, or any other fact about an unannounced inspection of an institution before the inspection occurs.

(b) In this section, "unauthorized person" does not include:

(1) the department;
(2) the office of the attorney general;
(3) a statewide organization for the elderly, including the American Association of Retired Persons, the Texas Senior Citizen Association, and the Texas Retired Federal Employees;
(4) an ombudsman or representative of the Texas Department on Aging;
(5) a representative of an agency or organization when a Medicare or Medicaid survey is made concurrently with a licensing inspection; or
(6) any other person or entity authorized by law to make an inspection or to accompany an inspector.

(c) An offense under this section is a third degree felony.

(d) A person convicted under this section is not eligible for state employment.

OPEN HEARING

Sec. 242.046. (a) The department shall hold an open hearing in a licensed institution, other than an institution that provides maternity care, if the department has taken a punitive action against the institution in the preceding 12 months or if the department receives a complaint from an ombudsman, advocate, resident, or relative of a resident relating to a serious or potentially serious problem in the institution and the department has reasonable cause to believe the complaint is valid. The department is not required to hold more than one open meeting in a particular institution in each year.

(b) The department shall give notice of the time, place, and date of the hearing to:
(1) the institution;
(2) the designated closest living relative or legal guardian of each resident; and
(3) appropriate state or federal agencies that work with the institution.

c) The department may exclude an institution's administrators and personnel from the hearing.

d) The department shall notify the institution of any complaints received at the hearing and, without
identifying the source of the complaints, provide a summary of them to the institution.

e) The department shall determine and implement a mechanism to notify confidentially a complainant of
the results of the investigation of the complaint.

ACCREDITATION REVIEW TO SATISFY INSPECTION OR CERTIFICATION REQUIREMENTS

Sec. 242.047. (a) The department shall accept an annual accreditation review from the Joint Commission
on Accreditation of Health Organizations for a nursing home instead of an inspection for renewal of a license under
Section 242.033 and in satisfaction of the requirements for certification by the department for participation in the
medical assistance program under Chapter 32, Human Resources Code, and the federal Medicare program, but only
if:

(1) the nursing home is accredited by the commission under the commission's long-term care
standards;
(2) the commission maintains an annual inspection or review program that, for each nursing
home, meets the department's applicable minimum standards as confirmed by the board;
(3) the commission conducts an annual on-site inspection or review of the home;
(4) the nursing home submits to the department a copy of its annual accreditation review from the
commission in addition to the application, fee, and any report required for renewal of a license or for certification, as
applicable; and

(5) the department has:
   (A) determined whether a waiver or authorization from a federal agency is necessary
       under federal law, including for federal funding purposes, before the department accepts an annual accreditation
       review from the joint commission:
       (i) instead of an inspection for license renewal purposes;
       (ii) as satisfying the requirements for certification by the department for
           participation in the medical assistance program; or
           (iii) as satisfying the requirements for certification by the department for
           participation in the federal Medicare program; and
   (B) obtained any necessary federal waivers or authorizations.

(b) The department shall coordinate its licensing and certification activities with the commission.

c) The department and the commission shall sign a memorandum of agreement to implement this section.
The memorandum must provide that if all parties to the memorandum do not agree in the development,
interpretation, and implementation of the memorandum, any area of dispute is to be resolved by the board.

(d) Except as specifically provided by this section, this section does not limit the department in performing
any duties and inspections authorized by this chapter or under any contract relating to the medical assistance
program under Chapter 32, Human Resources Code, and Titles XVIII and XIX of the Social Security Act (42 U.S.C.
Sections 1395 et seq. and 1396 et seq.), including authority to take appropriate action relating to an institution, such
as closing the institution.

e) This section does not require a nursing home to obtain accreditation from the commission.

LICENSING SURVEYS

Sec. 242.048. The department shall provide a team to conduct surveys to validate findings of licensing
surveys. The purpose of validation surveys is to assure that survey teams throughout the state survey in a fair and
consistent manner. A facility subjected to a validation survey must correct deficiencies cited by the validation team
but is not subject to punitive action for those deficiencies.

QUALITY IMPROVEMENT

Sec. 242.049. (a) The department may evaluate data for quality of care in nursing homes.

(b) The department may gather data on a form or forms to be provided by the department to improve
the quality of care in nursing homes and may provide information to nursing homes which will allow them to improve
and maintain the quality of care which they provide. Data referred to in this section can include information
Texas Laws Relating to DADS Health and Safety Code

compiled from documents otherwise available under Chapter 552, Government Code, including but not limited to individual survey reports and investigation reports.

(c) All licensed nursing homes in the state may be required to submit information designated by the department as necessary to improve the quality of care in nursing homes.

(d) The collection, compilation, and analysis of the information and any reports produced from these sources shall be done in a manner that protects the privacy of any individual about whom information is given and is explicitly confidential. The department shall protect and maintain the confidentiality of the information. The information received by the department, any information compiled as a result of review of internal agency documents, and any reports, compilations, and analyses produced from these sources shall not be available for public inspection or disclosure, nor are these sources public records within the meaning of Chapter 552, Government Code. The information and any compilations, reports, or analyses produced from the information shall not be subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided in this section and shall not be admissible in any civil, administrative, or criminal proceeding. This privilege shall be recognized by Rules 501 and 502 of the Texas Rules of Evidence.

(e) The information and reports, compilations, and analyses developed by the department for quality improvement shall be used only for the evaluation and improvement of quality care in nursing homes. No department proceeding or record shall be subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity, and shall not be admissible in any civil, administrative, or criminal proceeding. This privilege shall be recognized by Rules 501 and 502 of the Texas Rules of Evidence.

(f) Notwithstanding Subsection (d), the department shall transmit reports, compilations, and analyses of the information provided by a nursing home to that nursing home, and such disclosure shall not be violative of this section nor shall it constitute a waiver of confidentiality.

(g) A member, agent, or employee of the department may not disclose or be required to disclose a communication made to the department or a record or proceeding of the department required to be submitted under this section except to the nursing home in question or its agents or employees.

(h) Nothing in this section is intended to abridge the department's enforcement responsibilities under this chapter or under any other law.

(i) Any information, reports, and other documents produced which are subject to any means of legal compulsion or which are considered to be public information under Subchapter E and the rules adopted under that subchapter shall continue to be subject to legal compulsion and be treated as public information under Subchapter E after the effective date of this Act, even though such information, reports, and other documents may be used in the collection, compilation, and analysis described in Subsections (b) and (d).

NOTIFICATION OF AWARD OF EXEMPLARY DAMAGES

Sec. 242.051. (a) If exemplary damages are awarded under Chapter 41, Civil Practice and Remedies Code, against an institution or an officer, employee, or agent of an institution, the court shall notify the department.

(b) If the department receives notice under Subsection (a), the department shall maintain the information contained in the notice in the records of the department relating to the history of the institution.

DRUG TESTING OF EMPLOYEES

Sec. 242.052. (a) An institution may establish a drug testing policy for employees of the institution. An institution that establishes a drug testing policy under this subsection may adopt the model drug testing policy adopted by the board or may use another drug testing policy.

(b) The board by rule shall adopt a model drug testing policy for use by institutions. The model drug testing policy must be designed to ensure the safety of residents through appropriate drug testing and to protect the rights of employees. The model drug testing policy must:

1. require at least one scheduled drug test each year for each employee of an institution that has direct contact with a resident in the institution; and

2. authorize random, unannounced drug testing for employees described by Subdivision (1).

SUBCHAPTER C. GENERAL ENFORCEMENT
DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

Sec. 242.061. (a) The department, after providing notice and opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a license if the department finds that the applicant, the license holder, or any other person described by Section 242.032(d) has:

(1) violated this chapter or a rule, standard, or order adopted or license issued under this chapter in either a repeated or substantial manner;
(2) committed any act described by Sections 242.066(a)(2)-(6); or
(3) failed to comply with Section 242.074.

(b) The status of a person as an applicant for a license or a license holder is preserved until final disposition of the contested matter, except as the court having jurisdiction of a judicial review of the matter may order in the public interest for the welfare and safety of the residents.

(c) The department may deny, suspend, or revoke the license of an institution if any person described by Section 242.032(d) has been excluded from holding a license under Section 242.0615.

(d) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving the denial, suspension, or revocation of a license under this section or the conduct with respect to which the denial, suspension, or revocation of the license is sought.

EXCLUSION

Sec. 242.0615. (a) The department, after providing notice and opportunity for a hearing, may exclude a person from eligibility for a license under this chapter if the person or any person described by Section 242.032(d) has substantially failed to comply with this chapter and the rules adopted under this chapter. The authority granted by this subsection is in addition to the authority to deny issuance of a license under Section 242.061(a).

(b) Exclusion of a person under this section must extend for a period of at least two years, but may not exceed a period of 10 years.

EMERGENCY SUSPENSION OR CLOSING ORDER

Sec. 242.062. (a) The department shall suspend an institution's license or order an immediate closing of part of the institution if:

(1) the department finds the institution is operating in violation of the standards prescribed by this chapter; and
(2) the violation creates an immediate threat to the health and safety of a resident.

(b) The board by rule shall provide for the placement of residents during the institution's suspension or closing to ensure their health and safety.

(c) An order suspending a license or closing a part of an institution under this section is immediately effective on the date on which the license holder receives written notice or a later date specified in the order.

(d) An order suspending a license or ordering an immediate closing of a part of an institution is valid for 10 days after the effective date of the order.

(e) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving an emergency suspension or closing order under this section or the conduct with respect to which the emergency suspension or closing order is sought.

INJUNCTION

Sec. 242.063. (a) The department may petition a district court for:

(1) a temporary restraining order to restrain a person from a violation or threatened violation of the standards imposed under this chapter or any other law affecting residents if the department reasonably believes that the violation or threatened violation creates an immediate threat to the health and safety of a resident; and
(2) an injunction to restrain a person from a violation or threatened violation of the standards imposed under this chapter or by any other law affecting residents if the department reasonably believes that the violation or threatened violation creates a threat to the health and safety of a resident.

(b) A district court, on petition of the department, may by injunction:

(1) prohibit a person from violating the standards or licensing requirements prescribed by this chapter;
(2) restrain or prevent the establishment, conduct, management, or operation of an institution without a license issued under this chapter; or
(3) grant the injunctive relief warranted by the facts on a finding by the court that a person is violating or threatening to violate the standards or licensing requirements prescribed by this chapter.

(c) The attorney general, on request by the department, shall institute and conduct in the name of the state a suit authorized by this section or Subchapter D.

(d) A suit for a temporary restraining order or other injunctive relief must be brought in the county in which the alleged violation occurs.

(e) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.58(b).


LICENSE REQUIREMENT; CRIMINAL PENALTY

Sec. 242.064. (a) A person commits an offense if the person violates Section 242.031.

(b) An offense under this section is punishable by a fine of not more than $1,000 for the first offense and not more than $500 for each subsequent offense.

(c) Each day of a continuing violation after conviction is a separate offense.

CIVIL PENALTY

Sec. 242.065. (a) A person who violates or causes a violation of this chapter or a rule adopted under this chapter is liable for a civil penalty of not less than $1,000 or more than $20,000 for each act of violation if the department determines the violation threatens the health and safety of a resident.

(b) In determining the amount of a penalty to be awarded under this section, the trier of fact shall consider:

(1) the seriousness of the violation;
(2) the history of violations committed by the person or the person's affiliate, employee, or controlling person;
(3) the amount necessary to deter future violations;
(4) the efforts made to correct the violation;
(5) any misrepresentation made to the department or to another person regarding:
   (A) the quality of services rendered or to be rendered to residents;
   (B) the compliance history of the institution or any institutions owned or controlled by an owner or controlling person of the institution;
   (C) the identity of an owner or controlling person of the institution;
(6) the culpability of the individual who committed the violation; and
(7) any other matter that should, as a matter of justice or equity, be considered.

(c) Each day of a continuing violation constitutes a separate ground for recovery.

(d) Any party to a suit under this section may request a jury.

(e) If a person who is liable under this section fails to pay any amount the person is obligated to pay under this section, the state may seek satisfaction from any owner, other controlling person, or affiliate of the person found liable. The owner, other controlling person, or affiliate may be found liable in the same suit or in another suit on a showing by the state that the amount to be paid has not been paid or otherwise legally discharged. The department by rule may establish a method for satisfying an obligation imposed under this section from an insurance policy, letter of credit, or other contingency fund.

(f) On request by the department, the attorney general may institute an action in a district court to collect a civil penalty under this section.

(g) A payment made to satisfy an obligation under this section is not an allowable cost for reimbursement under the state Medicaid program.

(h) A civil penalty awarded under this section constitutes a fine, penalty, or forfeiture payable to and for the benefit of a government unit and is not compensation for actual pecuniary loss.

(i) In this section, "affiliate" means:

(1) with respect to a partnership other than a limited partnership, each partner of the partnership;
(2) with respect to a corporation:
   (A) an officer;
   (B) a director;
   (C) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and
   (D) a controlling individual;
(3) with respect to an individual:
(A) each partnership and each partner in the partnership in which the individual or any
other affiliate of the individual is a partner; and
(B) each corporation or other business entity in which the individual or another affiliate
of the individual is:
    (i) an officer;
    (ii) a director;
    (iii) a stockholder who owns, holds, or has the power to vote at least 10 percent
of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and
    (iv) a controlling individual;
(4) with respect to a limited partnership:
    (A) a general partner; and
    (B) a limited partner who is a controlling individual;
(5) with respect to a limited liability company:
    (A) an owner who is a manager as described by the Texas Limited Liability Company
Act (Article 1528n, Vernon's Texas Civil Statutes); and
    (B) each owner who is a controlling individual; and
(6) with respect to any other business entity, a controlling individual.

ADMINISTRATIVE PENALTY

Sec. 242.066. (a) The department may assess an administrative penalty against a person who:
(1) violates this chapter or a rule, standard, or order adopted or license issued under this chapter;
(2) makes a false statement, that the person knows or should know is false, of a material fact:
    (A) on an application for issuance or renewal of a license or in an attachment to the
application; or
    (B) with respect to a matter under investigation by the department;
(3) refuses to allow a representative of the department to inspect:
    (A) a book, record, or file required to be maintained by an institution; or
    (B) any portion of the premises of an institution;
(4) wilfully interferes with the work of a representative of the department or the enforcement of
this chapter;
(5) wilfully interferes with a representative of the department preserving evidence of a violation
of this chapter or a rule, standard, or order adopted or license issued under this chapter;
(6) fails to pay a penalty assessed by the department under this chapter not later than the 10th day
after the date the assessment of the penalty becomes final; or
(7) fails to notify the department of a change of ownership before the effective date of the change
of ownership.
(b) Except as provided by Subsection (f) and Section 242.0665(c), the penalty may not exceed $10,000 a
day for each violation.
(c) Each day of a continuing violation constitutes a separate violation.
(d) The board shall establish gradations of penalties in accordance with the relative seriousness of the
violation.
(e) In determining the amount of a penalty, the department shall consider any matter that justice may
require, including:
(1) the gradations of penalties established under Subsection (d);
(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the
prohibited act and the hazard or potential hazard created by the act to the health or safety of the public;
(3) the history of previous violations;
(4) deterrence of future violations; and
(5) efforts to correct the violation.
(f) The penalty for a violation of Section 242.072(c) or a right of a resident adopted under Subchapter L
may not exceed $1,000 a day for each violation. This subsection does not apply to conduct that violates both
Subchapter K or a standard adopted under Subchapter K and a right of a resident adopted under Subchapter L.
(g) The persons against whom an administrative penalty may be assessed under Subsection (a) include:
(1) an applicant for a license under this chapter;
(2) a license holder;
(3) a partner, officer, director, or managing employee of a license holder or applicant; and
(4) a person who controls an institution.

(h) A penalty assessed under Subsection (a)(6) is in addition to the penalty previously assessed and not timely paid.

VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES

Sec. 242.0663. (a) The department shall assess an administrative penalty under this subchapter against an institution that violates Section 166.004.

(b) Notwithstanding Sections 242.066(b) and (c), a penalty assessed in accordance with this section shall be $500 and a separate penalty may not be assessed for a separate day of a continuing violation.

(c) Section 242.0665 does not apply to a penalty assessed in accordance with this section.

RIGHT TO CORRECT

Sec. 242.0665. (a) The department may not collect an administrative penalty against an institution under this subchapter if, not later than the 45th day after the date the institution receives notice under Section 242.067(c), the institution corrects the violation.

(b) Subsection (a) does not apply:

(1) to a violation that the department determines:

(A) results in serious harm to or death of a resident;
(B) constitutes a serious threat to the health or safety of a resident; or
(C) substantially limits the institution's capacity to provide care;

(2) to a violation described by Sections 242.066(a)(2)(7);

(3) to a violation of Section 242.133 or 242.1335; or

(4) to a violation of a right of a resident adopted under Subchapter L.

(c) An institution that corrects a violation under Subsection (a) must maintain the correction. If the institution fails to maintain the correction until at least the first anniversary of the date the correction was made, the department may assess an administrative penalty under this subchapter for the subsequent violation. A penalty assessed under this subsection shall be equal to three times the amount of the penalty assessed but not collected under Subsection (a). The department is not required to provide the institution an opportunity to correct the subsequent violation under this section.

REPORT RECOMMENDING ADMINISTRATIVE PENALTY

Sec. 242.067. (a) The department may issue a preliminary report stating the facts on which it concludes that a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter has occurred if it has:

(1) examined the possible violation and facts surrounding the possible violation; and

(2) concluded that a violation has occurred.

(b) The report may recommend a penalty under Section 242.069 and the amount of the penalty.

(c) The department shall give written notice of the report to the person charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

(1) a brief summary of the charges;

(2) a statement of the amount of penalty recommended;

(3) a statement of whether the violation is subject to correction under Section 242.0665 and, if the violation is subject to correction under that section, a statement of:

(A) the date on which the institution must file with the department a plan of correction to be approved by the department; and

(B) the date on which the plan of correction must be completed to avoid assessment of the penalty; and

(4) a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(d) Not later than the 20th day after the date on which the notice under Subsection (c) is sent, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty;

(2) make a written request for a hearing; or
(3) if the violation is subject to correction under Section 242.0665, submit a plan of correction to the department for approval.

(e) If the violation is subject to correction under Section 242.0665, and the person reports to the department that the violation has been corrected, the department shall inspect the correction or take any other step necessary to confirm that the violation has been corrected and shall notify the person that:

(1) the correction is satisfactory and that a penalty is not assessed; or
(2) the correction is not satisfactory and that a penalty is recommended.

(f) Not later than the 20th day after the date on which a notice under Subsection (c)(2) is sent, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; or
(2) make a written request for a hearing.

(g) If the person charged consents to the administrative penalty recommended by the department, does not timely respond to a notice sent under Subsection (c) or (e), or fails to correct the violation to the department's satisfaction, the commissioner or the commissioner's designee shall assess the administrative penalty recommended by the department

(h) If the commissioner or the commissioner's designee assesses the recommended penalty, the department shall give written notice to the person charged of the decision and the person shall pay the penalty.

HEARINGS ON ADMINISTRATIVE PENALTIES

Sec. 242.068. (a) An administrative law judge shall order a hearing and give notice of the hearing if a person charged under Section 242.067(c) requests a hearing.

(b) The hearing shall be held before an administrative law judge.

(c) The administrative law judge shall make findings of fact and conclusions of law regarding the occurrence of a violation of this chapter or a rule or order adopted or license issued under this chapter.

(d) Based on the findings of fact and conclusions of law, the administrative law judge by order shall find:

(1) a violation has occurred and assess an administrative penalty; or
(2) a violation has not occurred.

(e) Proceedings under this section are subject to Chapter 2001, Government Code.

NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND

Sec. 242.069. (a) The commissioner shall give notice of the decision taken under Section 242.068(d) to the person charged. If the commissioner finds that a violation has occurred and has assessed an administrative penalty, the commissioner shall give written notice to the person charged of:

(1) the findings;
(2) the amount of the penalty;
(3) the rate of interest payable with respect to the penalty and the date on which interest begins to accrue;
(4) whether payment of the penalty or other action under Section 242.071 is required; and
(5) the person's right to judicial review of the order.

(b) Not later than the 30th day after the date on which the commissioner's order is final, the person charged with the penalty shall:

(1) pay the full amount of the penalty; or
(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, the failure to correct the violation to the department's satisfaction, or all of the above.

(c) Notwithstanding Subsection (b), the department may permit the person to pay the penalty in installments or may require the person to use the amount of the penalty under the department's supervision in accordance with Section 242.071.

(d) If the person does not pay the penalty within the 30-day period:

(1) the penalty is subject to interest; and
(2) the department may refer the matter to the attorney general for collection of the penalty and interest.

(e) If a penalty is reduced or not assessed, the commissioner shall:

(1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or
(2) execute a release of the supersedeas bond if one has been posted.
(f) Accrued interest on amounts remitted by the commissioner under Subsection (e)(1) shall be paid:
(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and
(2) for the period beginning on the date the penalty is paid under Subsection (b) and ending on the date the penalty is remitted.

(g) Interest under Subsection (d) shall be paid:
(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and
(2) for the period beginning on the date the notice of the commissioner's order is received by the person and ending on the date the penalty is paid.

USE OF ADMINISTRATIVE PENALTY

Sec. 242.0695. Money from an administrative penalty collected under this subchapter may be appropriated for the purpose of funding the grant program established under Section 161.074, Human Resources Code.

APPLICATION OF OTHER LAW

Sec. 242.070. The department may not assess more than one monetary penalty under this chapter and Chapter 32, Human Resources Code, for a violation arising out of the same act or failure to act, except as provided by Section 242.0665(c). The department may assess the greater of a monetary penalty under this chapter or a monetary penalty under Chapter 32, Human Resources Code, for the same act or failure to act.

AMELIORATION OF VIOLATION

Sec. 242.071. (a) In lieu of demanding payment of an administrative penalty assessed under Section 242.066, the commissioner may, in accordance with this section, allow the person to use, under the supervision of the department, any portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the institution affected by the violation.

(b) The department shall offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of an institution resident.

(c) The department may not offer amelioration to a person if:
(1) the person has been charged with a violation which is subject to correction under Section 242.0665; or
(2) the department determines that the charged violation constitutes immediate jeopardy to the health and safety of an institution resident.

(d) The department shall offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of assessment of administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 242.068.

(e) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. In submitting the plan, the person must agree to waive the person's right to an administrative hearing under Section 242.068 if the department approves the plan.

(f) At a minimum, a plan for amelioration must:
(1) propose changes to the management or operation of the institution that will improve services to or quality of care of residents of the institution;
(2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents of the institution;
(3) establish clear goals to be achieved through the proposed changes;
(4) establish a timeline for implementing the proposed changes; and
(5) identify specific actions necessary to implement the proposed changes.

(g) A plan for amelioration may include proposed changes to:
(1) improve staff recruitment and retention;
(2) offer or improve dental services for residents; and
(3) improve the overall quality of life for residents.

(h) The department may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.
(i) The department shall approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. On approval of a person's plan, the department shall deny a pending request for a hearing submitted by the person under Section 242.067(d).

(j) The department may not offer amelioration to a person:
   (1) more than three times in a two-year period; or
   (2) more than one time in a two-year period for the same or similar violation.

(k) In this section, "immediate jeopardy to health and safety" means a situation in which immediate corrective action is necessary because the institution's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in the institution.

OTHER REMEDIES

Sec. 242.072. (a) If the commissioner finds that an institution has committed an act for which a civil penalty may be imposed under Section 242.065, the commissioner may, as appropriate under the circumstances, order the institution to immediately suspend admissions.

(b) A suspension of admissions ordered under Subsection (a) is effective on the date a representative of the institution receives notice of the order and of the manner in which the order may be appealed. The department must provide an opportunity for a hearing with respect to an appeal of the order not later than the 14th day after the date the suspension becomes effective.

(c) During the period that an institution is ordered to suspend admissions, the institution shall post a notice of the suspension on all doors providing ingress to and egress from the institution. The notice shall be posted in the form required by the department.

(d) A person commits an offense if the person knowingly:
   (1) violates Subsection (c); or
   (2) removes a notice posted under Subsection (c) before the facility is allowed to admit residents.

(e) An offense under Subsection (d) is a Class C misdemeanor.

(f) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving an order suspending admissions under this section or the conduct with respect to which the order suspending admissions is sought.

LEGAL ACTION BY THE ATTORNEY GENERAL

Sec. 242.073. (a) The department and the attorney general shall work in close cooperation throughout any legal proceedings requested by the department.

(b) The commissioner must approve any settlement agreement to a suit brought under this chapter or any other law relating to the health and safety of residents in institutions.

NOTIFICATION OF CHANGE IN FINANCIAL CONDITION

Sec. 242.074. (a) An institution shall notify the department of a significant change in the institution's financial position, cash flow, or results of operation that could adversely affect the institution's delivery of essential services, including nursing services, dietary services, and utilities, to residents of the institution.

(b) The department may verify the financial condition of an institution in order to identify any risk to the institution's ability to deliver essential services.

(c) A person that knowingly files false information under this section may be prosecuted under the Penal Code.

(d) The department shall adopt rules to implement this section. The rules shall include the conditions that constitute a significant change in an institution's financial condition that are required to be reported under Subsection (a).

(e) The information obtained by the department under this section is confidential and is not subject to disclosure under Chapter 552, Government Code. The department may release the information to:
   (1) the institution; or
   (2) a person other than the institution if the institution consents in writing to the disclosure.

(f) A person who knowingly discloses information in violation of Subsection (e) commits an offense. An offense under this subsection is a Class A misdemeanor.

(g) The provisions in Subsection (e) relating to the confidentiality of records do not apply to:
   (1) an institution whose license has been revoked or suspended; or
   (2) the use of information in an administrative proceeding initiated by the department or in a judicial proceeding.
SUBCHAPTER D. TRUSTEES FOR NURSING OR CONVALESCENT HOMES

FINDINGS AND PURPOSE

Sec. 242.091. (a) The legislature finds that the closing of a nursing or convalescent home for violations of laws and rules may:

(1) in certain circumstances, have an adverse effect on both the home's residents and their families; and

(2) in some cases, result in a lack of readily available funds to meet the basic needs of the residents for food, shelter, medication, and personal services.

(b) The purpose of this subchapter is to provide for:

(1) the appointment of a trustee to assume the operations of the home in a manner that emphasizes resident care and reduces resident trauma; and

(2) a fund to assist a court-appointed trustee in meeting the basic needs of the residents.

DEFINITION

Sec. 242.092. In this subchapter, "home" means a nursing or convalescent home.

APPOINTMENT BY AGREEMENT

Sec. 242.093. (a) A person holding a controlling interest in a home may, at any time, request the department to assume the operation of the home through the appointment of a trustee under this subchapter.

(b) After receiving the request, the department may enter into an agreement providing for the appointment of a trustee to take charge of the home under conditions considered appropriate by both parties if the department considers the appointment desirable.

(c) An agreement under this section must:

(1) specify all terms and conditions of the trustee's appointment and authority; and

(2) preserve all rights of the residents as granted by law.

(d) The agreement terminates at the time specified by the parties or when either party notifies the other in writing that the party wishes to terminate the appointment agreement.

IN VOLUNTARY APPOINTMENT

Sec. 242.094. (a) The department may request the attorney general to bring an action in the name and on behalf of the state for the appointment of a trustee to operate a home if:

(1) the home is operating without a license;

(2) the department has suspended or revoked the home's license;

(3) license suspension or revocation procedures against the home are pending and the department determines that an imminent threat to the health and safety of the residents exists;

(4) the department determines that an emergency exists that presents an immediate threat to the health and safety of the residents; or

(5) the home is closing and arrangements for relocation of the residents to other licensed institutions have not been made before closure.

(b) A trustee appointed under Subsection (a)(5) may only ensure an orderly and safe relocation of the home's residents as quickly as possible.

(c) After a hearing, a court shall appoint a trustee to take charge of a home if the court finds that involuntary appointment of a trustee is necessary.

(d) If possible, the court shall appoint as trustee an individual whose background includes institutional medical administration.

Text of subsection (e) as added by Acts 1993, 73rd Leg., ch. 583, Sec. 2

(e) Venue for an action brought under this section is in Travis County.

Text of subsection (e) as added by Acts 1993, 73rd Leg., ch. 815, Sec. 3

(e) Venue for actions brought under this section shall be in Travis County.

(f) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve the legal issues of a dispute involving the:

(1) appointment of a trustee under this section; or

(2) conduct with respect to which the appointment of trustee is sought.
QUALIFICATIONS OF TRUSTEES

Sec. 242.0945. (a) A court may appoint a person to serve as a trustee under this subchapter only if the proposed trustee can demonstrate to the court that the proposed trustee will be:
(1) present at the home as required to perform the duties of a trustee; and
(2) available on call to appropriate staff at the home, the department, and the court as necessary during the time the trustee is not present at the home.
(b) A trustee shall report to the court in the event that the trustee is unable to satisfy the requirements of Subsection (a)(1) or (2).
(c) On the motion of any party or on the court's own motion, the court may replace a trustee who is unable to satisfy the requirements of Subsection (a)(1) or (2).
(d) A trustee's charges must separately identify personal hours worked for which compensation is claimed. A trustee's claim for personal compensation may include only compensation for activities related to the trusteeship and performed in or on behalf of the home.

NEPOTISM PROHIBITION

Sec. 242.0946. A person serving as a trustee under this subchapter may not employ or otherwise appoint an individual to work with the trustee in the home who is related to the trustee within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code.

FEE; RELEASE OF FUNDS

Sec. 242.095. (a) A trustee appointed under this subchapter is entitled to a reasonable fee as determined by the court. In determining the trustee's personal compensation for nursing facility administrator activities, the court shall consider reasonable a rate that is equal to 150 percent of the maximum allowable rate for an owner-administrator under the state's Medicaid reimbursement rules. The court shall determine the reasonableness of the trustee's personal compensation for other duties. On the motion of any party, the court shall review the reasonableness of the trustee's fees. The court shall reduce the amount if the court determines that the fees are not reasonable.
(b) The trustee may petition the court to order the release to the trustee of any payment owed the trustee for care and services provided to the residents if the payment has been withheld, including a payment withheld by the Texas Department of Human Services at the recommendation of the department.
(c) Withheld payments may include payments withheld by a governmental agency or other entity during the appointment of the trustee, such as payments:
(1) for Medicaid, Medicare, or insurance;
(2) by another third party; or
(3) for medical expenses borne by the resident.
(d) If the department appoints a trustee under this subchapter for a veterans home as defined by Section 164.002, Natural Resources Code, the Veterans' Land Board is responsible for the trustee's fee under this section.

NURSING AND CONVALESCENT HOME TRUST FUND AND EMERGENCY ASSISTANCE FUNDS

Sec. 242.096. (a) The nursing and convalescent home trust fund is with the comptroller and shall be made available to the department for expenditures without legislative appropriation to make emergency assistance funds available to a home.
(b) A trustee of a home may use the emergency assistance funds only to alleviate an immediate threat to the health or safety of the residents. The use may include payments for:
(1) food;
(2) medication;
(3) sanitation services;
(4) minor repairs;
(5) supplies necessary for personal hygiene; or
(6) services necessary for the personal care, health, and safety of the residents.
(c) A court may order the department to disburse emergency assistance funds to a home if the court finds that:
(1) the home has inadequate funds accessible to the trustee for the operation of the home;
(2) there exists an emergency that presents an immediate threat to the health and safety of the residents; and
(3) it is in the best interests of the health and safety of the residents that funds are immediately available.

(d) The department shall disburse money from the nursing and convalescent home trust fund as ordered by the court in accordance with board rules.

(e) Any unencumbered amount in the nursing and convalescent home trust fund in excess of $10,000,000 at the end of each fiscal year shall be transferred to the credit of the general revenue fund and may be appropriated only to the department for its use in administering and enforcing this chapter.

ASSISTED LIVING FACILITY TRUST FUND AND EMERGENCY ASSISTANCE FUNDS

Sec. 242.0965. (a) The assisted living facility trust fund is a trust fund with the comptroller and shall be made available to the department for expenditures without legislative appropriation to make emergency assistance funds available to an assisted living facility.

(b) A trustee of an assisted living facility may use the emergency assistance funds only to alleviate an immediate threat to the health or safety of the residents. The use may include payments for:

(1) food;

(2) medication;

(3) sanitation services;

(4) minor repairs;

(5) supplies necessary for personal hygiene; or

(6) services necessary for the personal care, health, and safety of the residents.

(c) A court may order the department to disburse emergency assistance funds to an assisted living facility if the court finds that:

(1) the assisted living facility has inadequate funds accessible to the trustee for the operation of the assisted living facility;

(2) an emergency exists that presents an immediate threat to the health and safety of the residents; and

(3) it is in the best interests of the health and safety of the residents that funds are immediately available.

(d) The department shall disburse money from the assisted living facility trust fund as ordered by the court in accordance with board rules.

(e) Any unencumbered amount in the assisted living facility trust fund in excess of $500,000 at the end of each fiscal year shall be transferred to the credit of the general revenue fund and may be appropriated only to the department for its use in administering and enforcing Chapter 247.

ADDITIONAL LICENSE FEE--NURSING AND CONVALESCENT HOMES

Sec. 242.097. (a) In addition to the license fee provided by Section 242.034, the department shall adopt an annual fee to be charged and collected if the amount of the nursing and convalescent home trust fund is less than $10,000,000. The fee shall be deposited to the credit of the nursing and convalescent home trust fund created by this subchapter.

(b) The department may charge and collect a fee under this section more than once each year only if necessary to ensure that the amount in the nursing and convalescent home trust fund is sufficient to make the disbursements required under Section 242.096. If the department makes a second or subsequent assessment under this subsection in any year, the department shall notify the governor and the members of the Legislative Budget Board.

(c) The department shall set the fee for each nursing and convalescent home at $1 for each licensed unit of capacity or bed space in that home or in an amount necessary to provide not more than $10,000,000 in the fund. The total fees assessed in a year may not exceed $20 for each licensed unit of capacity or bed space in a home.

(d) This section does not apply to a veterans home as defined by Section 164.002, Natural Resources Code.

ADDITIONAL LICENSE FEE--ASSISTED LIVING FACILITIES

Sec. 242.0975. (a) In addition to the license fee provided by Section 247.024, the department shall adopt an annual fee to be charged and collected if the amount of the assisted living facility trust fund is less than $500,000. The fee shall be deposited to the credit of the assisted living facility trust fund created by this subchapter.

(b) The department may charge and collect a fee under this section more than once each year only if necessary to ensure that the amount in the assisted living facility trust fund is sufficient to make the disbursements...
required under Section 242.0965. If the department makes a second or subsequent assessment under this subsection in any year, the department shall notify the governor and the Legislative Budget Board.

(c) The department shall set the fee on the basis of the number of beds in assisted living facilities required to pay the fee and in an amount necessary to provide not more than $500,000 in the assisted living facility trust fund.

**REIMBURSEMENT**

Sec. 242.098. (a) A home that receives emergency assistance funds under this subchapter shall reimburse the department for the amounts received, including interest.

(b) Interest on unreimbursed amounts begins to accrue on the date on which the funds were disbursed to the home. The rate of interest is the rate determined under Section 304.003, Finance Code, to be applicable to judgments rendered during the month in which the money was disbursed to the home.

(c) The owner of the home when the trustee was appointed is responsible for the reimbursement.

(d) The amount that remains unreimbursed on the expiration of one year after the date on which the funds were received is delinquent and the Texas Department of Human Services may determine that the home is ineligible for a Medicaid provider contract.

(e) The department shall deposit the reimbursement and interest received under this section to the credit of the nursing and convalescent home trust fund.

(f) The attorney general shall institute an action to collect the funds due under this section at the request of the department. Venue for an action brought under this section is in Travis County.

**APPLICABILITY OF OTHER LAW**

Sec. 242.099. Subtitle D, Title 10, Government Code does not apply to any payments made by a trustee under this subchapter.

**NOTIFICATION OF CLOSING**

Sec. 242.100. (a) A home that is closing temporarily or permanently, or voluntarily or involuntarily, shall notify the residents of the closing and make reasonable efforts to notify in writing each resident's nearest relative or the person responsible for the resident's support within a reasonable time before the closing.

(b) If the closing of a home is ordered by the department or is in any other way involuntary, the home shall make the notification, orally or in writing, immediately on receiving notice of the closing.

(c) If the closing of a home is voluntary, the home shall make the notification not later than one week after the date on which the decision to close is made.

**CRIMINAL PENALTY**

Sec. 242.101. (a) A home commits an offense if the home fails or refuses to comply with Section 242.100.

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

**INELIGIBILITY FOR LICENSE**

Sec. 242.102. (a) A license holder or controlling person who operates a home for which a trustee is appointed under this subchapter and with respect to which emergency assistance funds, other than funds used to pay the expenses of the trustee, are used under this subchapter is subject to exclusion from eligibility for:

1. issuance of an original license for a home for which the person has not previously held a license; or
2. renewal of the license for the home for which the trustee is appointed.

(b) Exclusion under this section is governed by Section 242.0615.

**SUBCHAPTER E. REPORTS OF ABUSE AND NEGLECT**

**DEFINITION**

Sec. 242.121. In this subchapter, "designated agency" means an agency designated by a court to be responsible for the protection of a resident who is the subject of a report of abuse or neglect.
REPORTING OF ABUSE AND NEGLECT

Sec. 242.122. (a) A person, including an owner or employee of an institution, who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse or neglect caused by another person shall report the abuse or neglect in accordance with this subchapter.

(b) Each institution shall require each employee of the institution, as a condition of employment with the institution, to sign a statement that the employee realizes that the employee may be criminally liable for failure to report those abuses.

(c) A person shall make an oral report immediately on learning of the abuse or neglect and shall make a written report to the same agency not later than the fifth day after the oral report is made.

CONTENTS OF REPORT

Sec. 242.123. (a) A report of abuse or neglect is nonaccusatory and reflects the reporting person's belief that a resident has been or will be abused or neglected or has died of abuse or neglect.

(b) The report must contain:

(1) the name and address of the resident;
(2) the name and address of the person responsible for the care of the resident, if available; and
(3) other relevant information.

(c) Except for an anonymous report under Section 242.124, a report of abuse or neglect under Section 242.122 or of other conduct or conditions under Section 242.1225 should also include the address or phone number of the person making the report so that an investigator can contact the person for any necessary additional information. The phone number and address as well as the name of the person making the report must be deleted from any copy of any type of report that is released to the public, to the institution, or to an owner or agent of the institution.

ANONYMOUS REPORTS OF ABUSE OR NEGLECT

Sec. 242.124. (a) An anonymous report of abuse or neglect, although not encouraged, shall be received and acted on in the same manner as an acknowledged report.

(b) An anonymous report about a specific individual that accuses the individual of abuse or neglect need not be investigated.

PROCESSING OF REPORTS

Sec. 242.125. (a) A report of abuse or neglect shall be made to the department or a local or state law enforcement agency. A report made by an owner or employee of an institution relating to abuse or neglect or another complaint described by Section 242.126(c)(1) shall be made to the department and to the law enforcement agency described by Section 242.135(a).

(b) Except as provided by Section 242.135, a local or state law enforcement agency that receives a report of abuse or neglect shall refer the report to the department or the designated agency.

INVESTIGATION AND REPORT OF DEPARTMENT OR DESIGNATED AGENCY

Sec. 242.126. (a) The department or the designated agency shall make a thorough investigation after receiving an oral or written report of abuse or neglect under Section 242.122 or another complaint alleging abuse or neglect.

(b) The primary purpose of the investigation is the protection of the resident.

(c) The agency shall begin the investigation:

(1) within 24 hours of receipt of the report or other allegation, if the report of abuse or neglect or other complaint alleges that:
(A) a resident's health or safety is in imminent danger;
(B) a resident has recently died because of conduct alleged in the report of abuse or neglect or other complaint;
(C) a resident has been hospitalized or been treated in an emergency room because of conduct alleged in the report of abuse or neglect or other complaint;
(D) a resident has been a victim of any act or attempted act described by Section 21.02, 21.11, 22.011, or 22.021, Penal Code; or
(E) a resident has suffered bodily injury, as that term is defined by Section 1.07, Penal Code, because of conduct alleged in the report of abuse or neglect or other complaint; or
before the end of the next working day after the date of receipt of the report of abuse or neglect or other complaint, if the report or complaint alleges the existence of circumstances that could result in abuse or neglect and that could place a resident's health or safety in imminent danger.

(d) The department shall adopt rules governing the conduct of investigations, including procedures to ensure that the complainant and the resident, the resident's next of kin, and any person designated to receive information concerning the resident receive periodic information regarding the investigation.

(e) In investigating the report of abuse or neglect or other complaint, the investigator for the investigating agency shall:

(1) make an unannounced visit to the institution to determine the nature and cause of the alleged abuse or neglect of the resident;
(2) interview each available witness, including the resident that suffered the alleged abuse or neglect if the resident is able to communicate or another resident or other witness identified by any source as having personal knowledge relevant to the report of abuse or neglect or other complaint;
(3) personally inspect any physical circumstance that is relevant and material to the report of abuse or neglect or other complaint and that may be objectively observed;
(4) make a photographic record of any injury to a resident, subject to Subsection (n); and
(5) write an investigation report that includes:
   (A) the investigator's personal observations;
   (B) a review of relevant documents and records;
   (C) a summary of each witness statement, including the statement of the resident that suffered the alleged abuse or neglect and any other resident interviewed in the investigation; and
   (D) a statement of the factual basis for the findings for each incident or problem alleged in the report or other allegation.

(f) An investigator for an investigating agency shall conduct an interview under Subsection (e)(2) in private unless the witness expressly requests that the interview not be private.

(g) Not later than the 30th day after the date the investigation is complete, the investigator shall prepare the written report required by Subsection (e). The department shall make the investigation report available to the public on request after the date the department's letter of determination is complete. The department shall delete from any copy made available to the public:

(1) the name of:
   (A) any resident, unless the department receives written authorization from a resident or the resident's legal representative requesting the resident's name be left in the report;
   (B) the person making the report of abuse or neglect or other complaint; and
   (C) an individual interviewed in the investigation; and
(2) photographs of any injury to the resident.

(h) In the investigation, the department or the designated agency shall determine:

(1) the nature, extent, and cause of the abuse or neglect;
(2) the identity of the person responsible for the abuse or neglect;
(3) the names and conditions of the other residents;
(4) an evaluation of the persons responsible for the care of the residents;
(5) the adequacy of the institution environment; and
(6) any other information required by the department.

(i) If the department attempts to carry out an on-site investigation and it is shown that admission to the institution, or any place where the resident is located, cannot be obtained, a probate or county court shall order the person responsible for the care of the resident or the person in charge of a place where the resident is located to allow entrance for the interview and investigation.

(j) Before the completion of the investigation the department shall file a petition for temporary care and protection of the resident if the department determines that immediate removal is necessary to protect the resident from further abuse or neglect.

(k) The department or the designated agency shall make a complete final written report of the investigation and submit the report and its recommendations to the district attorney and, if a law enforcement agency has not investigated the report of abuse or neglect or other complaint, to the appropriate law enforcement agency.

(l) Within 24 hours of receipt of a report of abuse or neglect or other complaint described by Subsection (c)(1), the department or designated agency shall report the report or complaint to the law enforcement agency described by Section 242.135(a). The department or designated agency shall cooperate with that law enforcement agency in the investigation of the report or complaint as described by Section 242.135.
The inability or unwillingness of a local law enforcement agency to conduct a joint investigation under Section 242.135 does not constitute grounds to prevent or prohibit the department from performing its duties under this chapter. The department shall document any instance in which a law enforcement agency is unable or unwilling to conduct a joint investigation under Section 242.135.

If the department determines that, before a photographic record of an injury to a resident may be made under Subsection (e), consent is required under state or federal law, the investigator:

1. shall seek to obtain any required consent; and
2. may not make the photographic record unless the consent is obtained.

CONFIDENTIALITY

Sec. 242.127. A report, record, or working paper used or developed in an investigation made under this subchapter and the name, address, and phone number of any person making a report under this subchapter are confidential and may be disclosed only for purposes consistent with the rules adopted by the board or the designated agency. The report, record, or working paper and the name, address, and phone number of the person making the report shall be disclosed to a law enforcement agency as necessary to permit the law enforcement agency to investigate a report of abuse or neglect or other complaint in accordance with Section 242.135.

IMMUNITY

Sec. 242.128. (a) A person who reports as provided by this subchapter is immune from civil or criminal liability that, in the absence of the immunity, might result from making the report.

(b) The immunity provided by this section extends to participation in any judicial proceeding that results from the report.

(c) This section does not apply to a person who reports in bad faith or with malice.

PRIVILEGED COMMUNICATIONS

Sec. 242.129. In a proceeding regarding the abuse or neglect of a resident or the cause of any abuse or neglect, evidence may not be excluded on the ground of privileged communication except in the case of a communication between an attorney and client.

CENTRAL REGISTRY

Sec. 242.130. (a) The department shall maintain in the city of Austin a central registry of reported cases of resident abuse or neglect.

(b) The board may adopt rules necessary to carry out this section.

(c) The rules shall provide for cooperation with hospitals and clinics in the exchange of reports of resident abuse or neglect.

FAILURE TO REPORT; CRIMINAL PENALTY

Sec. 242.131. (a) A person commits an offense if the person has cause to believe that a resident's physical or mental health or welfare has been or may be further adversely affected by abuse or neglect and knowingly fails to report in accordance with Section 242.122.

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

BAD FAITH, MALICIOUS, OR RECKLESS REPORTING; CRIMINAL PENALTY

Sec. 242.132. (a) A person commits an offense if the person reports under this subchapter in bad faith, maliciously, or recklessly.

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

(c) The criminal penalty provided by this section is in addition to any civil penalties for which the person may be liable.

RETALIATION AGAINST EMPLOYEES PROHIBITED

Sec. 242.133. (a) In this section, "employee" means a person who is an employee of an institution or any other person who provides services for an institution for compensation, including a contract laborer for the institution.

(b) An employee has a cause of action against an institution, or the owner or another employee of the institution, that suspends or terminates the employment of the person or otherwise disciplines or discriminates or retaliates against the employee for reporting to the employee's supervisor, an administrator of the institution, a state
regulatory agency, or a law enforcement agency a violation of law, including a violation of this chapter or a rule adopted under this chapter, or for initiating or cooperating in any investigation or proceeding of a governmental entity relating to care, services, or conditions at the institution.

(c) The petitioner may recover:

(1) the greater of $1,000 or actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown and damages for lost wages if the petitioner's employment was suspended or terminated;
(2) exemplary damages;
(3) court costs; and
(4) reasonable attorney's fees.

(d) In addition to the amounts that may be recovered under Subsection (c), a person whose employment is suspended or terminated is entitled to appropriate injunctive relief, including, if applicable:

(1) reinstatement in the person's former position; and
(2) reinstatement of lost fringe benefits or seniority rights.

(e) The petitioner, not later than the 90th day after the date on which the person's employment is suspended or terminated, must bring suit or notify the Texas Workforce Commission of the petitioner's intent to sue under this section. A petitioner who notifies the Texas Workforce Commission under this subsection must bring suit not later than the 90th day after the date of the delivery of the notice to the commission. On receipt of the notice, the commission shall notify the institution of the petitioner's intent to bring suit under this section.

(f) The petitioner has the burden of proof, except that there is a rebuttable presumption that the person's employment was suspended or terminated for reporting abuse or neglect if the person is suspended or terminated within 60 days after the date on which the person reported in good faith.

(g) A suit under this section may be brought in the district court of the county in which:

(1) the plaintiff resides;
(2) the plaintiff was employed by the defendant; or
(3) the defendant conducts business.

(h) Each institution shall require each employee of the institution, as a condition of employment with the institution, to sign a statement that the employee understands the employee's rights under this section. The statement must be part of the statement required under Section 242.122. If an institution does not require an employee to read and sign the statement, the periods under Subsection (e) do not apply, and the petitioner must bring suit not later than the second anniversary of the date on which the person's employment is suspended or terminated.

RETAILIATION AGAINST VOLUNTEERS, RESIDENTS, OR FAMILY MEMBERS OR GUARDIANS OF RESIDENTS

Sec. 242.1335. (a) An institution may not retaliate or discriminate against a volunteer, a resident, or a family member or guardian of a resident because the volunteer, the resident, the resident's family member or guardian, or any other person:

(1) makes a complaint or files a grievance concerning the facility;
(2) reports a violation of law, including a violation of this chapter or a rule adopted under this chapter; or
(3) initiates or cooperates in an investigation or proceeding of a governmental entity relating to care, services, or conditions at the institution.

(b) A volunteer, a resident, or a family member or guardian of a resident who is retaliated or discriminated against in violation of Subsection (a) is entitled to sue for:

(1) injunctive relief;
(2) the greater of $1,000 or actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown;
(3) exemplary damages;
(4) court costs; and
(5) reasonable attorney's fees.

(c) A volunteer, a resident, or a family member or guardian of a resident who seeks relief under this section must report the alleged violation not later than the 180th day after the date on which the alleged violation of this section occurred or was discovered by the volunteer, the resident, or the family member or guardian of the resident through reasonable diligence.

(d) A suit under this section may be brought in the district court of the county in which the institution is located or in a district court of Travis County.
REPORTS RELATING TO RESIDENT DEATHS

Sec. 242.134. (a) An institution licensed under this chapter shall submit a report to the department concerning deaths of residents of the institution. The report must be submitted within 10 working days after the last day of each month in which a resident of the institution dies. The report must also include the death of a resident occurring within 24 hours after the resident is transferred from the institution to a hospital.

(b) The institution must make the report on a form prescribed by the department. The report must contain the name and social security number of the deceased.

(c) The department shall correlate reports under this section with death certificate information to develop data relating to the:
   (1) name and age of the deceased;
   (2) official cause of death listed on the death certificate;
   (3) date, time, and place of death; and
   (4) name and address of the institution in which the deceased resided.

(d) Except as provided by Subsection (e), a record under this section is confidential and not subject to the provisions of Chapter 552, Government Code.

(e) The department shall develop statistical information on official causes of death to determine patterns and trends of incidents of death among the elderly and in specific institutions. Information developed under this subsection is public.

(f) A licensed institution shall make available historical statistics on all required information on request of an applicant or applicant's representative.

DUTIES OF LAW ENFORCEMENT; JOINT INVESTIGATION

Sec. 242.135. (a) A department or designated agency shall investigate a report of abuse or neglect or other complaint described by Section 242.126(c)(1) jointly with:
   (1) the municipal law enforcement agency, if the institution is located within the territorial boundaries of a municipality; or
   (2) the sheriff's department of the county in which the institution is located, if the institution is not located within the territorial boundaries of a municipality.

(b) The law enforcement agency described by Subsection (a) shall acknowledge the report of abuse or neglect or other complaint and begin the joint investigation required by this section within 24 hours of receipt of the report or complaint. The law enforcement agency shall cooperate with the department or designated agency and report to the department or designated agency the results of the investigation.

(c) The requirement that the law enforcement agency and the department or designated agency conduct a joint investigation under this section does not require that a representative of each agency be physically present during all phases of the investigation or that each agency participate equally in each activity conducted in the course of the investigation.

SUBCHAPTER F. MEDICAL, NURSING, AND DENTAL SERVICES OTHER THAN ADMINISTRATION OF MEDICATION

PHYSICIAN SERVICES

Sec. 242.151. (a) An institution shall have at least one medical director who is licensed as a physician in this state.

(b) The attending physician is responsible for a resident's assessment and comprehensive plan of care and shall review, revise, and sign orders relating to any medication or treatment in the plan of care. The responsibilities imposed on the attending physician by this subsection may be performed by an advanced practice nurse or a physician assistant pursuant to protocols jointly developed with the attending physician.

(c) Each resident has the right to choose a personal attending physician.

PHYSICIAN SERVICES FOR RESIDENTS YOUNGER THAN 18 YEARS OF AGE

Sec. 242.152. (a) An institution shall use appropriate pediatric consultative services for a resident younger than 18 years of age, in accordance with the resident's assessment and comprehensive plan of care.

(b) A pediatrician or other physician with training or expertise in the clinical care of children with complex medical needs shall participate in all aspects of the resident's medical care.
DIRECTOR OF NURSING SERVICES

Sec. 242.153. An institution shall have a director of nursing services who shall be a registered nurse. The director of nursing services is responsible for:

1. coordinating each resident's comprehensive plan of care; and
2. ensuring that only personnel with an appropriate license or permit administer medication.

NURSING SERVICES

Sec. 242.154. (a) An institution shall provide the nursing care required to allow each resident to achieve and maintain the highest possible degree of function and independence medically possible.

(b) The institution shall maintain sufficient staff to provide nursing and related services:

1. in accordance with each resident's plan of care; and
2. to obtain and maintain the physical, mental, and psychosocial functions of each resident at the highest practicable level, as determined by the resident's assessment and plan of care.

PEDIATRIC NURSING SERVICES

Sec. 242.155. An institution shall ensure that:

1. nursing services for a resident younger than 18 years of age are provided by a staff member who has been instructed and has demonstrated competence in the care of children; and
2. consultative pediatric nursing services are available to the staff if the institution has a resident younger than 18 years of age.

REQUIRED MEDICAL EXAMINATION

Sec. 242.156. (a) Except as required by federal law, the department shall require that each resident be given at least one medical examination each year.

(b) The department shall specify the details of the examination.

DENTAL EXAMINATION

Sec. 242.157. (a) The department shall require that each resident of an institution or the resident's custodian be asked at least once each year if the resident desires a dental examination and possible treatment at the resident's own expense.

(b) Each institution shall be encouraged to use all reasonable efforts to arrange for a dental examination for each resident who desires one.

(c) The institution is not liable for any costs relating to a dental examination under this section.

IDENTIFICATION OF CERTAIN NURSING HOME RESIDENTS REQUIRING MENTAL HEALTH OR MENTAL RETARDATION SERVICES

Sec. 242.158. (a) Each resident of a nursing home who is considering making a transition to a community-based care setting shall be identified to determine the presence of a mental illness or mental retardation, regardless of whether the resident is receiving treatment or services for a mental illness or mental retardation.

(b) In identifying residents having a mental illness or mental retardation, the department shall use an identification process that is at least as effective as the mental health and mental retardation identification process established by federal law. The results of the identification process may not be used to prevent a resident from remaining in the nursing home unless the nursing home is unable to provide adequate care for the resident.

(c) The department shall compile and provide to the Texas Department of Mental Health and Mental Retardation information regarding each resident identified as having a mental illness or mental retardation before the resident makes a transition from the nursing home to a community-based care setting.

(d) The Texas Department of Mental Health and Mental Retardation shall use the information provided under Subsection (c) solely for the purposes of:

1. determining the need for and funding levels of mental health and mental retardation services for residents making a transition from a nursing home to a community-based care setting;
2. providing mental health or mental retardation services to an identified resident after the resident makes that transition; and
3. referring an identified resident to a local mental health or mental retardation authority or private provider for additional mental health or mental retardation services.
(e) This section does not authorize the department to decide for a resident of a nursing home that the resident will make a transition from the nursing home to a community-based care setting.

**SUBCHAPTER G. RESPITE CARE**

**DEFINITIONS**

Sec. 242.181. In this subchapter:

(1) "Handicapped person" means a person whose physical or mental functioning is impaired to the extent that the person needs medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

(2) "Plan of care" means a written description of the medical care or the supervision and nonmedical care needed by a person during respite care.

(3) "Respite care" means the provision by an institution to a person, for not more than two weeks for each stay in the institution, of:

(A) room and board; and

(B) care at the level ordinarily provided for permanent residents.

**RESPITE CARE**

Sec. 242.182. (a) An institution licensed under this chapter may provide respite care for an elderly or handicapped person according to a plan of care.

(b) The board may adopt rules for the regulation of respite care provided by an institution licensed under this chapter.

**PLAN OF CARE**

Sec. 242.183. (a) The institution and the person arranging the care must agree on the plan of care and the plan must be filed at the institution before the institution admits the person for the care.

(b) The plan of care must be signed by:

(1) a licensed physician if the person for whom the care is arranged needs medical care or treatment; or

(2) the person arranging for the respite care if medical care or treatment is not needed.

(c) The institution may keep an agreed plan of care for a person for not longer than six months from the date on which it is received. During that period, the institution may admit the person as frequently as is needed and as accommodations are available.

**NOTIFICATION**

Sec. 242.184. An institution that offers respite care shall notify the department in writing that it offers respite care.

**INSPECTIONS**

Sec. 242.185. The department, at the time of an ordinary licensing inspection or at other times determined necessary by the department, shall inspect an institution's records of respite care services, physical accommodations available for respite care, and the plan of care records to ensure that the respite care services comply with the licensing standards of this chapter and with any rules the board may adopt to regulate respite care services.

**SUSPENSION**

Sec. 242.186. (a) The department may require an institution to cease providing respite care if the department determines that the respite care does not meet the standards required by this chapter and that the institution cannot comply with those standards in the respite care it provides.

(b) The department may suspend the license of an institution that continues to provide respite care after receiving a written order from the department to cease.
SUBCHAPTER H. CARE FOR RESIDENTS WITH ALZHEIMER’S DISEASE AND RELATED DISORDERS

SCOPE OF SUBCHAPTER
Sec. 242.201. This subchapter applies only to an institution that advertises, markets, or otherwise promotes that the institution provides services to residents with Alzheimer's disease and related disorders.

DISCLOSURE REQUIRED
Sec. 242.202. (a) An institution covered by this subchapter shall provide a disclosure statement disclosing the nature of its care or treatment of residents with Alzheimer's disease and related disorders to:

1. an individual seeking placement as a resident with Alzheimer's disease or a related disorder;
2. an individual attempting to place another individual as a resident with Alzheimer's disease or a related disorder; or
3. a person seeking information about the institution's care or treatment of residents with Alzheimer's disease and related disorders.

(b) The disclosure statement must be displayed with the institution's license as it is posted under Section 242.042.

(c) The institution must file the disclosure statement with the department as part of the report filed under Section 242.033(d). The department shall verify contents of the disclosure statement as part of the license renewal process.

(d) The disclosure statement must contain the following categories of information:

1. the institution's philosophy of care;
2. the preadmission, admission, and discharge process;
3. resident assessment, care planning, and implementation of the care plan;
4. staffing patterns, such as resident-to-staff ratios, and staff training;
5. the physical environment of the institution;
6. resident activities;
7. program costs;
8. systems for evaluation of the institution's programs for residents;
9. family involvement in resident care; and
10. the toll-free telephone number maintained by the department for acceptance of complaints against the institution.

(e) The institution must update the disclosure statement as needed to reflect changes in the operation of the institution.

VIOLATION
Sec. 242.203. (a) An institution that violates this subchapter is subject to an administrative penalty under Subchapter C.

(b) The department may not revoke or suspend the license of an institution for a violation of this subchapter.

RULES
Sec. 242.204. The board shall adopt rules governing:

1. the content of the disclosure statement required by this subchapter, consistent with the information categories required by Section 242.202(d); and
2. the amount of an administrative penalty to be assessed for a violation of this subchapter.

SUBCHAPTER H-1. AUTOMATED MEDICAID PATIENT CARE AND REIMBURSEMENT SYSTEM

AUTOMATED SYSTEM FOR MEDICAID PATIENT CARE AND REIMBURSEMENT
Sec. 242.221. (a) The department shall acquire and develop an automated system for providing reimbursements to nursing facilities under the state Medicaid program, subject to the availability of funds appropriated for that purpose.

(b) The department shall select an automated system that will allow the addition of other components of the state Medicaid program, including components administered by other state agencies.
(c) The department and the Health and Human Services Commission shall work together to apply for all available federal funds to help pay for the automated system.
(d) To the extent possible, the department shall assist nursing facilities to make systems compatible with the automated system selected by the department.
(e) The department shall charge a fee to nursing facilities that do not receive their Medicaid reimbursements electronically. The department shall set the fee in an amount necessary to cover the costs of manually processing and sending the reimbursements.

DATA USED BY SYSTEM
Sec. 242.222. The automated patient care and reimbursement system must use a form designed by the United States Health Care Financing Administration for nursing facility use.

FREQUENCY OF DATA SUBMISSION
Sec. 242.223. Nursing facilities must complete and electronically submit the designated form to the department at least quarterly for reimbursement.

ELECTRONIC CLAIMS FOR REIMBURSEMENT
Sec. 242.224. The automated reimbursement system must be able to link the department electronically with nursing facilities making claims for reimbursement. When the system is operational, each nursing facility shall make claims electronically.

DATE OF REIMBURSEMENT
Sec. 242.225. The department shall pay Medicaid nursing facility reimbursement claims that are made electronically not later than the 30th day after the date the claim is made.

RULES
Sec. 242.226. The department shall adopt rules and make policy changes as necessary to improve the efficiency of the reimbursement process and to maximize the automated reimbursement system's capabilities.

SUBCHAPTER J. ARBITRATION OF CERTAIN DISPUTES

SCOPE OF SUBCHAPTER
Sec. 242.251. This subchapter applies to any dispute between an institution licensed under this chapter and the department relating to:
(1) renewal of a license under Section 242.033;
(2) suspension or revocation of a license under Section 242.061;
(3) assessment of a civil penalty under Section 242.065;
(4) assessment of a monetary penalty under Section 242.066; or
(5) assessment of a penalty as described by Section 32.021(k), Human Resources Code.

ELECTION OF ARBITRATION
Sec. 242.252. (a) Except as provided by Subsection (d), an affected institution may elect binding arbitration of any dispute to which this subchapter applies. Arbitration under this subchapter is an alternative to a contested case hearing or to a judicial proceeding relating to the assessment of a civil penalty.
(b) An affected institution may elect arbitration under this subchapter by filing the election with the court in which the lawsuit is pending and sending notice of the election to the department and the office of the attorney general. The election must be filed not later than the 10th day after the date on which the answer is due or the date on which the answer is filed, whichever is sooner. If a civil penalty is requested after the initial filing of a Section 242.094 lawsuit through the filing of an amended or supplemental pleading, an affected institution must elect arbitration not later than the 10th day after the date on which the amended or supplemental pleading is served on the affected institution or its counsel.
(c) The department may elect arbitration under this subchapter by filing the election with the court in which the lawsuit is pending and by notifying the institution of the election not later than the date that the institution may elect arbitration under Subsection (b).
(d) Arbitration may not be used to resolve a dispute related to an affected institution that has had an award levied against it in the previous five years.

(e) If arbitration is not permitted under this subchapter or the election of arbitration is not timely filed:
   (1) the court will dismiss the arbitration election and retain jurisdiction of the lawsuit; and
   (2) the State Office of Administrative Hearings shall dismiss the arbitration and has no jurisdiction over the lawsuit.

(f) An election to engage in arbitration under this subchapter is irrevocable and binding on the institution and the department.

ARBITRATION PROCEDURES

Sec. 242.253. (a) The arbitration shall be conducted by an arbitrator.
   (b) The arbitration and the appointment of the arbitrator shall be conducted in accordance with rules adopted by the chief administrative law judge of the State Office of Administrative Hearings. Before adopting rules under this subsection, the chief administrative law judge shall consult with the department and shall consider appropriate rules developed by any nationally recognized association that performs arbitration services.
   (c) The party that elects arbitration shall pay the cost of the arbitration. The total fees and expenses paid for an arbitrator for a day may not exceed $500.
   (d) The State Office of Administrative Hearings may designate a nationally recognized association that performs arbitration services to conduct arbitrations under this subchapter and may, after consultation with the department, contract with that association for the arbitrations.
   (e) On request by the department, the attorney general may represent the department in the arbitration.

ARBITRATOR; QUALIFICATIONS

Sec. 242.254. Each arbitrator must be on an approved list of a nationally recognized association that performs arbitration services or be otherwise qualified as provided in the rules adopted under Section 242.253(b).

ARBITRATOR; SELECTION

Sec. 242.255. The arbitrator shall be appointed in accordance with the rules adopted under Section 242.253(b).

DUTIES OF ARBITRATOR

Sec. 242.256. The arbitrator shall:
   (1) protect the interests of the department and the institution;
   (2) ensure that all relevant evidence has been disclosed to the arbitrator, department, and institution; and
   (3) render an order consistent with this chapter and the rules adopted under this chapter.

SCHEDULING OF ARBITRATION

Sec. 242.257. (a) The arbitrator conducting the arbitration shall schedule arbitration to be held not later than the 90th day after the date the arbitrator is selected and shall notify the department and the institution of the scheduled date.
   (b) The arbitrator may grant a continuance of the arbitration at the request of the department or institution. The arbitrator may not unreasonably deny a request for a continuance.

EXCHANGE AND FILING OF INFORMATION

Sec. 242.258. Not later than the seventh day before the first day of arbitration, the department and the institution shall exchange and file with the arbitrator:
   (1) all documentary evidence not previously exchanged and filed that is relevant to the dispute; and
   (2) information relating to a proposed resolution of the dispute.

ATTENDANCE REQUIRED

Sec. 242.259. (a) The arbitrator may proceed in the absence of any party or representative of a party who, after notice of the proceeding, fails to be present or to obtain a postponement.
   (b) An arbitrator may not make an order solely on the default of a party and shall require the party who is present to submit evidence, as required by the arbitrator, before making an award.
TESTIMONY; RECORD

Sec. 242.260.  (a) The arbitrator may require witnesses to testify under oath and shall require testimony under oath if requested by the department or the institution.
(b) The department shall make an electronic recording of the proceeding.
(c) An official stenographic record of the proceeding is not required, but the department or the institution may make a stenographic record. The party that makes the stenographic record shall pay the expense of having the record made.

EVIDENCE

Sec. 242.261.  (a) The department or the institution may offer evidence as they desire and shall produce additional evidence as the arbitrator considers necessary to understand and resolve the dispute.
(b) The arbitrator is the judge of the relevance and materiality of the evidence offered. Strict conformity to rules applicable to judicial proceedings is not required.

CLOSING STATEMENTS; BRIEFS

Sec. 242.262. The department and the institution may present closing statements as they desire, but the record may not remain open for written briefs unless requested by the arbitrator.

EX PARTE CONTACTS PROHIBITED

Sec. 242.263.  (a) Except as provided by Subsection (b), the department and the institution may not communicate with an arbitrator other than at an oral hearing unless the parties and the arbitrator agree otherwise.
(b) Any oral or written communication, other than a communication authorized under Subsection (a), from the parties to an arbitrator shall be directed to the association that is conducting the arbitration or, if there is no association conducting the arbitration, to the State Office of Administrative Hearings, for transmittal to the arbitrator.

ORDER

Sec. 242.264.  (a) The arbitrator may enter any order that may be entered by the department, board, commissioner, or court under this chapter in relation to a dispute described by Section 242.251.
(b) The arbitrator shall enter the order not later than the 60th day after the last day of the arbitration.
(c) The arbitrator shall base the order on the facts established at arbitration, including stipulations of the parties, and on the law as properly applied to those facts.
(d) The order must:
(1) be in writing;
(2) be signed and dated by the arbitrator; and
(3) include a statement of the arbitrator's decision on the contested issues and the department's and institution's stipulations on uncontested issues.
(e) The arbitrator shall file a copy of the order with the department and shall notify the department and the institution in writing of the decision.

EFFECT OF ORDER

Sec. 242.265. An order of an arbitrator under this subchapter is final and binding on all parties. Except as provided by Section 242.267, there is no right to appeal.

CLERICAL ERROR

Sec. 242.266. For the purpose of correcting a clerical error, an arbitrator retains jurisdiction of the award for 20 days after the date of the award.

COURT VACATING ORDER

Sec. 242.267.  (a) On a finding described by Subsection (b), a court shall:
(1) on application of an institution, vacate an arbitrator's order with respect to an arbitration conducted at the election of the department; or
(2) on application of the department, vacate an arbitrator's order with respect to an arbitration conducted at the election of an institution.
(b) A court shall vacate an arbitrator's order under Subsection (a) only on a finding that:
(1) the order was procured by corruption, fraud, or misrepresentation;
(2) the decision of the arbitrator was arbitrary or capricious and against the weight of the evidence; or
(3) the order exceeded the jurisdiction of the arbitrator under Section 242.264(a).
(c) If the order is vacated, the dispute shall be remanded to the department for another arbitration proceeding.
(d) A suit to vacate an arbitrator's order must be filed not later than the 30th day after:
   (1) the date of the award; or
   (2) the date the institution or department knew or should have known of a basis for suit under this section, but in no event later than the first anniversary of the date of the order.
(e) Venue for a suit to vacate an arbitrator's order is in the county in which the arbitration was conducted.

NO ARBITRATION IN CASE OF EMERGENCY ORDER OR CLOSING ORDER
Sec. 242.268. This subchapter does not apply to an order issued under Section 242.062 or 242.072, and neither the department nor the institution may elect to arbitrate a dispute if the subject matter of the dispute is part of the basis for:
   (1) revocation, denial, or suspension of an institution's license;
   (2) issuance of a closing order under Section 242.062; or
   (3) suspension of admissions under Section 242.072.

ENFORCEMENT OF CERTAIN ARBITRATION ORDERS
Sec. 242.269. (a) This section applies only to a suit for the assessment of a civil penalty under Section 242.065 in which binding arbitration has been elected under this subchapter as an alternative to the judicial proceeding.
(b) On application of a party to the suit, the district court in which the underlying suit has been filed shall enter a judgment in accordance with the arbitrator's order unless, within the time limit prescribed by Section 242.267(d)(1), a motion is made to the court to vacate the arbitrator's order in accordance with Section 242.267.
(c) A judgment filed under Subsection (b) is enforceable in the same manner as any other judgment of the court. The court may award costs for an application made under Subsection (b) and for any proceedings held after the application is made.
(d) Subsection (b) does not affect the right of a party, in accordance with Section 242.267 and within the time limit prescribed by Section 242.267(d)(2), if applicable, to make a motion to the court or initiate a proceeding in court as provided by law to vacate the arbitrator's order or to vacate a judgment of the court entered in accordance with the arbitrator's order.

SUBCHAPTER I. NURSING FACILITY ADMINISTRATION

DEFINITIONS
Sec. 242.301. Text of section effective until federal determination of failure to comply with federal regulations
In this subchapter:
(1) "Nursing facility" means an institution or facility that is licensed as a nursing home, nursing facility, or skilled nursing facility by the department under this chapter.
(2) "Nursing facility administrator" or "administrator" means a person who engages in the practice of nursing facility administration, without regard to whether the person has an ownership interest in the facility or whether the functions and duties are shared with any other person.
(3) "Practice of nursing facility administration" means the performance of the acts of administering, managing, supervising, or being in general administrative charge of a nursing facility.

POWERS AND DUTIES OF DEPARTMENT
Sec. 242.302. Text of section effective until federal determination of failure to comply with federal regulations
(a) The board may adopt rules consistent with this subchapter.
(b) The department shall:
   (1) adopt and publish a code of ethics for nursing facility administrators;
(2) establish the qualifications of applicants for licenses and the renewal of licenses issued under this subchapter;
(3) spend funds necessary for the proper administration of the department's assigned duties under this subchapter;
(4) establish reasonable and necessary fees for the administration and implementation of this subchapter; and
(5) establish a minimum number of hours of continuing education required to renew a license issued under this subchapter and periodically assess the continuing education needs of license holders to determine whether specific course content should be required.

(c) The department is the licensing agency for the healing arts, as provided by 42 U.S.C. Section 1396g.

NURSING FACILITY ADMINISTRATORS ADVISORY COMMITTEE

Sec. 242.303. Text of section effective until federal determination of failure to comply with federal regulations
(a) The Nursing Facility Administrators Advisory Committee is appointed by the governor.
(b) Members of the committee serve for staggered terms of six years, with the terms of three members expiring on February 1 of each odd-numbered year.
(c) The committee shall consist of:
   (1) three licensed nursing facility administrators, at least one of whom shall represent a not-for-profit nursing facility;
   (2) one physician with experience in geriatrics who is not employed by a nursing facility;
   (3) one registered nurse with experience in geriatrics who is not employed by a nursing facility;
   (4) one social worker with experience in geriatrics who is not employed by a nursing facility; and
   (5) three public members with experience working with the chronically ill and infirm as provided by 42 U.S.C. Section 1396g.
(d) The committee shall advise the board on the licensing of nursing facility administrators, including the content of applications for licensure and of the examination administered to license applicants under Section 242.306. The committee shall review and recommend rules and minimum standards of conduct for the practice of nursing facility administration. The committee shall review all complaints against administrators and make recommendations to the department regarding disciplinary actions. Failure of the committee to review complaints and make recommendations in a timely manner shall not prevent the department from taking disciplinary action.
(e) Appointments to the committee shall be made without regard to the race, color, disability, sex, religion, or national origin of the person appointed.
(f) A member of the committee receives no compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing the member's duties under this section.
(g) The department shall pay the expenses of the committee and shall supply necessary personnel and supplies.
(h) A vacancy in a position on the committee shall be filled in the same manner in which the position was originally filled and shall be filled by a person who meets the qualifications of the vacated position.

FEES; FUNDS

Sec. 242.304. Text of section effective until federal determination of failure to comply with federal regulations
(a) The board by rule shall set reasonable and necessary fees in amounts necessary to cover the cost of administering this subchapter. The board by rule may set different licensing fees for different categories of licenses.
(b) The department shall receive and account for funds received under this subchapter. The funds shall be deposited in the state treasury to the credit of the general revenue fund.
(c) The department may receive and disburse funds received from any federal source for the furtherance of the department's functions under this subchapter.

PRACTICING WITHOUT A LICENSE

Sec. 242.305. Text of section effective until federal determination of failure to comply with federal regulations
A person may not act as a nursing facility administrator or represent to others that the person is a nursing facility administrator unless the person is licensed under this subchapter.
LICENSE APPLICATION; QUALIFICATIONS
Sec. 242.306. Text of section effective until federal determination of failure to comply with federal regulations
(a) An applicant for a nursing facility administrator's license must submit a sworn application that is accompanied by the application fee.
(b) The board shall prescribe the form of the application and may by rule establish dates by which applications and fees must be received.
(c) An applicant for a nursing facility administrator's license must take a licensing examination under this subchapter. To qualify for the licensing examination, the applicant must have satisfactorily completed a course of instruction and training prescribed by the board that is conducted by or in cooperation with an accredited postsecondary educational institution and that is designed and administered to provide sufficient knowledge of:
   (1) the needs served by nursing facilities;
   (2) the laws governing the operation of nursing facilities and the protection of the interests of facility residents; and
   (3) the elements of nursing facility administration.
(d) An applicant who has not completed the course of instruction and training described by Subsection (c) must present evidence satisfactory to the department of having completed sufficient education, training, and experience in the fields described by Subsection (c) to enable the applicant to engage in the practice of nursing facility administration.

EXAMINATION
Sec. 242.307. Text of section effective until federal determination of failure to comply with federal regulations
(a) The licensing examination shall be prepared or approved by the department and shall be administered by the department to qualified applicants at least twice each calendar year. The department shall have the written portion of the examination, if any, validated by a testing professional.
(b) Not later than the 30th day after the date on which a licensing examination is administered under this subchapter, the department shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national or state testing service, the department shall notify examinees of the results of the examination not later than two weeks after the date the department receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the department shall notify the examinee of the reason for the delay before the 90th day.
(c) If requested in writing by a person who fails the licensing examination, the department shall furnish the person with an analysis of the person's performance on the examination.
(d) The board may establish by rule additional educational requirements to be met by an applicant who fails the examination three times.

LICENSES; TEMPORARY LICENSE; INACTIVE STATUS
Sec. 242.308. Text of section effective until federal determination of failure to comply with federal regulations
(a) A person who meets the requirements for licensing under this subchapter is entitled to receive a license. A nursing facility administrator's license is not transferable.
(b) A person licensed under this subchapter must notify the department of the license holder's correct mailing address.
(c) A license is valid for two years. The board by rule may adopt a system under which licenses expire on various dates during the two-year period. For the year in which a license expiration date is changed, license fees payable on the original expiration date shall be prorated on a monthly basis so that each license holder shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.
(d) The board by rule may provide for the issuance of a temporary license. Rules adopted under this section shall include a time limit for a licensee to practice under a temporary license.
(e) The board by rule may provide for a license holder to be placed on inactive status.

PROVISIONAL LICENSE
Sec. 242.309. Text of section effective until federal determination of failure to comply with federal regulations
(a) The board shall issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

1. has been licensed in good standing as a nursing facility administrator for at least two years in another jurisdiction, including a foreign country, that has licensing requirements that are substantially equivalent to the requirements of this subchapter;
2. has passed a national or other examination recognized by the board relating to the practice of nursing facility administration; and
3. is sponsored by a person licensed by the board under this subchapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) The board may waive the requirement of Subsection (a)(3) for an applicant if the board determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this subchapter to the provisional license holder if:

1. the provisional license holder is eligible to be licensed under Section 242.306; or
2. the provisional license holder passes the part of the examination under Section 242.307 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of nursing facility administration in this state and:
   A. the board verifies that the provisional license holder meets the academic and experience requirements for a license under this subchapter; and
   B. the provisional license holder satisfies all other license requirements under this subchapter.

(d) The board must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend the 180-day period if the results of an examination have not been received by the board before the end of that period.

(e) The board may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

**LICENSE RENEWAL**

Sec. 242.310. Text of section effective until federal determination of failure to comply with federal regulations

(a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the department before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(e) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for the license.

(f) Not later than the 31st day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

**MANDATORY CONTINUING EDUCATION**

Sec. 242.311. Text of section effective until federal determination of failure to comply with federal regulations

(a) The board by rule shall establish a minimum number of hours of continuing education required to renew a license under this subchapter. The department may assess the continuing education needs of license holders and may require license holders to attend continuing education courses specified by the board.
(b) The board shall identify the key factors for the competent performance by a license holder of the license holder's professional duties. The department shall adopt a procedure to assess a license holder's participation in continuing education programs.

COMPLAINT RECEIPT, INVESTIGATION, AND DISPOSITION
Sec. 242.312. Text of section effective until federal determination of failure to comply with federal regulations
(a) The department shall keep an information file concerning each complaint filed with the department regarding a person licensed under this subchapter. The department's information file shall be kept current and shall contain a record for each complaint of:
   (1) all persons contacted in relation to the complaint;
   (2) a summary of findings made at each step of the complaint process;
   (3) an explanation of the legal basis and reason for a complaint that is dismissed; and
   (4) other relevant information.
(b) If a written complaint is filed with the department that the department has authority to resolve, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.
(c) The board by rule shall adopt a form to standardize information concerning complaints made to the department. The board by rule shall prescribe information to be provided to a person when the person files a complaint with the department.
(d) The department shall provide reasonable assistance to a person who wishes to file a complaint with the department.
(e) The board shall adopt rules concerning the investigation of complaints filed with the department. The rules adopted under this subsection shall:
   (1) distinguish between categories of complaints;
   (2) ensure that complaints are not dismissed without appropriate consideration;
   (3) require that the board be advised at least quarterly of complaints that have been dismissed and require that a letter be sent to each person who has filed a complaint that is dismissed explaining the action taken on the complaint;
   (4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and
   (5) prescribe guidelines concerning the categories of complaints that may require the use of a private investigator and the procedures to be followed by the department in obtaining the services of a private investigator.
(f) The department shall dispose of all complaints in a timely manner. The board by rule shall establish a schedule for initiating a complaint investigation that is under the control of the department not later than the 30th day after the date the complaint is received by the department. The schedule shall be kept in the information file for the complaint, and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.
(g) The commissioner shall notify the board at least quarterly of complaints that have extended beyond the time prescribed by the board for resolving complaints so that the department may take any necessary corrective actions on the processing of complaints.

SANCTIONS
Sec. 242.313. Text of section effective until federal determination of failure to comply with federal regulations
(a) The department may revoke, suspend, or refuse to renew a nursing facility administrator's license, assess an administrative penalty, issue a written reprimand, require participation in continuing education, or place an administrator on probation, after due notice and hearing, on proof of any of the following grounds:
   (1) the license holder has wilfully or repeatedly violated a provision of this subchapter or a rule adopted under this subchapter;
   (2) the license holder has wilfully or repeatedly acted in a manner inconsistent with the health and safety of the residents of a facility of which the license holder is an administrator;
   (3) the license holder obtained or attempted to obtain a license through misrepresentation or deceit or by making a material misstatement of fact on a license application;
(4) the license holder's use of alcohol or drugs creates a hazard to the residents of a facility;
(5) a judgment of a court of competent jurisdiction finds that the license holder is mentally incapacitated;
(6) the license holder has been convicted in a court of competent jurisdiction of a misdemeanor or felony involving moral turpitude; or
(7) the license holder has been negligent or incompetent in the license holder's duties as a nursing facility administrator.

(b) If a license sanction is probated, the department may require the license holder to:
(1) report regularly to the department on matters that are the basis of the probation;
(2) limit practice to the areas prescribed by the department; or
(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) A license holder is entitled to a hearing in accordance with rules promulgated by the board before a sanction is imposed under this section.

(d) The board by rule shall adopt a broad schedule of sanctions for violations under this subchapter. The department shall use the schedule for any sanction imposed as the result of a hearing conducted in accordance with the rules.

(e) The department shall by rule establish criteria to determine whether deficiencies from a facility's survey warrant action against an administrator. The criteria shall include a determination of whether the survey indicates substandard quality of care related to an act or failure to act by the administrator, and whether a deficiency is related to an act or failure to act by the administrator. If a deficiency on which a disciplinary action against an administrator is initiated or completed is not substantiated, the disciplinary action shall be reversed.

WRITTEN REPRIMAND AND CONTINUING EDUCATION AS SANCTIONS
Sec. 242.314. Text of section effective until federal determination of failure to comply with federal regulations
In addition to the other disciplinary actions authorized under this subchapter, the department may issue a written reprimand to a license holder who violates this subchapter or may require that a license holder who violates this subchapter participate in continuing education programs. The department shall specify the continuing education programs that may be attended and the number of hours that must be completed by a license holder to fulfill the requirements of this section.

ADMINISTRATIVE PENALTY AS SANCTION
Sec. 242.315. Text of section effective until federal determination of failure to comply with federal regulations
(a) The department may impose an administrative penalty against a person licensed or regulated under this subchapter who violates this subchapter or a rule adopted by the board under this subchapter.

(b) The penalty for a violation may be in an amount not to exceed $1,000. Each day a violation occurs or continues is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:
(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;
(2) the economic harm to property or the environment caused by the violation;
(3) the history of previous violations;
(4) the amount necessary to deter future violations;
(5) efforts to correct the violations; and
(6) any other matter that justice may require.

NOTICE AND HEARING
Sec. 242.316. Text of section effective until federal determination of failure to comply with federal regulations
(a) If the department determines that a violation has occurred, the department shall give written notice of the determination to the person alleged to have committed the violation. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.
(b) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and the penalty recommended by the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) If the person accepts the determination and the penalty recommended by the department, the department shall impose the recommended penalty.

(d) If the person requests a hearing or fails to respond timely to the notice, the department shall set a hearing and give notice of the hearing to the person. The hearing shall be held in accordance with the department's rules on contested case hearings.

(e) The notice of the hearing decision given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the decision.

(f) Within 30 days after the date the department's decision is final as provided by Section 2001.144, Government Code, the person shall:

1. pay the amount of the penalty;
2. pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or
3. without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) Within the 30-day period, a person who acts under Subsection (f)(3) may:

1. stay enforcement of the penalty by:
   A. paying the amount of the penalty to the court for placement in an escrow account; or
   B. giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's decision is final; or
2. request the court to stay enforcement of the penalty by:
   A. filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and
   B. sending a copy of the affidavit to the department by certified mail.

(h) If the department receives a copy of an affidavit under Subsection (g)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(i) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(j) Judicial review of the decision of the department:

1. is instituted by filing a petition as provided by Section 2001.176, Government Code; and
2. is under the substantial evidence rule.

(k) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(l) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(m) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(n) All proceedings under this section are subject to Chapter 2001, Government Code.

**INFORMAL PROCEEDINGS**

Sec. 242.317.  Text of section effective until federal determination of failure to comply with federal regulations
(a) The department by rule shall adopt procedures governing:
   (1) informal disposition of a contested case under Section 2001.056, Government Code; and
   (2) informal proceedings held in compliance with Section 2001.054, Government Code.
(b) Rules adopted under this section must provide the complainant and the license holder an opportunity to be heard.

**MONITORING OF LICENSE HOLDER**

Sec. 242.318. Text of section effective until federal determination of failure to comply with federal regulations
The department by rule shall develop a system for monitoring a license holder's compliance with the requirements of this subchapter. Rules adopted under this section shall include procedures for monitoring a license holder who is required by the department to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a risk to the public.

**CIVIL PENALTY**

Sec. 242.319. Text of section effective until federal determination of failure to comply with federal regulations
A person who violates this subchapter is liable to the state for a civil penalty of $1,000 for each day of violation. At the request of the department, the attorney general shall bring an action to recover a civil penalty established by this section.

**ASSISTANCE OF ATTORNEY GENERAL**

Sec. 242.320. Text of section effective until federal determination of failure to comply with federal regulations
The attorney general shall provide legal assistance as necessary in enforcing the provisions of this subchapter. This requirement does not relieve a local prosecuting officer of any of the prosecuting officer's duties under the law.

**OFFENSE**

Sec. 242.321. Text of section effective until federal determination of failure to comply with federal regulations
(a) A person commits an offense if the person knowingly or intentionally violates Section 242.305.
(b) An offense under this section is a Class B misdemeanor.

**PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN CONDUCT**

Sec. 242.322. Text of section effective until federal determination of failure to comply with federal regulations
(a) A person may not suspend, terminate, or otherwise discipline or discriminate against a licensed nursing facility administrator who refuses to engage in an act or omission relating to the administrator's job duties or responsibilities that would constitute a violation of this subchapter or of a rule adopted under this subchapter, if the administrator notifies the person at the time of the refusal that the reason for refusing is that the act or omission constitutes a violation of this subchapter or of a rule adopted under this subchapter.
(b) An act by a person under Subsection (a) does not constitute a violation of this section if:
   (1) the act or omission the administrator refused to commit was not conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter; or
   (2) the act or omission the administrator refused to commit was conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter, and the person rescinds any disciplinary or discriminatory action taken against the administrator, compensates the administrator for lost wages, and restores any lost benefits to the administrator.
(c) A violation of this section is an unlawful employment practice, and a civil action may be brought by a licensed nursing facility administrator against a person for the violation. The relief available in a civil action shall be the same as the relief available to complainants in a civil action for violations of Chapter 21, Labor Code. In no event may any action be brought pursuant to this section more than two years after the date of the administrator's refusal to engage in an act or omission that would constitute a violation of this subchapter or of a rule adopted under this subchapter.
(d) In this section, "person" includes an individual, organization, corporation, agency, facility, or other entity.

DEFINITIONS

Sec. 242.301. Text of section effective upon federal determination of failure to comply with federal regulations
In this subchapter:
(1) "Board" means the Texas Board of Nursing Facility Administrators.
(2) "Nursing facility" means an institution or facility that is licensed as a nursing home, nursing facility, or skilled nursing facility by the department under this chapter.
(3) "Nursing facility administrator" or "administrator" means a person who engages in the practice of nursing facility administration, without regard to whether the person has an ownership interest in the facility or whether the functions and duties are shared with any other person.
(4) "Practice of nursing facility administration" means the performance of the acts of administering, managing, supervising, or being in general administrative charge of a nursing facility.

TEXAS BOARD OF NURSING FACILITY ADMINISTRATORS

Sec. 242.302. Text of section effective upon federal determination of failure to comply with federal regulations
(a) The Texas Board of Nursing Facility Administrators is within the department.
(b) The board is composed of nine members appointed by the governor as follows:
(1) three licensed nursing facility administrators, at least one of whom shall represent a not-for-profit nursing facility;
(2) one physician with experience in geriatrics who is not employed by a nursing facility;
(3) one registered nurse with experience in geriatrics who is not employed by a nursing facility;
(4) one social worker with experience in geriatrics who is not employed by a nursing facility; and
(5) three public members with experience working with the chronically ill and infirm as provided by 42 U.S.C. Section 1396g.
(c) Members of the board serve staggered six-year terms, with the terms of three members expiring on February 1 of each odd-numbered year. A person appointed to fill a vacancy on the board shall serve for the unexpired portion of the term for which the person is appointed.
(d) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, or national origin of the person appointed.

MEMBERSHIP REQUIREMENTS

Sec. 242.303. Text of section effective upon federal determination of failure to comply with federal regulations
(a) A member of the board who is an administrator must:
(1) be a resident of this state and a citizen of the United States;
(2) be licensed under this subchapter and currently serving as a nursing facility administrator or have direct supervisory responsibility on a daily basis over an administrator who works in a nursing facility; and
(3) hold a degree from an accredited four-year college or university.
(b) An administrator who does not have a degree as required by Subsection (a)(3) may be qualified to serve as a member of the board if the administrator has two years of practical experience as an administrator for every year less than four that the administrator has completed at a four-year college or university.
(c) A member or employee of the board may not:
(1) be an officer, employee, or paid consultant of a trade association in the nursing facility industry; or
(2) be related within the second degree by affinity or within the third degree by consanguinity to an officer, employee, or paid consultant of a trade association in the nursing facility industry.
(d) A member of the board who represents the general public may not have a financial interest, other than as a consumer, in a nursing facility as an officer, director, partner, owner, employee, attorney, or paid consultant or be related within the second degree by affinity or within the third degree by consanguinity to a person who has a financial interest, other than as a consumer, in a nursing facility as an officer, director, partner, owner, employee, attorney, or paid consultant.
(e) A person who is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board may not serve on the board.

**GROUNDS FOR REMOVAL**

**Sec. 242.304.** Text of section effective upon federal determination of failure to comply with federal regulations

It is a ground for removal from the board if a member:

1. does not have at the time of appointment the qualifications required by Section 242.303 for appointment to the board;
2. does not maintain during service on the board the qualifications required by Section 242.303 for appointment to the board;
3. violates a prohibition established by Section 242.303;
4. cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or
5. is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year.

**BOARD OFFICERS; MEETINGS; QUORUM; EXPENSES**

**Sec. 242.305.** Text of section effective upon federal determination of failure to comply with federal regulations

(a) The board shall elect from its members a presiding officer and assistant presiding officer who serve according to rules adopted by the board.

(b) The board shall hold at least two regular meetings each year as provided by rules adopted by the board.

(c) A majority of the members constitutes a quorum.

(d) Each member of the board is entitled to compensation for transportation expenses as provided by the General Appropriations Act.

**APPLICATION OF OPEN MEETINGS AND ADMINISTRATIVE PROCEDURE ACT**

**Sec. 242.306.** Text of section effective upon federal determination of failure to comply with federal regulations

The board is subject to Chapters 551 and 2001, Government Code.

**POWERS AND DUTIES OF THE BOARD**

**Sec. 242.307.** Text of section effective upon federal determination of failure to comply with federal regulations

(a) The board may adopt rules consistent with this subchapter.

(b) The board shall:

1. adopt and publish a code of ethics for nursing facility administrators;
2. establish the qualifications of applicants for licenses and the renewal of licenses issued under this subchapter;
3. spend funds necessary for the proper administration of the department's assigned duties under this subchapter;
4. establish reasonable and necessary fees for the administration and implementation of this subchapter; and
5. establish a minimum number of hours of continuing education required to renew a license issued under this subchapter and periodically assess the continuing education needs of license holders to determine whether specific course content should be required.

(c) The board is the licensing authority for the healing arts, as provided by 42 U.S.C. Section 1396g, and shall meet the requirements of a state licensing agency for nursing facility practitioners, as provided by 42 C.F.R. Part 431, Subpart N.

**ADMINISTRATIVE FUNCTIONS**

**Sec. 242.308.** Text of section effective upon federal determination of failure to comply with federal regulations
The department shall serve as the administrator of the licensing activities under this subchapter and shall provide staff as necessary for the licensing and regulation of nursing facility administrators under this subchapter. If necessary to the administration of this subchapter, the department may secure and provide for compensation for services that the department considers necessary and may employ and compensate within available appropriations professional consultants, technical assistants, and employees on a full-time or part-time basis.

FEES; FUNDS

Sec. 242.309. Text of section effective upon federal determination of failure to comply with federal regulations
(a) The board by rule shall set reasonable and necessary fees in amounts necessary to cover the cost of administering this subchapter. The board by rule may set different licensing fees for different categories of licenses.
(b) The department shall receive and account for funds received under this subchapter. The funds shall be deposited in the state treasury to the credit of the general revenue fund.
(c) The department may receive and disburse funds received from any federal source for the furtherance of the department's functions under this subchapter.

PRACTICING WITHOUT A LICENSE

Sec. 242.310. Text of section effective upon federal determination of failure to comply with federal regulations
A person may not act as a nursing facility administrator or represent to others that the person is a nursing facility administrator unless the person is licensed under this subchapter.

LICENSE APPLICATION; QUALIFICATIONS

Sec. 242.311. Text of section effective upon federal determination of failure to comply with federal regulations
(a) An applicant for a nursing facility administrator's license must submit a sworn application that is accompanied by the application fee.
(b) The board shall prescribe the form of the application and may by rule establish dates by which applications and fees must be received.
(c) An applicant for a nursing facility administrator's license must take a licensing examination under this subchapter. To qualify for the licensing examination, the applicant must have satisfactorily completed a course of instruction and training prescribed by the board that is conducted by or in cooperation with an accredited postsecondary educational institution and that is designed and administered to provide sufficient knowledge of:
   (1) the needs served by nursing facilities;
   (2) the laws governing the operation of nursing facilities and the protection of the interests of facility residents; and
   (3) the elements of nursing facility administration.
(d) An applicant who has not completed the course of instruction and training described by Subsection (c) must present evidence satisfactory to the board of having completed sufficient education, training, and experience in the fields described by Subsection (c) to enable the applicant to engage in the practice of nursing facility administration.

EXAMINATION

Sec. 242.312. Text of section effective upon federal determination of failure to comply with federal regulations
(a) The licensing examination shall be prepared or approved by the board and shall be administered by the board to qualified applicants at least twice each calendar year. The board shall have the written portion of the examination, if any, validated by a testing professional.
(b) Not later than the 30th day after the date on which a licensing examination is administered under this subchapter, the board shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national or state testing service, the board shall notify examinees of the results of the examination not later than two weeks after the date the board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.
(c) If requested in writing by a person who fails the licensing examination, the board shall furnish the person with an analysis of the person's performance on the examination.
(d) The board may establish by rule additional educational requirements to be met by an applicant who fails the examination three times.

LICENSES; TEMPORARY LICENSE; INACTIVE STATUS

Sec. 242.313. Text of section effective upon federal determination of failure to comply with federal regulations
(a) A person who meets the requirements for licensing under this subchapter is entitled to receive a license. A nursing facility administrator's license is not transferable.
(b) A person licensed under this subchapter must notify the board of the license holder's correct mailing address.
(c) A license is valid for two years. The board by rule may adopt a system under which licenses expire on various dates during the two-year period. For the year in which a license expiration date is changed, license fees payable on the original expiration date shall be prorated on a monthly basis so that each license holder shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.
(d) The board by rule may provide for the issuance of a temporary license. Rules adopted under this section shall include a time limit for a licensee to practice under a temporary license.
(e) The board by rule may provide for a license holder to be placed on inactive status.

PROVISIONAL LICENSE

Sec. 242.314. Text of section effective upon federal determination of failure to comply with federal regulations
(a) The board shall issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:
   (1) has been licensed in good standing as a nursing facility administrator for at least two years in another jurisdiction, including a foreign country, that has licensing requirements that are substantially equivalent to the requirements of this subchapter;
   (2) has passed a national or other examination recognized by the board relating to the practice of nursing facility administration; and
   (3) is sponsored by a person licensed by the board under this subchapter with whom the provisional license holder will practice during the time the person holds a provisional license.
(b) The board may waive the requirement of Subsection (a)(3) for an applicant if the board determines that compliance with that subsection would be a hardship to the applicant.
(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this subchapter to the provisional license holder if:
   (1) the provisional license holder is eligible to be licensed under Section 242.311; or
   (2) the provisional license holder passes the part of the examination under Section 242.312 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of nursing facility administration in this state and:
      (A) the board verifies that the provisional license holder meets the academic and experience requirements for a license under this subchapter; and
      (B) the provisional license holder satisfies any other license requirements under this subchapter.
(d) The board must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend the 180-day period if the results of an examination have not been received by the board before the end of that period.
(e) The board may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

LICENSE RENEWAL

Sec. 242.315. Text of section effective upon federal determination of failure to comply with federal regulations
(a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.
(b) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to 1-1/2 times the normally required fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the board a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(e) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the board a fee that is equal to two times the normally required renewal fee for the license.

(f) Not later than the 31st day before the date a person's license is scheduled to expire, the board shall send written notice of the impending expiration to the person at the person's last known address according to the records of the board.

MANDATORY CONTINUING EDUCATION

Sec. 242.316. Text of section effective upon federal determination of failure to comply with federal regulations

(a) The board by rule shall establish a minimum number of hours of continuing education required to renew a license under this subchapter. The board may assess the continuing education needs of license holders and may require license holders to attend continuing education courses specified by the board.

(b) The board shall identify the key factors for the competent performance by a license holder of the license holder's professional duties. The board shall adopt a procedure to assess a license holder's participation in continuing education programs.

COMPLAINT RECEIPT, INVESTIGATION, AND DISPOSITION

Sec. 242.317. Text of section effective upon federal determination of failure to comply with federal regulations

(a) The board shall keep an information file about each complaint filed with the board regarding a person licensed under this subchapter. The board's information file shall be kept current and contain a record for each complaint of:

(1) all persons contacted in relation to the complaint;
(2) a summary of findings made at each step of the complaint process;
(3) an explanation of the legal basis and reason for a complaint that is dismissed; and
(4) other relevant information.

(b) If a written complaint is filed with the board that the board has authority to resolve, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The board by rule shall adopt a form to standardize information concerning complaints made to the board. The board by rule shall prescribe information to be provided to a person when the person files a complaint with the board.

(d) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

(e) The board shall adopt rules concerning the investigation of complaints filed with the board. The rules adopted under this subsection shall:

(1) distinguish between categories of complaints;
(2) ensure that complaints are not dismissed without appropriate consideration;
(3) require that the board be advised at least quarterly of complaints that have been dismissed and require that a letter be sent to each person who has filed a complaint that is dismissed explaining the action taken on the complaint;
(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and
(5) prescribe guidelines concerning the categories of complaints that may require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

(f) The board shall dispose of all complaints in a timely manner. The board by rule shall establish a schedule for initiating a complaint investigation that is under the control of the board not later than the 30th day after
the date the complaint is received by the board. The schedule shall be kept in the information file for the complaint, and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(g) The department shall notify the board at least quarterly of complaints that have extended beyond the time prescribed by the board for resolving complaints so that the department may take any necessary corrective actions on the processing of complaints.

SANCTIONS

Sec. 242.318. Text of section effective upon federal determination of failure to comply with federal regulations

(a) The board may revoke, suspend, or refuse to renew a nursing facility administrator's license, assess an administrative penalty, issue a written reprimand, require participation in continuing education, or place an administrator on probation, after due notice and hearing, on proof of any of the following grounds:

1. the license holder has wilfully or repeatedly violated a provision of this subchapter or a rule adopted under this subchapter;
2. the license holder has wilfully or repeatedly acted in a manner inconsistent with the health and safety of the residents of a facility of which the license holder is an administrator;
3. the license holder obtained or attempted to obtain a license through misrepresentation or deceit or by making a material misstatement of fact on a license application;
4. the license holder's use of alcohol or drugs creates a hazard to the residents of a facility;
5. a judgment of a court of competent jurisdiction finds that the license holder is mentally incapacitated;
6. the license holder has been convicted in a court of competent jurisdiction of a misdemeanor or felony involving moral turpitude; or
7. the license holder has been negligent or incompetent in the license holder's duties as a nursing facility administrator.

(b) If a license sanction is probated, the board may require the license holder to:

1. report regularly to the board on matters that are the basis of the probation;
2. limit practice to the areas prescribed by the department; or
3. continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) A license holder is entitled to a hearing in accordance with rules promulgated by the board before a sanction is imposed under this section.

(d) The board by rule shall adopt a broad schedule of sanctions for violations under this subchapter. The board shall use the schedule for any sanction imposed as the result of a hearing conducted in accordance with the rules.

(e) The department shall by rule establish criteria to determine whether deficiencies from a facility's survey warrant action against an administrator. The criteria shall include a determination of whether the survey indicates substandard quality of care and whether a deficiency is related to an act or failure to act by the administrator. If a deficiency on which a disciplinary action against an administrator is initiated or completed is not substantiated, the disciplinary action shall be reversed.

WRITTEN REPRIMAND AND CONTINUING EDUCATION AS SANCTIONS

Sec. 242.319. Text of section effective upon federal determination of failure to comply with federal regulations

In addition to the other disciplinary actions authorized under this subchapter, the board may issue a written reprimand to a license holder who violates this subchapter or require that a license holder who violates this subchapter participate in continuing education programs. The board shall specify the continuing education programs that may be attended and the number of hours that must be completed by a license holder to fulfill the requirements of this section.

ADMINISTRATIVE PENALTY AS SANCTION

Sec. 242.320. Text of section effective upon federal determination of failure to comply with federal regulations
(a) The department may impose an administrative penalty against a person licensed or regulated under this subchapter who violates this subchapter or a rule adopted by the board under this subchapter.

(b) The penalty for a violation may be in an amount not to exceed $1,000. Each day a violation occurs or continues is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

1. the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;
2. the economic harm to property or the environment caused by the violation;
3. the history of previous violations;
4. the amount necessary to deter future violations;
5. efforts to correct the violations; and
6. any other matter that justice may require.

NOTICE AND HEARING

Sec. 242.321. Text of section effective upon federal determination of failure to comply with federal regulations

(a) If the department determines that a violation has occurred, the department shall give written notice of the determination to the person alleged to have committed the violation. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and the penalty recommended by the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) If the person accepts the determination and the penalty recommended by the department, the department shall impose the recommended penalty.

(d) If the person requests a hearing or fails to respond timely to the notice, the department shall set a hearing and give notice of the hearing to the person. The hearing shall be held in accordance with the department's rules on contested case hearings.

(e) The notice of the hearing decision given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the decision.

(f) Within 30 days after the date the department's decision is final as provided by Section 2001.144, Government Code, the person shall:

1. pay the amount of the penalty;
2. pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or
3. without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) Within the 30-day period, a person who acts under Subsection (f)(3) may:

1. stay enforcement of the penalty by:
   A. paying the amount of the penalty to the court for placement in an escrow account; or
   B. giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's decision is final; or
2. request the court to stay enforcement of the penalty by:
   A. filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and
   B. giving a copy of the affidavit to the department by certified mail.

(h) If the department receives a copy of an affidavit under Subsection (g)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(i) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.
(j) Judicial review of the decision of the department:
   (1) is instituted by filing a petition as provided by Section 2001.176, Government Code; and
   (2) is under the substantial evidence rule.

(k) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the
penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the
occurrence of the violation, the court shall order that no penalty is owed.

(l) When the judgment of the court becomes final, the court shall proceed under this subsection. If the
person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall
order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate
charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for
the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person
gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release
of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order
the release of the bond after the person pays the amount.

(m) A penalty collected under this section shall be remitted to the comptroller for deposit in the general
revenue fund.

(n) All proceedings under this section are subject to Chapter 2001, Government Code.

INFORMAL PROCEEDINGS

Sec. 242.322. Text of section effective upon federal determination of failure to comply with federal
regulations
(a) The department by rule shall adopt procedures governing:
   (1) informal disposition of a contested case under Section 2001.056, Government Code; and
   (2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must provide the complainant and the license holder an opportunity to
be heard.

MONITORING OF LICENSE HOLDER

Sec. 242.323. Text of section effective upon federal determination of failure to comply with federal
regulations
The board by rule shall develop a system for monitoring a license holder's compliance with the
requirements of this subchapter. Rules adopted under this section shall include procedures for monitoring a license
holder who is required by the board to perform certain acts to ascertain that the license holder performs the required
acts and to identify and monitor license holders who represent a risk to the public.

CIVIL PENALTY

Sec. 242.324. Text of section effective upon federal determination of failure to comply with federal
regulations
A person who violates this subchapter is liable to the state for a civil penalty of $1,000 for each day of
violation. At the request of the department, the attorney general shall bring an action to recover a civil penalty
established by this section.

ASSISTANCE OF ATTORNEY GENERAL

Sec. 242.325. Text of section effective upon federal determination of failure to comply with federal
regulations. The attorney general shall provide legal assistance as necessary in enforcing the provisions of this
subchapter. This requirement does not relieve a local prosecuting officer of any of the prosecuting officer's duties
under the law.

OFFENSE

Sec. 242.326. Text of section effective upon federal determination of failure to comply with federal
regulations
(a) A person commits an offense if the person knowingly or intentionally violates Section 242.310.
(b) An offense under this section is a Class B misdemeanor.
PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN CONDUCT

Sec. 242.327. Text of section effective upon federal determination of failure to comply with federal regulations

(a) A person may not suspend, terminate, or otherwise discipline or discriminate against a licensed nursing facility administrator who refuses to engage in an act or omission relating to the administrator's job duties or responsibilities that would constitute a violation of this subchapter or of a rule adopted under this subchapter, if the administrator notifies the person at the time of the refusal that the reason for refusing is that the act or omission constitutes a violation of this subchapter or of a rule adopted under this subchapter.

(b) An act by a person under Subsection (a) does not constitute a violation of this section if:

(1) the act or omission the administrator refused to commit was not conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter; or

(2) the act or omission the administrator refused to commit was conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter, and the person rescinds any disciplinary or discriminatory action taken against the administrator, compensates the administrator for lost wages, and restores any lost benefits to the administrator.

(c) A violation of this section is an unlawful employment practice, and a civil action may be brought by a licensed nursing facility administrator against a person for the violation. The relief available in a civil action shall be the same as the relief available to complainants in a civil action for violations of Chapter 21, Labor Code. In no event may any action be brought pursuant to this section more than two years after the date of the administrator's refusal to engage in an act or omission that would constitute a violation of this subchapter or of a rule adopted under this subchapter.

(d) In this section, "person" includes an individual, organization, corporation, agency, facility, or other entity.

SUBCHAPTER K. QUALITY OF CARE

QUALITY OF LIFE

Sec. 242.401. (a) An institution shall care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life and dignity. An institution that admits a resident who is younger than 18 years of age must provide care to meet the resident's unique medical and developmental needs.

(b) A resident of an institution has the right to reside and receive services in the institution with reasonable accommodation of individual needs, except to the extent the health or safety of the resident or other residents would be endangered.

QUALITY OF CARE

Sec. 242.402. An institution shall provide to each resident the necessary care or service needed to enable the resident to attain and maintain the highest practicable level of physical, emotional, and social well-being, in accordance with:

(1) each resident's individual assessment and comprehensive plan of care; and

(2) the rules and standards relating to quality of care adopted under this chapter.

STANDARDS FOR QUALITY OF LIFE AND QUALITY OF CARE

Sec. 242.403. (a) The department shall adopt standards to implement Sections 242.401 and 242.402. Those standards must, at a minimum, address:

(1) admission of residents;

(2) care of residents younger than 18 years of age;

(3) an initial assessment and comprehensive plan of care for residents;

(4) transfer or discharge of residents;

(5) clinical records;

(6) infection control at the institution;

(7) rehabilitative services;

(8) food services;

(9) nutrition services provided by a director of food services who is licensed by the Texas State Board of Examiners of Dietitians or, if not so licensed, who is in scheduled consultation with a person who is so
licenced as frequently and for such time as the department shall determine necessary to assure each resident a diet that meets the daily nutritional and special dietary needs of each resident;

(10) social services and activities;
(11) prevention of pressure sores;
(12) bladder and bowel retraining programs for residents;
(13) prevention of complications from nasogastric or gastrotomy tube feedings;
(14) relocation of residents within an institution;
(15) postmortem procedures; and
(16) appropriate use of chemical and physical restraints.

(b) The department may require an institution to submit information to the department, including Minimum Data Set Resident Assessments, necessary to ensure the quality of care in institutions. Information submitted to the department that identifies a resident of an institution is confidential and not subject to disclosure under Chapter 552, Government Code.

(c) The department may adopt standards in addition to those required by Subsection (a) to implement Sections 242.401 and 242.402.

POLICIES, PROCEDURES, AND PRACTICES FOR QUALITY OF CARE AND QUALITY OF LIFE

Sec. 242.404. (a) Each institution shall comply with the standards adopted under this subchapter and shall develop written operating policies to implement those standards.

(b) The policies and procedures must be available to each physician, staff member, resident, and resident's next of kin or guardian and to the public.

SUBCHAPTER L. RIGHTS OF RESIDENTS

RESIDENT'S RIGHTS

Sec. 242.501. (a) The department by rule shall adopt a statement of the rights of a resident. The statement must be consistent with Chapter 102, Human Resources Code, but shall reflect the unique circumstances of a resident at an institution. At a minimum, the statement of the rights of a resident must address the resident's constitutional, civil, and legal rights and the resident's right:

(1) to be free from abuse and exploitation;
(2) to safe, decent, and clean conditions;
(3) to be treated with courtesy, consideration, and respect;
(4) to not be subjected to discrimination based on age, race, religion, sex, nationality, or disability and to practice the resident's own religious beliefs;
(5) to place in the resident's room an electronic monitoring device that is owned and operated by the resident or provided by the resident's guardian or legal representative;
(6) to privacy, including privacy during visits and telephone calls;
(7) to complain about the institution and to organize or participate in any program that presents residents’ concerns to the administrator of the institution;
(8) to have information about the resident in the possession of the institution maintained as confidential;
(9) to retain the services of a physician the resident chooses, at the resident's own expense or through a health care plan, and to have a physician explain to the resident, in language that the resident understands, the resident's complete medical condition, the recommended treatment, and the expected results of the treatment, including reasonably expected effects, side effects, and risks associated with psychoactive medications;
(10) to participate in developing a plan of care, to refuse treatment, and to refuse to participate in experimental research;
(11) to a written statement or admission agreement describing the services provided by the institution and the related charges;
(12) to manage the resident's own finances or to delegate that responsibility to another person;
(13) to access money and property that the resident has deposited with the institution and to an accounting of the resident's money and property that are deposited with the institution and of all financial transactions made with or on behalf of the resident;
(14) to keep and use personal property, secure from theft or loss;
(15) to not be relocated within the institution, except in accordance with standards adopted by the department under Section 242.403;
(16) to receive visitors;
(17) to receive unopened mail and to receive assistance in reading or writing correspondence;
(18) to participate in activities inside and outside the institution;
(19) to wear the resident's own clothes;
(20) to discharge himself or herself from the institution unless the resident is an adjudicated mental incompetent;
(21) to not be discharged from the institution except as provided in the standards adopted by the department under Section 242.403;
(22) to be free from any physical or chemical restraints imposed for the purposes of discipline or convenience, and not required to treat the resident's medical symptoms; and
(23) to receive information about prescribed psychoactive medication from the person prescribing the medication or that person's designee, to have any psychoactive medications prescribed and administered in a responsible manner, as mandated by Section 242.505, and to refuse to consent to the prescription of psychoactive medications.

(b) A right of a resident may be restricted only to the extent necessary to protect:
   (1) a right of another resident, particularly a right of the other resident relating to privacy and confidentiality; or
   (2) the resident or another person from danger or harm.

(c) The department may adopt rights of residents in addition to those required by Subsection (a) and may consider additional rights applicable to residents in other jurisdictions.

RIGHTS CUMULATIVE

Sec. 242.502. The rights established under this subchapter are cumulative of the rights established under any other law.

DUTIES OF INSTITUTION

Sec. 242.503. (a) An institution shall develop and implement policies to protect resident rights.
   (b) An institution and the staff of an institution may not violate a right adopted under this subchapter.

INFORMATION ABOUT RESIDENT'S RIGHTS AND VIOLATIONS

Sec. 242.504. (a) An institution shall inform each resident and the resident's next of kin or guardian of the rights adopted under this subchapter and shall explain the rights to the resident and the resident's next of kin or guardian. The institution shall provide a written statement of:
   (1) all of the resident's rights; and
   (2) any additional rules adopted by the institution involving resident rights and responsibilities.
   (b) The institution shall provide a copy of the written statement to:
       (1) each resident;
       (2) the next of kin or guardian of each resident; and
       (3) each member of the staff of the institution.
   (c) The institution shall maintain a copy of the statement, signed by the resident or the resident's next of kin or guardian, in the institution's records.
   (d) The institution shall post the written statement in the manner required by Section 242.042.
   (e) An institution that has been cited by the department for a violation of any right adopted under this subchapter shall include a notice of the citation in the informational materials required by Section 242.042(a)(8). The notice of citation must continue to be included in the informational materials until any regulatory action or proceeding with respect to the violation is complete and the department has determined that the institution is in full compliance with the applicable requirement.

PRESCRIPTION OF PSYCHOACTIVE MEDICATION

Sec. 242.505. (a) In this section:
   (1) "Medication-related emergency" means a situation in which it is immediately necessary to administer medication to a resident to prevent:
       (A) imminent probable death or substantial bodily harm to the resident; or
       (B) imminent physical or emotional harm to another because of threats, attempts, or other acts the resident overtly or continually makes or commits.
(2) "Psychoactive medication" means a medication that is prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness. The term includes the following categories when used as described by this subdivision:

(A) antipsychotics or neuroleptics;
(B) antidepressants;
(C) agents for control of mania or depression;
(D) antianxiety agents;
(E) sedatives, hypnotics, or other sleep-promoting drugs; and
(F) psychomotor stimulants.

(b) A person may not administer a psychoactive medication to a resident who does not consent to the prescription unless:

(1) the resident is having a medication-related emergency; or
(2) the person authorized by law to consent on behalf of the resident has consented to the prescription.

(c) Consent to the prescription of psychoactive medication given by a resident or by a person authorized by law to consent on behalf of the resident is valid only if:

(1) the consent is given voluntarily and without coercive or undue influence;
(2) the person prescribing the medication or that person's designee provided the following information, in a standard format approved by the department, to the resident and, if applicable, to the person authorized by law to consent on behalf of the resident:

(A) the specific condition to be treated;
(B) the beneficial effects on that condition expected from the medication;
(C) the probable clinically significant side effects and risks associated with the medication; and
(D) the proposed course of the medication;

(3) the resident and, if appropriate, the person authorized by law to consent on behalf of the resident are informed in writing that consent may be revoked; and

(4) the consent is evidenced in the resident's clinical record by a signed form prescribed by the facility or by a statement of the person prescribing the medication or that person's designee that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

(d) A resident's refusal to consent to receive psychoactive medication shall be documented in the resident's clinical record.

(e) If a person prescribes psychoactive medication to a resident without the resident's consent because the resident is having a medication-related emergency:

(1) the person shall document in the resident's clinical record in specific medical or behavioral terms the necessity of the order; and

(2) treatment of the resident with the psychoactive medication shall be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the resident's personal liberty.

(f) A physician or a person designated by the physician is not liable for civil damages or an administrative penalty and is not subject to disciplinary action for a breach of confidentiality of medical information for a disclosure of the information provided under Subsection (c)(2) made by the resident or the person authorized by law to consent on behalf of the resident that occurs while the information is in the possession or control of the resident or the person authorized by law to consent on behalf of the resident.

SUBCHAPTER M. COMPLAINT INSPECTIONS

COMPLAINT REQUESTING INSPECTION

Sec. 242.551. (a) A person may request an inspection of an institution in accordance with this chapter by making a complaint notifying the department of an alleged violation of law and requesting an inspection.

(b) The department shall encourage a person who makes an oral complaint under Subsection (a) to submit a written, signed complaint.

DISCLOSURE OF SUBSTANCE OF COMPLAINT

Sec. 242.552. The department may not provide information to the institution relating to the substance of a complaint made under this subchapter before an on-site inspection is begun in accordance with this subchapter.
CONFIDENTIALITY

Sec. 242.553. The name of the person making the complaint is confidential and may not be released to the institution or any other person, unless the person making the complaint specifically requests that the person's name be released.

PRELIMINARY REVIEW OF COMPLAINT; INSPECTION

Sec. 242.554. (a) On receipt of a complaint under this subchapter, the department shall make a preliminary review of the complaint.
(b) Within a reasonable time after receipt of the complaint, the department shall make an on-site inspection or otherwise respond to the complaint unless the department determines that:
   (1) the person making the complaint made the complaint to harass the institution;
   (2) the complaint is without any reasonable basis; or
   (3) sufficient information in the possession of the department indicates that corrective action has been taken.
(c) The department shall promptly notify the person making the complaint of the department's proposed course of action under Subsection (b) and the reasons for that action.

SUBCHAPTER N. ADMINISTRATION OF MEDICATION

MEDICATION ADMINISTRATION

Sec. 242.601. (a) An institution must establish medication administration procedures.
(b) The medication administration procedures must comply with this subchapter and the rules adopted by the board under Section 242.608.

PHARMACIST SERVICES

Sec. 242.602. (a) An institution shall:
   (1) employ a licensed pharmacist responsible for operating the institution's pharmacy; or
   (2) contract, in writing, with a licensed pharmacist to advise the institution on ordering, storage, administration, and disposal of medications and biologicals and related recordkeeping.
(b) The institution shall allow residents to choose their pharmacy provider from any pharmacy that is qualified to perform the services.

STORAGE AND DISPOSAL OF MEDICATIONS

Sec. 242.603. (a) An institution shall store medications under appropriate conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security.
(b) The institution shall properly dispose of:
   (1) any medication that is discontinued or outdated, except as provided by Subsection (c); and
   (2) any medication in a container with a worn or illegible label or missing a label.
(c) A discontinued medication that has not been destroyed must be reinstated if reordered.
(d) An institution shall release the medications of a resident who is transferred directly to another institution or who is discharged to home to the new institution or to the resident or resident's next of kin or guardian, as appropriate. The institution may release a medication to a resident only on the written or verbal authorization of the attending physician.

REPORTS OF MEDICATION ERRORS AND ADVERSE REACTIONS

Sec. 242.604. An institution's nursing staff must report medication errors and adverse reactions to the resident's physician in a timely manner, as warranted by an assessment of the resident's condition, and record the errors and reactions in the resident's clinical record.

MEDICATION REFERENCE SOURCES

Sec. 242.605. An institution shall maintain updated medication reference texts or sources. If the institution has a resident younger than 18 years of age, these texts or sources must include information on pediatric medications, dosages, sites, routes, techniques of administration of medications, desired effects, and possible side effects.
PERMITS TO ADMINISTER MEDICATION

Sec. 242.606. A person may not administer medication to a resident unless the person:
(1) holds a license under state law that authorizes the person to administer medication; or
(2) holds a permit issued under Section 242.610 and acts under the authority of a person who holds a license under state law that authorizes the person to administer medication.

EXEMPTIONS FOR NURSING STUDENTS AND MEDICATION AIDE TRAINEES

Sec. 242.607. (a) Sections 242.606 and 242.614 do not apply to:
(1) a graduate nurse holding a temporary permit issued by the Texas Board of Nursing;
(2) a student enrolled in an accredited school of nursing or program for the education of registered nurses who is administering medications as part of the student's clinical experience;
(3) a graduate vocational nurse holding a temporary permit issued by the Texas Board of Nursing;
(4) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or
(5) a trainee in a medication aide training program approved by the department under this subchapter who is administering medications as part of the trainee's clinical experience.

(b) The administration of medications by persons exempted under Subdivisions (1) through (4) of Subsection (a) is governed by the terms of the memorandum of understanding executed by the department and the Texas Board of Nursing.

RULES FOR ADMINISTRATION OF MEDICATION

Sec. 242.608. The board by rule shall establish:
(1) minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to administer medication to a resident;
(2) curricula to train persons to administer medication to a resident;
(3) minimum standards for the approval of programs to train persons to administer medication to a resident and for rescinding approval; and
(4) the acts and practices that are allowed or prohibited to a permit holder.

TRAINING PROGRAMS TO ADMINISTER MEDICATION

Sec. 242.609. (a) An application for the approval of a training program must be made to the department on a form and under rules prescribed by the board.

(b) The department shall approve a training program that meets the minimum standards adopted under Section 242.608. The department may review the approval annually.

ISSUANCE AND RENEWAL OF PERMIT TO ADMINISTER MEDICATION

Sec. 242.610. (a) To be issued or to have renewed a permit to administer medication, a person shall apply to the department on a form prescribed and under rules adopted by the board.

(b) The department shall prepare and conduct, at the site of the training program, an examination for the issuance of a permit. The results of the examination shall be reported in accordance with Section 242.6101.

(c) The department shall require a permit holder to satisfactorily complete a continuing education course approved by the department for renewal of the permit.

(d) Subject to Subsections (h)-(m), the department shall issue a permit or renew a permit to an applicant who:
(1) meets the minimum requirements adopted under Section 242.608;
(2) successfully completes the examination or the continuing education requirements; and
(3) pays a nonrefundable application fee determined by the board.

(e) Except as provided by Subsection (g), a permit is valid for one year and is not transferable.

(f) The department may issue a permit to an employee of a state or federal agency listed in Section 242.003(a)(6)(B).

(g) The board by rule may adopt a system under which permits expire on various dates during the year. For the year in which the permit expiration date is changed, the department shall prorate permit fees on a monthly basis so that each permit holder pays only that portion of the permit fee that is allocable to the number of months during which the permit is valid. On renewal of the permit on the new expiration date, the total permit renewal fee is payable.
(h) A person who is otherwise eligible to renew a permit may renew an unexpired permit by paying the required renewal fee to the department before the expiration date of the permit. A person whose permit has expired may not engage in activities that require a permit until the permit has been renewed.

(i) A person whose permit has been expired for 90 days or less may renew the permit by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(j) A person whose permit has been expired for more than 90 days but less than one year may renew the permit by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(k) A person whose permit has been expired for one year or more may not renew the permit. The person may obtain a new permit by complying with the requirements and procedures, including the examination requirements, for obtaining an original permit.

(l) A person who was issued a permit in this state, moved to another state, currently holds a valid permit or license issued by the other state, and has been in practice in that state for the two years preceding the date of application may obtain a new permit without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for the permit.

(m) Not later than the 30th day before the date a person's permit is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

RESULTS OF EXAMINATION FOR ISSUANCE OF PERMIT

Sec. 242.6101. (a) Not later than the 30th day after the date a person takes an examination for the issuance of a permit under this subchapter, the department shall notify the person of the results of the examination.

(b) If the examination is graded or reviewed by a testing service:

(1) the department shall notify the person of the results of the examination not later than the 14th day after the date the department receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the department shall notify the person of the reason for the delay before the 90th day.

(c) The department may require a testing service to notify a person of the results of the person's examination.

(d) If requested in writing by a person who fails an examination for the issuance of a permit administered under this subchapter, the department shall furnish the person with an analysis of the person's performance on the examination.

FEES FOR ISSUANCE AND RENEWAL OF PERMIT TO ADMINISTER MEDICATION

Sec. 242.611. The board shall set the fees in amounts reasonable and necessary to recover the amount projected by the department as required to administer its functions. Except as otherwise provided by Section 242.610, the fees may not exceed:

(1) $25 for a combined permit application and examination fee; and

(2) $15 for a renewal permit application fee.

VIOLATION OF PERMITS TO ADMINISTER MEDICATION

Sec. 242.612. (a) The board shall revoke, suspend, or refuse to renew a permit or shall reprimand a permit holder for a violation of this subchapter or a rule of the board adopted under this subchapter. In addition, the board may suspend a permit in an emergency or rescind training program approval.

(b) Except as provided by Section 242.613, the procedure by which the department takes a disciplinary action and the procedure by which a disciplinary action is appealed are governed by the department's rules for a formal hearing and by Chapter 2001, Government Code.

(c) The board may place on probation a person whose permit is suspended. If a permit suspension is probated, the board may require the person:

(1) to report regularly to the department on matters that are the basis of the probation;

(2) to limit practice to the areas prescribed by the board; or

(3) to continue or review professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.
**EMERGENCY SUSPENSION OF PERMITS TO ADMINISTER MEDICATION**

Sec. 242.613. (a) The department shall issue an order to suspend a permit issued under this subchapter if the department has reasonable cause to believe that the conduct of the permit holder creates an imminent danger to the public health or safety.

(b) An emergency suspension is effective immediately without a hearing on notice to the permit holder.

(c) If requested in writing by a permit holder whose permit is suspended, the department shall conduct a hearing to continue, modify, or rescind the emergency suspension.

(d) The hearing must be held not earlier than the 10th day or later than the 30th day after the date on which the hearing request is received.

(e) The hearing and an appeal from a disciplinary action related to the hearing are governed by the department's rules for a formal hearing and Chapter 2001, Government Code.

**ADMINISTRATION OF MEDICATION; CRIMINAL PENALTY**

Sec. 242.614. (a) A person commits an offense if the person knowingly administers medication to a resident and the person:

1. does not hold a license under state law that authorizes the person to administer medication; or
2. does not hold a permit issued by the department under this subchapter.

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

**SUBCHAPTER R. ELECTRONIC MONITORING OF RESIDENT'S ROOM**

**DEFINITIONS**

Sec. 242.841. In this subchapter:

1. "Authorized electronic monitoring" means the placement of an electronic monitoring device in the room of a resident of an institution and making tapes or recordings with the device after making a request to the institution to allow electronic monitoring.

2. "Electronic monitoring device":

   (A) includes:

   i. video surveillance cameras installed in the room of a resident; and

   ii. audio devices installed in the room of a resident designed to acquire communications or other sounds occurring in the room; and

   (B) does not include an electronic, mechanical, or other device that is specifically used for the nonconsensual interception of wire or electronic communications.

**CRIMINAL AND CIVIL LIABILITY**

Sec. 242.842. (a) It is a defense to prosecution under Section 16.02, Penal Code, or any other statute of this state under which it is an offense to intercept a communication or disclose or use an intercepted communication, that the communication was intercepted by an electronic monitoring device placed in the room of a resident of an institution.

(b) This subchapter does not affect whether a person may be held to be civilly liable under other law in connection with placing an electronic monitoring device in the room of a resident of an institution or in connection with using or disclosing a tape or recording made by the device except:

1. as specifically provided by this subchapter; or
2. to the extent that liability is affected by:

   (A) a consent or waiver signed under this subchapter; or

   (B) the fact that authorized electronic monitoring is required to be conducted with notice to persons who enter a resident's room.

(c) A communication or other sound acquired by an audio electronic monitoring device installed under the provisions of this subchapter concerning authorized electronic monitoring is not considered to be:

1. an oral communication as defined by Section 1, Article 18.20, Code of Criminal Procedure; or

2. a communication as defined by Section 123.001, Civil Practice and Remedies Code.
COVERT USE OF ELECTRONIC MONITORING DEVICE; LIABILITY OF DEPARTMENT OR INSTITUTION

Sec. 242.843. (a) For purposes of this subchapter, the placement and use of an electronic monitoring device in the room of a resident is considered to be covert if:

1. the placement and use of the device is not open and obvious; and
2. the institution and the department are not informed about the device by the resident, by a person who placed the device in the room, or by a person who is using the device.

(b) The department and the institution may not be held to be civilly liable in connection with the covert placement or use of an electronic monitoring device in the room of a resident.

REQUIRED FORM ON ADMISSION

Sec. 242.844. The department by rule shall prescribe a form that must be completed and signed on a resident's admission to an institution by or on behalf of the resident. The form must state:

1. that a person who places an electronic monitoring device in the room of a resident or who uses or discloses a tape or other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another;
2. that a person who covertly places an electronic monitoring device in the room of a resident or who consents to or acquiesces in the covert placement of the device in the room of a resident has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device;
3. that a resident or the resident's guardian or legal representative is entitled to conduct authorized electronic monitoring under Subchapter R, Chapter 242, Health and Safety Code, and that if the institution refuses to permit the electronic monitoring or fails to make reasonable physical accommodations for the authorized electronic monitoring that the person should contact the Texas Department of Human Services;
4. the basic procedures that must be followed to request authorized electronic monitoring;
5. the manner in which this chapter affects the legal requirement to report abuse or neglect when electronic monitoring is being conducted; and
6. any other information regarding covert or authorized electronic monitoring that the department considers advisable to include on the form.

AUTHORIZED ELECTRONIC MONITORING: WHO MAY REQUEST

Sec. 242.845. (a) If a resident has capacity to request electronic monitoring and has not been judicially declared to lack the required capacity, only the resident may request authorized electronic monitoring under this subchapter, notwithstanding the terms of any durable power of attorney or similar instrument.

(b) If a resident has been judicially declared to lack the capacity required for taking an action such as requesting electronic monitoring, only the guardian of the resident may request electronic monitoring under this subchapter.

(c) If a resident does not have capacity to request electronic monitoring but has not been judicially declared to lack the required capacity, only the legal representative of the resident may request electronic monitoring under this subchapter. The department by rule shall prescribe:

1. guidelines that will assist institutions, family members of residents, advocates for residents, and other interested persons to determine when a resident lacks the required capacity; and
2. who may be considered to be a resident's legal representative for purposes of this subchapter, including:
   (A) persons who may be considered the legal representative under the terms of an instrument executed by the resident when the resident had capacity; and
   (B) persons who may become the legal representative for the limited purpose of this subchapter under a procedure prescribed by the department.

AUTHORIZED ELECTRONIC MONITORING: FORM OF REQUEST; CONSENT OF OTHER RESIDENTS IN ROOM

Sec. 242.846. (a) A resident or the guardian or legal representative of a resident who wishes to conduct authorized electronic monitoring must make the request to the institution on a form prescribed by the department.

(b) The form prescribed by the department must require the resident or the resident's guardian or legal representative to:

1. release the institution from any civil liability for a violation of the resident's privacy rights in connection with the use of the electronic monitoring device;
(2) choose, when the electronic monitoring device is a video surveillance camera, whether the camera will always be unobstructed or whether the camera should be obstructed in specified circumstances to protect the dignity of the resident; and

(3) obtain the consent of other residents in the room, using a form prescribed for this purpose by the department, if the resident resides in a multiperson room.

(c) Consent under Subsection (b)(3) may be given only:

(1) by the other resident or residents in the room;
(2) by the guardian of a person described by Subdivision (1), if the person has been judicially declared to lack the required capacity; or
(3) by the legal representative who under Section 242.845(c) may request electronic monitoring on behalf of a person described by Subdivision (1), if the person does not have capacity to sign the form but has not been judicially declared to lack the required capacity.

(d) The form prescribed by the department under Subsection (b)(3) must condition the consent of another resident in the room on the other resident also releasing the institution from any civil liability for a violation of the person's privacy rights in connection with the use of the electronic monitoring device.

(e) Another resident in the room may:

(1) when the proposed electronic monitoring device is a video surveillance camera, condition consent on the camera being pointed away from the consenting resident; and
(2) condition consent on the use of an audio electronic monitoring device being limited or prohibited.

(f) If authorized electronic monitoring is being conducted in the room of a resident and another resident is moved into the room who has not yet consented to the electronic monitoring, authorized electronic monitoring must cease until the new resident has consented in accordance with this section.

(g) The department may include other information that the department considers to be appropriate on either of the forms that the department is required to prescribe under this section.

(h) The department may adopt rules prescribing the place or places that a form signed under this section must be maintained and the period for which it must be maintained.

(i) Authorized electronic monitoring:

(1) may not commence until all request and consent forms required by this section have been completed and returned to the institution; and
(2) must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident in the room.

AUTHORIZED ELECTRONIC MONITORING: GENERAL PROVISIONS

Sec. 242.847. (a) An institution shall permit a resident or the resident's guardian or legal representative to monitor the room of the resident through the use of electronic monitoring devices.

(b) The institution shall require a resident who conducts authorized electronic monitoring or the resident's guardian or legal representative to post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.

(c) Authorized electronic monitoring conducted under this subchapter is not compulsory and may be conducted only at the request of the resident or the resident's guardian or legal representative.

(d) An institution may not refuse to admit an individual to residency in the institution and may not remove a resident from the institution because of a request to conduct authorized electronic monitoring. An institution may not remove a resident from the institution because covert electronic monitoring is being conducted by or on behalf of a resident.

(e) An institution shall make reasonable physical accommodation for authorized electronic monitoring, including:

(1) providing a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and
(2) providing access to power sources for the video surveillance camera or other electronic monitoring device.

(f) The resident or the resident's guardian or legal representative must pay for all costs associated with conducting electronic monitoring, other than the costs of electricity. The resident or the resident's guardian or legal representative is responsible for:

(1) all costs associated with installation of equipment; and
(2) maintaining the equipment.
(g) An institution may require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. The department may adopt rules regarding the safe placement of an electronic monitoring device.

(h) If authorized electronic monitoring is conducted, the institution may require the resident or the resident's guardian or legal representative to conduct the electronic monitoring in plain view.

(i) An institution may but is not required to place a resident in a different room to accommodate a request to conduct authorized electronic monitoring.

REPORTING ABUSE AND NEGLECT

Sec. 242.848. (a) For purposes of the duty to report abuse or neglect under Section 242.122 and the criminal penalty for the failure to report abuse or neglect under Section 242.131, a person who is conducting electronic monitoring on behalf of a resident under this subchapter is considered to have viewed or listened to a tape or recording made by the electronic monitoring device on or before the 14th day after the date the tape or recording is made.

(b) If a resident who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring under this subchapter gives a tape or recording made by the electronic monitoring device to a person and directs the person to view or listen to the tape or recording to determine whether abuse or neglect has occurred, the person to whom the resident gives the tape or recording is considered to have viewed or listened to the tape or recording on or before the seventh day after the date the person receives the tape or recording for purposes of the duty to report abuse or neglect under Section 242.122 and of the criminal penalty for the failure to report abuse or neglect under Section 242.131.

(c) A person is required to report abuse based on the person's viewing of or listening to a tape or recording only if the incident of abuse is acquired on the tape or recording. A person is required to report neglect based on the person's viewing of or listening to a tape or recording only if it is clear from viewing or listening to the tape or recording that neglect has occurred.

(d) If abuse or neglect of the resident is reported to the institution and the institution requests a copy of any relevant tape or recording made by an electronic monitoring device, the person who possesses the tape or recording shall provide the institution with a copy at the institution's expense.

USE OF TAPE OR RECORDING BY AGENCY OR COURT

Sec. 242.849. (a) Subject to applicable rules of evidence and procedure and the requirements of this section, a tape or recording created through the use of covert or authorized electronic monitoring described by this subchapter may be admitted into evidence in a civil or criminal court action or administrative proceeding.

(b) A court or administrative agency may not admit into evidence a tape or recording created through the use of covert or authorized electronic monitoring or take or authorize action based on the tape or recording unless:
   (1) if the tape or recording is a video tape or recording, the tape or recording shows the time and date that the events acquired on the tape or recording occurred;
   (2) the contents of the tape or recording have not been edited or artificially enhanced; and
   (3) if the contents of the tape or recording have been transferred from the original format to another technological format, the transfer was done by a qualified professional and the contents of the tape or recording were not altered.

(c) A person who sends more than one tape or recording to the department shall identify for the department each tape or recording on which the person believes that an incident of abuse or evidence of neglect may be found. The department may adopt rules encouraging persons who send a tape or recording to the department to identify the place on the tape or recording that an incident of abuse or evidence of neglect may be found.

NOTICE AT ENTRANCE TO INSTITUTION

Sec. 242.850. Each institution shall post a notice at the entrance to the institution stating that the rooms of some residents may be being monitored electronically by or on behalf of the residents and that the monitoring is not necessarily open and obvious. The department by rule shall prescribe the format and the precise content of the notice.

ENFORCEMENT

Sec. 242.851. (a) The department may impose appropriate sanctions under this chapter on an administrator of an institution who knowingly:
(1) refuses to permit a resident or the resident's guardian or legal representative to conduct authorized electronic monitoring;  
(2) refuses to admit an individual to residency or allows the removal of a resident from the institution because of a request to conduct authorized electronic monitoring;  
(3) allows the removal of a resident from the institution because covert electronic monitoring is being conducted by or on behalf of the resident; or  
(4) violates another provision of this subchapter.

(b) The department may assess an administrative penalty under Section 242.066 against an institution that:  
(1) refuses to permit a resident or the resident's guardian or legal representative to conduct authorized electronic monitoring;  
(2) refuses to admit an individual to residency or allows the removal of a resident from the institution because of a request to conduct authorized electronic monitoring;  
(3) allows the removal of a resident from the institution because covert electronic monitoring is being conducted by or on behalf of the resident; or  
(4) violates another provision of this subchapter.

CRIMINAL OFFENSE

Sec. 242.852. (a) A person who intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident's room in accordance with this subchapter or a tape or recording made by the device commits an offense. An offense under this section is a Class B misdemeanor.

(b) It is a defense to prosecution under Subsection (a) that the person took the action with the effective consent of the resident on whose behalf the electronic monitoring device was installed or the resident's guardian or legal representative.

SUBCHAPTER S: FAMILY COUNCIL

DEFINITIONS

Sec. 242.901. In this subchapter:  
(1) “Department” means the Department of Aging and Disability Services.  
(2) “Executive commissioner” means the executive commissioner of the Health and Human Services Commission.  
(3) “Family council” means a group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.

FAMILY COUNCIL

Sec. 242.902. A family council may:  
(1) make recommendations to the institution proposing policy and operational decisions affecting resident care and quality of life; and  
(2) promote educational programs and projects that will promote the health and happiness of residents.

DUTIES OF INSTITUTION

Sec. 242.903. (a) An institution shall consider the views and recommendations of the family council and make a reasonable effort to resolve the council’s grievances.

(b) An institution may not:  
(1) prohibit the formation of a family council;  
(2) terminate an existing family council;  
(3) deny a family council the opportunity to accept help from an outside person;  
(4) limit the rights of a resident, family member, or family council member to meet with an outside person, including:  
   (A) an employee of the institution during nonworking hours if the employee agrees; and  
   (B) a member of the nonprofit or government organization;  
(5) prevent or interfere with the family council receiving outside correspondence addressed to the council; 
(6) open family council mail; or
(7) willfully interfere with the formation, maintenance, or operation of a family council, including interfering by:
   (A) discriminating or retaliating against a family council participant; and
   (B) willfully scheduling events in conflict with previously scheduled family council meetings if the institution has other scheduling options.

(c) On admission of a resident, an institution shall inform the resident’s family members in writing of:
   (1) the family members’ right to form a family council; or
   (2) if a family council already exists, the council’s:
      (A) meeting time, date, and location; and
      (B) contact person.

(d) An institution shall.
   (1) include notice of a family council in a mailing that occurs at least semiannually;
   (2) permit a representative of a family council to discuss concerns with an individual conducting an inspection or survey of the facility;
   (3) provide a family council with adequate space on a prominent bulletin board to post notices and other information;
   (4) provide a designated staff person to act as liaison for a family council; and
   (5) respond in writing to a written request by a family council within five working days.

MEETINGS
Sec. 242.904. (a) On written request, an institution shall allow a family council to meet in a common meeting room of the institution at least once a month during hours mutually agreed upon by the family council and the institution.
   (b) Institution employees or visitors may attend a family council meeting only at the council’s invitation.
   (b-1) Not later than the fifth working day after the date the facility receives the final statement of violations under this section, the facility shall provide a copy of the statement to a representative of the facility’s family council.

VISITING
Sec. 242.905. A family council member may authorize in writing another member to visit and observe a resident represented by the authorizing member unless the resident objects.

ADMINISTRATION; RULES
Sec. 242.906. (a) The department shall administer this subchapter.
   (b) The executive commissioner shall adopt rules necessary to implement this section.
CHAPTER 247. ASSISTED LIVING FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

SHORT TITLE
Sec. 247.001. This chapter may be cited as the Assisted Living Facility Licensing Act.

SCOPE, PURPOSE, AND IMPLEMENTATION
Sec. 247.0011. (a) The purpose of this chapter is to ensure that assisted living facilities in this state deliver the highest possible quality of care. This chapter and the rules adopted under this chapter establish minimum acceptable levels of care, and a violation of a minimum acceptable level of care established under this chapter is a violation of law. For purposes of this chapter, components of quality of care include:

1. resident independence and self-determination;
2. humane treatment;
3. conservative intervention;
4. access to care;
5. continuity of care;
6. coordination of services;
7. safe surroundings;
8. professionalism of service providers;
9. participation in useful studies; and
10. quality of life.

(b) The department shall protect residents of assisted living facilities by:

1. adopting rules relating to quality of care and quality of life;
2. adopting rules relating to the assessment of the condition and service needs of each resident;
3. promoting policies that maximize the dignity, autonomy, privacy, and independence of each resident;
4. regulating the construction, maintenance, and operation of assisted living facilities;
5. strictly monitoring factors relating to the health, safety, welfare, and dignity of each resident;
6. imposing prompt and effective remedies for violations of this chapter and rules and standards adopted under this chapter;
7. providing a residential environment that allows residents to maintain the highest possible degree of independence and self-determination; and
8. providing the public with helpful and understandable information relating to the operation of assisted living facilities in this state.

(c) Assisted living services are driven by a service philosophy that emphasizes personal dignity, autonomy, independence, and privacy. Assisted living services should enhance a person's ability to age in place in a residential setting while receiving increasing or decreasing levels of service as the person's needs change.

DEFINITIONS
Sec. 247.002. In this chapter:

1. "Assisted living facility" means an establishment that:
   (A) furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment; and
   (B) provides personal care services.
2. "Board" means the Texas Board of Human Services.
3. "Controlling person" means a person who controls an assisted living facility or other person as described by Section 247.005.
4. "Department" means the Texas Department of Human Services.
5. "Personal care services" means:
   (A) assistance with meals, dressing, movement, bathing, or other personal needs or maintenance;
   (B) the administration of medication by a person licensed to administer medication or the assistance with or supervision of medication; or
general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in an assisted living facility or who needs assistance to manage the person's personal life, regardless of whether a guardian has been appointed for the person.

(6) "Qualified religious society" means a church, synagogue, or other organization or association that is organized primarily for religious purposes and that:

(A) has been in existence in this state for at least 35 years; and

(B) does not distribute any of its income to its members, officers, or governing body other than as reasonable compensation for services or reimbursement of expenses.

(7) "Commissioner" means the commissioner of human services.

IMMEDIATE THREAT OF HARM

Sec. 247.0025. For purposes of this chapter, there is considered to be an immediate threat to the health or safety of a resident, or a situation is considered to put the health or safety of a resident in immediate jeopardy, if there is a situation in which an assisted living facility's noncompliance with one or more requirements of licensure has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

APPLICATION OF OTHER LAW

Sec. 247.003. (a) Except as provided by Subsections (b) and (c), Chapter 242 does not apply to an assisted living facility licensed under this chapter.

(b) Subchapter D, Chapter 242, applies to an assisted living facility, and the department shall administer and enforce that subchapter for an assisted living facility in the same manner it is administered and enforced for a nursing home.

(c) Except as provided by this subsection, Subchapter R, Chapter 242, applies to an assisted living facility, and the department shall administer that subchapter for an assisted living facility in the same manner it is administered and enforced for a nursing home, but shall enforce that subchapter in accordance with the sanctions authorized by this chapter. Sections 242.851 and 242.852 do not apply to an assisted living facility or to conduct within an assisted living facility.

EXEMPTIONS

Sec. 247.004. This chapter does not apply to:

(1) a boarding facility that has rooms for rent and that may offer community meals, light housework, meal preparation, transportation, grocery shopping, money management, or laundry services but that does not provide personal care services;

(2) an establishment conducted by or for the adherents of the Church of Christ, Scientist, for the purpose of providing facilities for the care or treatment of the sick who depend exclusively on prayer or spiritual means for healing without the use of any drug or material remedy if the establishment complies with local safety, sanitary, and quarantine ordinances and regulations;

(3) a facility conducted by or for the adherents of a qualified religious society classified as a tax-exempt organization under an Internal Revenue Service group exemption ruling for the purpose of providing personal care services without charge solely for the society's professed members or ministers in retirement, if the facility complies with local safety, sanitation, and quarantine ordinances and regulations; or

(4) a facility that provides personal care services only to persons enrolled in a program that is funded in whole or in part by the Texas Department of Mental Health and Mental Retardation and that is monitored by the Texas Department of Mental Health and Mental Retardation or its designated local authority in accordance with standards set by the Texas Department of Mental Health and Mental Retardation.

CONTROLLING PERSON

Sec. 247.005. (a) A person is a controlling person if the person, acting alone or with others, has the ability to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an assisted living facility or other person.

(b) For purposes of this chapter, "controlling person" includes:

(1) a management company, landlord, or other business entity that operates or contracts with others for the operation of an assisted living facility;

(2) a person who is a controlling person of a management company or other business entity that operates an assisted living facility or that contracts with another person for the operation of an assisted living facility; and
(3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an assisted living facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(c) A controlling person described by Subsection (b)(3) does not include an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of an assisted living facility.

(d) The department may adopt rules that specify the ownership interests and other relationships that qualify a person as a controlling person.

ADVISORY COMMITTEE

Sec. 247.006. (a) The Advisory Committee on Assisted Living Facilities consists of nine members appointed by the board. The commissioner of human services shall appoint two staff members from the department to serve as nonvoting advisory members. In appointing staff members under this subsection, the commissioner shall appoint one member as a representative of long-term care policy and one member as a representative of long-term care regulation.

(b) The board shall appoint the advisory committee to provide for a balanced representation of assisted living providers and consumers and shall appoint one member who has expertise in life safety code regulations. At least one of the provider members must be representative of a nonprofit facility, and at least one member must be a family member of a resident of a facility.

(c) The committee shall elect the presiding officer from among its members.

(d) The committee shall advise the department on standards for licensing assisted living facilities and on the implementation of this chapter.

SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

LICENSE REQUIRED

Sec. 247.021. (a) A person may not establish or operate an assisted living facility without a license issued under this chapter.

(b) A person establishing or operating a facility that is not required to be licensed under this chapter may not use the term "assisted living" in referring to the facility or the services provided at the facility.

(c) A person establishing or operating a facility that is not required to be licensed but who elects to obtain a license under this chapter may use the term "assisted living" in referring to the facility or the services provided at the facility.

(d) The department by rule shall establish procedures to issue a six-month provisional license to existing facilities with residents. The department may issue a provisional license only if:

(1) the facility is in compliance with resident care standards;
(2) the facility voluntarily discloses that the facility needs additional time to comply with life safety code and physical plant standards;
(3) the disclosure is made in writing by certified mail to the department;
(4) an investigation of the violation was not initiated and the violation was not independently detected by the department; and
(5) the disclosure is made promptly after knowledge of the information disclosed is obtained by the facility.

(e) If, at the end of the six-month provisional license period, the facility does not meet life safety code and physical plant standards, the department may not issue a license to the facility.

(f) No provisional licenses shall be issued after December 31, 1999.

(g) Notwithstanding Subsection (f), the department may automatically issue a provisional license to a newly constructed facility if:

(1) the facility is in compliance with resident care standards;
(2) all local approvals have been obtained;
(3) a complete license application is submitted within 30 days of receipt of all local approvals; and
(4) the license fee has been paid.
(h) Notwithstanding Subsection (f), the department may automatically issue a provisional license in the case of a corporate change of ownership of a facility.

**LICENSE APPLICATION**

**Sec. 247.022.** (a) An applicant for an assisted living facility license must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the board.

(c) The department may provide technical assistance to an applicant by making brief inspections of the assisted living facility proposed to be licensed and making recommendations concerning actions necessary to meet standards for assisted living facilities.

**ISSUANCE AND RENEWAL OF LICENSE**

**Sec. 247.023.** (a) The department shall issue a license if, after inspection and investigation, it finds that the applicant, the assisted living facility, and all controlling persons with respect to the applicant or facility meet the requirements of this chapter and the standards adopted under this chapter. The license expires on the second anniversary date of its issuance. The executive commissioner of the Health and Human Services Commission by rule may adopt a system under which licenses expire on various dates during the two-year period. For the year in which a license expiration date is changed, the department shall prorate the license fee on a monthly basis. Each license holder shall pay only that portion of the license fee allocable to the number of months during which the license is valid. A license holder shall pay the total license renewal fee at the time of renewal.

(b) To renew a license, the license holder must submit to the department the license renewal fee.

(c) The board may require participation in a continuing education program as a condition of renewal of a license. The board shall adopt rules to implement this subsection.

**COMPLIANCE RECORD IN OTHER STATES**

**Sec. 247.0231.** The department may require an applicant or license holder to provide the department with information relating to compliance by the applicant, the license holder, or a controlling person with respect to the applicant or license holder with regulatory requirements in another state in which the applicant, license holder, or controlling person operates or operated an assisted living facility.

**FEES; DISPOSITION OF REVENUE**

**Sec. 247.024.** (a) The department shall set license fees imposed by this chapter:

1. on the basis of the number of beds in assisted living facilities required to pay the fee; and
2. in amounts reasonable and necessary to defray the cost of administering this chapter, but not to exceed $1,500.

(b) The board shall establish by rule a base fee schedule and a per bed fee schedule.

(c) All fees or penalties collected under this chapter shall be deposited in the state treasury to the credit of the general revenue fund and shall be appropriated to the department only to administer and enforce this chapter.

(d) Investigation fees or attorney's fees may not be assessed against or collected from an assisted living facility by or on behalf of the department or another state agency unless the department or other state agency assesses and collects a penalty authorized by this chapter from the facility.

(e) An applicant who submits a license renewal later than the 45th day before the expiration date of a current license is subject to a late fee in accordance with department rules.

**ADOPTION OF RULES**

**Sec. 247.025.** The board shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an assisted living facility.

**RESTRAINT AND SECLUSION**

**Sec. 247.0255.** A person providing services to a resident of an assisted living facility shall comply with Chapter 322 and the rules adopted under that chapter.

**STANDARDS**

**Sec. 247.026.** (a) The board by rule shall prescribe minimum standards to protect the health and safety of an assisted living facility resident.

(b) The standards must:
(1) clearly differentiate an assisted living facility from an institution required to be licensed under Chapter 242;
(2) ensure quality care and protection of the residents' health and safety without excessive cost;
(3) ensure that the daily nutritional and special dietary needs of each resident are met; and
(4) require an assisted living facility to:
   (A) use its license number or a state-issued facility identification number in all advertisements, solicitations, and promotional materials; and
   (B) provide each prospective resident or prospective resident's representative, as appropriate, with a consumer disclosure statement in a standard form adopted by the department.

(c) The board shall require an assisted living facility that provides brain injury rehabilitation services to include in the facility's consumer disclosure statement a specific statement that licensure as an assisted living facility does not indicate state review, approval, or endorsement of the facility's rehabilitation services.

(d) The board may prescribe different levels of minimum standards for assisted living facilities according to the number of residents, the type of residents, the level of personal care provided, the nutritional needs of residents, and other distinctions the board considers relevant. If the board does not prescribe minimum standards for facilities serving non-geriatric residents, it must develop procedures for consideration and approval of alternate methods of compliance by such facilities with the board's standards.

(e) Local health and safety standards adopted by the municipality in which an assisted living facility is located do not apply to the facility unless the standards specifically state that they apply to assisted living facilities.

(f) The board by rule shall prescribe minimum standards requiring appropriate training in geriatric care for each individual who provides services to geriatric residents as an employee of an assisted living facility and who holds a license or certificate issued by an agency of this state that authorizes the person to provide the services. The minimum standards may require that each licensed or certified individual complete an appropriate program of continuing education or in-service training, as determined by board rule, on a schedule determined by board rule.

(g) Any individual otherwise qualified, who has been employed by a licensed assisted living facility for at least 90 days, shall be eligible to be certified as a medication aide following completion of the required course of study and successful completion of any required examination.

(h) An individual may not serve as the manager of an assisted living facility that has 17 beds or more unless the individual:
   (1) has an associate's degree in nursing, health care management, or a related field from a public or private institution of higher education;
   (2) has a bachelor's degree from a public or private institution of higher education; or
   (3) has at least one year of experience working in management or in the health care industry.

(i) The board by rule shall require each manager of an assisted living facility that has 17 beds or more to complete at least one educational course on the management of assisted living facilities not later than the first anniversary of the date the manager begins employment in that capacity.

**EARLY COMPLIANCE REVIEW**

**Sec. 247.0261.** (a) The department by rule shall adopt a procedure under which a person proposing to construct or modify an assisted living facility may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the department shall set reasonable deadlines by which the department must complete review of submitted plans.

(b) The department shall, within 30 days, review plans submitted under this section for compliance with the department's architectural requirements and inform the person of the results of the review. If the plans comply with the department's architectural requirements, the department may not subsequently change the architectural requirements applicable to the project unless:
   (1) the change is required by federal law; or
   (2) the person fails to complete the project within a reasonable time.

(c) The department may charge a reasonable fee for conducting a review under this section.

(d) A fee collected under this section shall be deposited in the general revenue fund to the credit of the assisted living account and shall be appropriated only to the department to conduct reviews under this section.

(e) The review procedure provided by this section does not include review of building plans for compliance with the Texas Accessibility Standards as administered and enforced by the Texas Department of Licensing and Regulation.
INSPECTIONS

Sec. 247.027. (a) In addition to the inspection required under Section 247.023(a), the department may inspect an assisted living facility annually and may inspect a facility at other reasonable times as necessary to assure compliance with this chapter.

(b) The department shall establish an inspection checklist based on the minimum standards that describes the matters subject to inspection. The department shall use the inspection checklist in conducting inspections under this section and Section 247.023(a).

INSPECTION EXIT CONFERENCE

Sec. 247.0271. (a) At the conclusion of an inspection under Section 247.023(a) or Section 247.027, the inspector shall perform an exit conference to advise the assisted living facility of the findings resulting from the inspection.

(b) At the exit conference, the inspector shall provide a copy of the inspection checklist to the assisted living facility and list each violation discovered during the inspection, with specific reference to the standard violated.

(c) If, after the initial exit conference, additional violations are cited, the inspector shall conduct an additional exit conference regarding the newly identified violations. An additional exit conference must be held in person and may not be held by telephone, e-mail, or facsimile transmission.

(d) The assisted living facility shall submit a plan of correction to the regional director with supervisory authority over the inspector not later than the 10th working day after the date the facility receives the final official statement of violations.

INSPECTOR TRAINING; REQUIRED EXAMINATION

Sec. 247.0272. (a) The department shall develop and implement a training program to provide specialized training to department employees who inspect assisted living facilities under this chapter. The training must emphasize the distinction between an assisted living facility and an institution licensed under Chapter 242.

(b) In developing and updating the training program required by this section, the department shall consult with operators of assisted living facilities and consumers of personal care services provided by assisted living facilities or legal representatives of those consumers.

(c) The department shall examine department employees who inspect or otherwise survey assisted living facilities under this chapter. In developing the examination, the department shall consult with operators of assisted living facilities or their representatives and with consumers of personal care services provided by assisted living facilities or representatives of consumers.

(d) A department employee may not independently inspect, survey, or take administrative action against an assisted living facility unless the employee has passed the examination administered under Subsection (c).

ASSISTANCE BY DEPARTMENT

Sec. 247.028. The department may provide assistance to an assisted living facility, including the provision of training materials, the coordination of training conferences and workshops with other state agencies, and the development of a provider's handbook explaining assisted living facility rules.

FACILITIES FOR PERSONS WITH ALZHEIMER'S DISEASE

Sec. 247.029. (a) The board by rule shall establish a classification and license for a facility that advertises, markets, or otherwise promotes that the facility provides personal care services to residents who have Alzheimer's disease or related disorders. A facility is not required to be classified under this section to provide care or treatment to residents who have Alzheimer's disease or related disorders.

(b) The board shall adopt minimum standards for an assisted living facility classified under this section.

(c) An individual may not serve as the manager of an assisted living facility classified under this section or as the supervisor of an assisted living facility unit classified under this section unless the individual is at least 21 years of age and has:

(1) an associate's degree from a public or private institution of higher education in nursing, health care management, or a related field;

(2) a bachelor's degree from a public or private institution of higher education in psychology, gerontology, nursing, or a related field; or

(3) at least one year of experience working with persons with dementia.
FACILITIES FOR SUPERVISION OF MEDICATION AND GENERAL WELFARE

Sec. 247.030. (a) The board by rule shall establish a classification and license for a facility that:

(1) provides only medication supervision, in accordance with Section 247.002(5)(B), and general supervision of residents' welfare, in accordance with Section 247.002(5)(C); and

(2) does not provide substantial assistance with the activities of daily living, as described by Section 247.002(5)(A).

(b) The board shall adopt minimum standards for an assisted living facility classified under this section, including standards imposing adequate requirements relating to medication supervision. The board shall modify accessibility and life safety code standards generally applicable to a facility licensed under this chapter as necessary for a facility classified under this section to reflect the level of services provided by the facility. The modified standards must be specifically defined by the board and must provide for two-story buildings. Two-story buildings must meet all life safety code requirements in regards to protecting vertical openings, as specified in the 1988 edition of the National Fire Protection Association (NFPA) 101, Section 21-2.3.1.

(c) Except as provided by this section, an assisted living facility classified under this section is required to comply with all requirements imposed by this chapter.

MUNICIPAL ENFORCEMENT

Sec. 247.031. The governing body of a municipality by ordinance may:

(1) prohibit a person who does not hold a license issued under this chapter from establishing or operating an assisted living facility within the municipality; and

(2) establish a procedure for emergency closure of a facility in circumstances in which:

(A) the facility is established or operating in violation of Section 247.021; and

(B) the continued operation of the facility creates an immediate threat to the health and safety of a resident of the facility.

ACCREDITATION SURVEY TO SATISFY INSPECTION REQUIREMENTS


(a) In this section, "accreditation commission" means the Commission on Accreditation of Rehabilitation Facilities or the Joint Commission on Accreditation of Healthcare Organizations.

(b) The department shall accept an accreditation survey from an accreditation commission for an assisted living facility instead of an inspection under Section 247.023 or an annual inspection or survey conducted under the authority of Section 247.027, but only if:

(1) the accreditation commission's standards meet or exceed the requirements for licensing of the executive commissioner of the Health and Human Services Commission for an assisted living facility;

(2) the accreditation commission maintains an inspection or survey program that, for each assisted living facility, meets the department's applicable minimum standards as confirmed by the executive commissioner of the Health and Human Services Commission;

(3) the accreditation commission conducts an on-site inspection or survey of the facility at least as often as required by Section 247.023 or 247.027 and in accordance with the department's minimum standards;

(4) the assisted living facility submits to the department a copy of its required accreditation reports to the accreditation commission in addition to the application, the fee, and any report required for renewal of a license;

(5) the inspection or survey results are available for public inspection to the same extent that the results of an investigation or survey conducted under Section 247.023 or 247.027 are available for public inspection; and

(6) the department ensures that the accreditation commission has taken reasonable precautions to protect the confidentiality of personally identifiable information concerning the residents of the assisted living facility.

(c) The department shall coordinate its licensing activities with each of the accreditation commissions.

(d) Except as specifically provided by this section, this section does not limit the department in performing any power or duty under this chapter or inspection authorized by Section 247.027, including taking appropriate action relating to an assisted living facility, such as suspending or revoking a license, investigating an allegation of abuse, exploitation, or neglect or another complaint, assessing an administrative penalty, or closing the facility.

(e) This section does not require an assisted living facility to obtain accreditation from an accreditation commission.
FEASIBILITY OF REGISTERING SMALL FACILITIES

Sec. 247.032.  Text of section as added by Acts 2005, 79th Leg., ch. 1206, Sec. 1
Text of section effective until January 1, 2007

(a) The commissioner of aging and disability services shall appoint a work group to study the feasibility of requiring facilities that furnish food, shelter, and personal care services to three or fewer people who are unrelated to the proprietor of the facility to register with the department and the best method to identify those facilities. The work group must include:

(1) representatives of the department;
(2) a representative from the Department of Family and Protective Services;
(3) a representative of a licensed assisted living facility;
(4) a resident of an assisted living facility;
(5) an advocate for persons with disabilities;
(6) an advocate for the elderly;
(7) representatives of provider associations representing assisted living facilities; and
(8) representatives of local governmental entities, with at least one representative from a rural area of the state and one representative from an urban area of the state.

(b) A member of the work group serving under Subsection (a)(1) or (2) is not entitled to additional compensation for serving on the work group. Another member of the work group is not entitled to compensation for serving on the work group.

(c) Not later than January 1, 2007, the work group shall submit its findings to the lieutenant governor, the speaker of the house of representatives, and the presiding officers of the standing committees of each house with jurisdiction over assisted living facilities.

(d) This section expires January 1, 2007.


SUBCHAPTER C. GENERAL ENFORCEMENT

DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

Sec. 247.041.  (a) The department, after providing notice and opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a license if the department finds that the applicant, license holder, or a controlling person has:

(1) violated this chapter or a rule, standard, or order adopted or license issued under this chapter in either a repeated or substantial manner; or
(2) committed any act described by Sections 247.0451(a)(2)-(6).

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

(c) The status of a person as an applicant for a license or as a license holder is preserved until final disposition of the contested matter, except as the court having jurisdiction of a judicial review of the matter may order in the public interest for the welfare and safety of the residents.

(d) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving the denial, suspension, or revocation of a license under this section or the conduct with respect to which the denial, suspension, or revocation of the license is sought.

EMERGENCY SUSPENSION OR CLOSING ORDER

Sec. 247.042.  (a) If the department finds an assisted living facility operating in violation of the standards prescribed by this chapter and the violations create an immediate threat to the health and safety of a resident in the facility, the department may suspend the license or order immediate closing of all or part of the facility.

(b) The order suspending a license under Subsection (a) is effective immediately on written notice to the license holder or on the date specified in the order.

(c) The order suspending the license and ordering closure of all or part of an assisted living facility is valid for 10 days after its effective date.
(d) The department shall provide for the relocation of residents of an assisted living facility that is closed. The relocation may not be to a facility with a more restrictive environment unless all other reasonable alternatives are exhausted. Relocation procedures shall be adopted as part of the memorandum of understanding adopted under Section 247.061.

(e) The department and the State Office of Administrative Hearings shall expedite any hearing or decision involving an emergency suspension or closing order issued under this section.

INVESTIGATION OF ABUSE, EXPLOITATION, OR NEGLECT

Sec. 247.043. (a) The department shall conduct a preliminary investigation of each allegation of abuse, exploitation, or neglect of a resident of an assisted living facility to determine if there is evidence to corroborate the allegation. If the department determines that there is evidence to corroborate the allegation, the department shall conduct a thorough investigation of the allegation.

(b) If the thorough investigation reveals that abuse, exploitation, or neglect has occurred, the department shall:

1. implement enforcement measures, including closing the facility, revoking the facility's license, relocating residents, and making referrals to law enforcement agencies;
2. notify the Department of Protective and Regulatory Services of the results of the investigation;
3. notify a health and human services agency, as defined by Section 531.001, Government Code, that contracts with the facility for the delivery of personal care services of the results of the investigation; and
4. provide to a contracting health and human services agency access to the department's documents or records relating to the investigation.

(c) Providing access to a confidential document or record under Subsection (b)(4) does not constitute a waiver of confidentiality.

INJUNCTION

Sec. 247.044. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that:

1. the violation creates an immediate threat to the health and safety of the assisted living facility residents; or
2. the facility is operating without a license.

(b) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter, may by injunction:

1. prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;
2. restrain the establishment or operation of an assisted living facility without a license issued under this chapter; or
3. grant any other injunctive relief warranted by the facts.

(c) The department may petition a district court for a temporary restraining order to inspect a facility allegedly required to be licensed and operating without a license when admission to the facility cannot be obtained. If it is shown that admission to the facility cannot be obtained, the court shall order the facility to allow the department admission to the facility.

(d) The attorney general or local prosecuting attorney may institute and conduct a suit authorized by this section at the request of the department.

(e) Venue for a suit brought under this section is in the county in which the assisted living facility is located or in Travis County.

CIVIL PENALTIES

Sec. 247.045. (a) Except as provided by Subsections (b) and (c), a person who violates this chapter or who fails to comply with a rule adopted under this chapter and whose violation is determined by the department to threaten the health and safety of a resident of an assisted living facility is subject to a civil penalty of not less than $100 nor more than $10,000 for each act of violation. Each day of a continuing violation constitutes a separate ground of recovery.

(b) A person is subject to a civil penalty if the person:

1. is in violation of Section 247.021; or
(2) has been determined to be in violation of Section 247.021 and violates any other provision of this chapter or fails to comply with a rule adopted under this chapter.

(c) The amount of a civil penalty under Subsection (b) may not be less than $1,000 or more than $10,000 for each act of violation. Each day of a continuing violation constitutes a separate ground of recovery.

(d) The attorney general may institute and conduct a suit to collect a penalty and fees under this section at the request of the department. If the attorney general fails to notify the department within 30 days of referral from the department that the attorney general will accept the case, the department shall refer the case to the local district attorney, county attorney, or city attorney. The district attorney, county attorney, or city attorney shall file suit in a district court to collect and retain the penalty.

(e) Investigation and attorney's fees may not be assessed or collected by or on behalf of the department or other state agency unless a penalty described under this chapter is assessed.

(f) The department and attorney general, or other legal representative as described in Subsection (d), shall work in close cooperation throughout any legal proceedings requested by the department.

(g) The commissioner of human services must approve any settlement agreement to a suit brought under this chapter.

(h) If a person who is liable under this section fails to pay any amount the person is obligated to pay under this section, the state may seek satisfaction from any owner, other controlling person, or affiliate of the person found liable. The owner, other controlling person, or affiliate may be found liable in the same suit or in another suit on a showing by the state that the amount to be paid has not been paid or otherwise legally discharged. The department by rule may establish a method for satisfying an obligation imposed under this section from an insurance policy, letter of credit, or other contingency fund.

(i) In this section, “affiliate” means:

1. with respect to a partnership other than a limited partnership, each partner of the partnership;
2. with respect to a corporation:
   A. an officer;
   B. a director;
   C. a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and
   D. a controlling individual
3. with respect to an individual:
   A. each partnership and each partner in the partnership in which the individual or any other affiliate of the individual is a partner; and
   B. each corporation or other business entity in which the individual or another affiliate of the individual is:
      i. an officer;
      ii. a director;
      iii. a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and
      iv. a controlling individual;
4. with respect to a limited partnership:
   A. a general partner; and
   B. a limited partner who is a controlling individual;
5. with respect to a limited liability company:
   A. an owner who is a manager as described by the Texas Limited Liability Company Act (Article 1528n, Vernon’s Texas Civil Statutes); and
   B. each owner who is a controlling individual; and
6. with respect to any other business entity, a controlling individual.

**ADMINISTRATIVE PENALTY**

Sec. 247.0451. (a) The department may assess an administrative penalty against a person who:
1. violates this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter;
2. makes a false statement, that the person knows or should know is false, of a material fact:
(A) on an application for issuance or renewal of a license or in an attachment to the application; or
(B) with respect to a matter under investigation by the department;
(3) refuses to allow a representative of the department to inspect:
   (A) a book, record, or file required to be maintained by an assisted living facility; or
   (B) any portion of the premises of an assisted living facility;
(4) willfully interferes with the work of a representative of the department or the enforcement of this chapter;
(5) willfully interferes with a representative of the department preserving evidence of a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter;
(6) fails to pay a penalty assessed under this chapter not later than the 30th day after the date the assessment of the penalty becomes final;
(7) fails to notify the department of a change of ownership before the effective date of the change of ownership.

(b) Except as provided by Section 247.0452(c), the penalty may not exceed $1,000 for each violation.
(c) The board shall establish gradations of penalties in accordance with the relative seriousness of the violation.
(d) In determining the amount of a penalty, the department shall consider any matter that justice may require, but must consider each of the following and make a record of the extent to which each of the following was considered:
   (1) the gradations of penalties established under Subsection (c);
   (2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created by the act to the health or safety of the public;
   (3) the history of previous violations;
   (4) deterrence of future violations;
   (5) efforts to correct the violation; and
   (6) the size of the facility and of the business entity that owns the facility.
(e) A penalty assessed under Subsection (a)(6) is in addition to the penalty previously assessed and not timely paid.
(f) The department may not assess a penalty under this section against a resident of an assisted living facility unless the resident is also an employee of the facility or a controlling person.

RIGHT TO CORRECT

Sec. 247.0452. (a) The department may not collect an administrative penalty from an assisted living facility under Section 247.0451 if, not later than the 45th day after the date the facility receives notice under Section 247.0453(c), the facility corrects the violation.
(b) Subsection (a) does not apply:
   (1) to a violation that the department determines results in serious harm to or death of a resident;
   (2) to a violation described by Sections 247.0451(a)(2)-(7) ;
   (3) to a second or subsequent violation of:
      (A) a right of the same resident under Section 247.064; or
      (B) the same right of all residents under Section 247.064; or
   (4) to a violation described by Section 247.066, which contains its own right to correct provisions.
(c) An assisted living facility that corrects a violation must maintain the correction. If the facility fails to maintain the correction until at least the first anniversary of the date the correction was made, the department may assess and collect an administrative penalty for the subsequent violation. An administrative penalty assessed under this subsection is equal to three times the amount of the original penalty assessed but not collected. The department is not required to provide the facility with an opportunity under this section to correct the subsequent violation.

REPORT RECOMMENDING ADMINISTRATIVE PENALTY

Sec. 247.0453. (a) The department shall issue a preliminary report stating the facts on which the department concludes that a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter has occurred if the department has:
   (1) examined the possible violation and facts surrounding the possible violation; and
   (2) concluded that a violation has occurred.
(b) The report may recommend a penalty under Section 247.0451 and the amount of the penalty.

(c) The department shall give written notice of the report to the person charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

(1) a brief summary of the charges;
(2) a statement of the amount of penalty recommended;
(3) a statement of whether the violation is subject to correction under Section 247.0452 and, if the violation is subject to correction under that section, a statement of:
   (A) the date on which the assisted living facility must file with the department a plan of correction to be approved by the department; and
   (B) the date on which the plan of correction must be completed to avoid assessment of the penalty; and
(4) a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(d) Not later than the 20th day after the date on which the notice under Subsection (c) is received, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; or
(2) make a written request for a hearing.

(e) If the violation is subject to correction under Section 247.0452, the assisted living facility shall submit a plan of correction to the department for approval not later than the 10th day after the date on which the notice under Subsection (c) is received.

(f) If the violation is subject to correction under Section 247.0452, and the person reports to the department that the violation has been corrected, the department shall inspect the correction or take any other step necessary to confirm the correction and shall notify the person that:

(1) the correction is satisfactory and a penalty will not be assessed; or
(2) the correction is not satisfactory and a penalty is recommended.

(g) Not later than the 20th day after the date on which a notice under Subsection (f)(2) is received, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; or
(2) make a written request for a hearing.

(h) If the person charged with the violation consents to the penalty recommended by the department or does not timely respond to a notice sent under Subsection (c) or (f)(2), the commissioner or the commissioner's designee shall assess the penalty recommended by the department.

(i) If the commissioner or the commissioner's designee assesses the recommended penalty, the department shall give written notice to the person charged of the decision and the person shall pay the penalty.

HEARING ON ADMINISTRATIVE PENALTY

Sec. 247.0454. (a) An administrative law judge shall order a hearing and give notice of the hearing if a person charged with a violation under Section 247.0451 timely requests a hearing.

(b) The hearing shall be held before an administrative law judge.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner or the commissioner's designee a written decision regarding the occurrence of a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter and a recommendation regarding the amount of the proposed penalty if a penalty is warranted.

(d) Based on the findings of fact and conclusions of law and the recommendation of the administrative law judge, the commissioner or the commissioner's designee by order may:

(1) find that a violation has occurred and assess an administrative penalty; or
(2) find that a violation has not occurred.

(e) If the commissioner or the commissioner's designee finds that a violation has not occurred, the commissioner or the commissioner's designee shall order that all records reflecting that the department found a violation had occurred and attempted to impose an administrative penalty shall be expunged except:

(1) records obtained by the department during its investigation; and
(2) the administrative law judge's findings of fact.

(f) Proceedings under this section are subject to Chapter 2001, Government Code.
NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND

Sec. 247.0455. (a) The commissioner or the commissioner's designee shall give notice of the findings made under Section 247.0454(d) to the person charged. If the commissioner or the commissioner's designee finds that a violation has occurred, the commissioner or the commissioner's designee shall give to the person charged written notice of:

(1) the findings;
(2) the amount of the administrative penalty;
(3) the rate of interest payable with respect to the penalty and the date on which interest begins to accrue;
(4) whether action under Section 247.0457 is required in lieu of payment of all or part of the penalty; and
(5) the person's right to judicial review of the order of the commissioner or the commissioner's designee.

(b) Not later than the 30th day after the date on which the order of the commissioner or the commissioner's designee is final, the person charged with the penalty shall:

(1) pay the full amount of the penalty; or
(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, the department's dissatisfaction with efforts to correct the violation, or any combination of these issues.

(c) Notwithstanding Subsection (b), the department may permit the person to pay a penalty in installments or may require the person to use all or part of the amount of the penalty in accordance with Section 247.0457.

(d) If the person does not pay the penalty within the period provided by Subsection (b) or in accordance with Subsection (c), if applicable:

(1) pay the full amount of the penalty; or
(2) execute a release of the supersedeas bond if one has been posted.

(e) Interest under Subsection (d)(1) accrues:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and
(2) for the period beginning on the date the penalty becomes due and ending on the date the penalty is paid.

(f) If the amount of the penalty is reduced or the assessment of a penalty is not upheld on judicial review, the commissioner shall:

(1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or
(2) execute a release of the supersedeas bond if one has been posted.

(g) Accrued interest on amounts remitted by the commissioner under Subsection (f)(1) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and
(2) for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted to the person charged.

APPLICATION OF OTHER LAW

Sec. 247.0456. The department may not assess a monetary penalty under this chapter and a monetary penalty under Chapter 32, Human Resources Code, for the same act or failure to act.

AMELIORATION OF VIOLATION

Sec. 247.0457. (a) In lieu of demanding payment of an administrative penalty assessed under Section 247.0451, the commissioner in accordance with this section may allow the person to use, under the supervision of the department, any portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the assisted living facility affected by the violation.

(b) The department shall offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of a resident of the assisted living facility.

(c) The department shall offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of the recommended assessment of an
administrative penalty that is sent to the person after an informal dispute resolution process but before an
administrative hearing under Section 247.0454.

(d) A person to whom amelioration has been offered must file a plan for amelioration not later than the
45th day after the date the person receives the offer of amelioration from the department. In submitting the plan, the
person must agree to waive the person's right to an administrative hearing under Section 247.0454 if the department
approves the plan.

(e) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the assisted living facility that will
improve services to or quality of care of residents of the assisted living facility;
(2) identify, through measurable outcomes, the ways in which and the extent to which the
proposed changes will improve services to or quality of care of residents of the assisted living facility;
(3) establish clear goals to be achieved through the proposed changes;
(4) establish a time line for implementing the proposed changes; and
(5) identify specific actions necessary to implement the proposed changes.

(f) A plan for amelioration may include proposed changes to:

(1) improve staff recruitment and retention;
(2) offer or improve dental services for residents; and
(3) improve the overall quality of life for residents.

(g) The department may require that an amelioration plan propose changes that would result in conditions
that exceed the requirements of this chapter or the rules adopted under this chapter.

(h) The department shall approve or deny an amelioration plan not later than the 45th day after the date the
department receives the plan. On approval of a person's plan, the department shall deny a pending request for a
hearing submitted by the person under Section 247.0453.

(i) The department may not offer amelioration to a person:

(1) more than three times in a two-year period; or
(2) more than one time in a two-year period for the same or similar violation.

USE OF ADMINISTRATIVE PENALTY

Sec. 247.0458. Money from an administrative penalty collected under this subchapter may be appropriated
for the purpose of funding the grant program established under Section 161.074, Human Resources Code.

VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES

Sec. 247.0459. (a) The department shall assess an administrative penalty against an assisted living facility
that violates Section 166.004.

(b) A penalty assessed under this section shall be $500.

(c) The penalty shall be assessed in accordance with department rules. The rules must provide for notice
and an opportunity for a hearing.

COOPERATION AMONG AGENCIES

Sec. 247.046. The board, the Department of Protective and Regulatory Services, and the attorney general
shall adopt by rule a memorandum of understanding that:

(1) defines each agency's responsibilities concerning assisted living facilities and coordinates each
agency's activities;
(2) details coordinated procedures to be used by each agency in responding to complaints relating
to neglect or abuse of residents of facilities, to substandard facilities, and to unlicensed facilities;
(3) identifies enforcement needs each agency may have in order to perform its duties under the
memorandum of understanding, including any need for access to information or to facilities under investigation or
operating under a plan of correction; and
(4) provides a plan for correcting violations in substandard or unlicensed assisted living facilities
that specifies the conditions under which it is appropriate to impose such a plan and that outlines a schedule of
implementation for the plan.

TRANSITION

Sec. 247.047. The department shall grant to a personal care facility licensed on or before December 31,
1990, under Chapter 242 a temporary permit to continue operation until the department performs any inspection or
investigation required by this chapter.
REGIONAL TRAINING FOR AGENCIES AND LOCAL GOVERNMENTS

Sec. 247.048. The department periodically shall conduct regional training programs for representatives of local governments and appropriate state agencies relating to assisted living facility concerns. The training programs must provide to participants information relating to the assisted living facility industry, including information on:

1. the general characteristics of assisted living facilities and residents of those facilities;
2. the different types of assisted living facilities;
3. the laws applicable to assisted living facilities; and
4. the authority of the department and other entities to enforce applicable laws.

USE OF REGULATORY REPORTS AND DOCUMENTS

Sec. 247.049. (a) Except as otherwise provided by this section, a report or other document prepared by the department that relates to regulation of an assisted living facility is not admissible as evidence in a civil action to prove that the facility violated a standard prescribed under this chapter.

(b) Subsection (a) does not:

1. bar the admission into evidence of department reports or other documents in an enforcement action in which the state or an agency or political subdivision of the state is a party, including:
   A. an action seeking injunctive relief under Section 247.044;
   B. an action seeking imposition of a civil penalty under Section 247.045;
   C. a contested case hearing involving denial, suspension, or revocation of a license issued under this chapter; and
   D. an action seeking imposition of an administrative penalty under this subchapter;
2. bar the admission into evidence of department reports or other documents that are offered:
   A. to establish warning or notice to an assisted living facility of a relevant department determination; or
   B. under any rule or evidentiary predicate of the Texas Rules of Evidence;
3. prohibit or limit the testimony of a department employee, in accordance with the Texas Rules of Evidence, as to observations, factual findings, conclusions, or determinations that an assisted living facility violated a standard prescribed under this chapter if the observations, factual findings, conclusions, or determinations were made in the discharge of the employee's official duties for the department; or
4. prohibit or limit the use of department reports or other documents in depositions or other forms of discovery conducted in connection with a civil action if use of the reports or other documents appears reasonably calculated to lead to the discovery of admissible evidence.

MONITORING OF UNLICENSED FACILITIES: REPORTING

Sec. 247.050. (a) The board shall adopt procedures to monitor the status of unlicensed assisted living facilities. As part of these procedures, the department shall:

1. maintain a registry of all reported unlicensed assisted living facilities for the purpose of periodic follow-up by the field staff in each region; and
2. prepare a quarterly report that shows the number of:
   A. complaints relating to unlicensed assisted living facilities that are received;
   B. complaints that are investigated;
   C. unsubstantiated complaints;
   D. substantiated complaints; and
   E. cases referred to the attorney general.

(b) The attorney general shall prepare a quarterly report that shows:

1. the number of:
   A. unlicensed assisted living facilities referred to the attorney general;
   B. referrals pending;
   C. referrals investigated;
   D. facilities closed; and
   E. operators permanently enjoined from operating an unlicensed assisted living facility; and
2. the amount of civil penalties collected from operators of unlicensed assisted living facilities.
(c) The department and the attorney general shall file a copy of the quarterly reports required by this section with the substantive committees of each house of the legislature with jurisdiction over regulation of assisted living facilities.

(d) The department shall permanently retain at least one copy or one electronic source of information pertaining to complaints and investigations of unlicensed assisted living facilities used to maintain a registry as required under Subsection (a)(1) and used to prepare a report under Subsection (a)(2).

INFORMAL DISPUTE RESOLUTION

Sec. 247.051. (a) The Health and Human Services Commission by rule shall establish an informal dispute resolution process in accordance with this section. The process must provide for adjudication by an appropriate disinterested person of disputes relating to a proposed enforcement action or related proceeding under this chapter. The informal dispute resolution process must require:

(1) the assisted living facility to request informal dispute resolution not later than the 10th day after the date of notification by the department of the violation of a standard or standards;

(2) the Health and Human Services Commission to complete the process not later than the 30th day after the date of receipt of a request from the assisted living facility for informal dispute resolution; and

(3) any individual representing an assisted living facility in an informal dispute resolution process to register with the Health and Human Services Commission and disclose the following:

(A) the individual's employment history during the preceding five years, including employment in regulatory agencies of this state and other states;

(B) ownership, including the identity of the controlling person or persons, of the assisted living facility the individual is representing before the Health and Human Services Commission; and

(C) the identity of other entities the individual represents or has represented before the Health and Human Services Commission during the preceding 24 months.

(b) The Health and Human Services Commission shall adopt rules to adjudicate claims in contested cases.

(c) The Health and Human Services Commission may not delegate its responsibility to administer the informal dispute resolution process established by this section to another state agency.

SUBCHAPTER D. MISCELLANEOUS PROVISIONS

COORDINATION BETWEEN AGENCIES

Sec. 247.061. (a) The department and the attorney general shall adopt by rule a memorandum of understanding that:

(1) defines each agency's responsibilities concerning assisted living facilities;

(2) outlines and coordinates procedures to be used by those agencies in responding to complaints concerning assisted living facilities; and

(3) provides a plan for correcting violations or deficiencies in assisted living facilities.

(b) The department shall prepare the initial draft of the memorandum of understanding and shall facilitate and ensure its adoption.

DIRECTORY OF ASSISTED LIVING FACILITIES; CONSUMERS' GUIDE

Sec. 247.062. (a) The department shall prepare a directory of assisted living facilities that includes the name of the owner, the address and telephone number of the facility, the number of beds in the facility, and the facility's accessibility to disabled persons.

(b) The department shall revise the directory annually and shall make it available to the public.

(c) The department shall prepare a consumers' guide to assisted living facilities and make it available to the public. The consumers' guide shall provide information on licensing requirements for assisted living facilities, a brief description of minimum standards for facilities, a copy of the residents' bill of rights, a copy of the providers' bill of rights, and any other information that the department determines may be useful to the public.

REFERRALS

Sec. 247.063. (a) If the Texas Department of Mental Health and Mental Retardation or a local mental health or mental retardation authority refers a patient or client to an assisted living facility, the referral may not be made to a facility that is not licensed under this chapter.
(b) If the Texas Department of Mental Health and Mental Retardation or a local mental health or mental retardation authority gains knowledge of an assisted living facility that is not operated or licensed by the Texas Department of Mental Health and Mental Retardation, the authority, or the Texas Department of Human Services and that has four or more residents who are unrelated to the proprietor of the facility, the Texas Department of Mental Health and Mental Retardation or the authority shall report the name, address, and telephone number of the facility to the Texas Department of Human Services.

ACCESS

Sec. 247.0631. An employee of the Texas Department of Mental Health and Mental Retardation or an employee of a local mental health and mental retardation authority may enter an assisted living facility as necessary to provide services to a resident of the facility.

RESIDENTS' BILL OF RIGHTS

Sec. 247.064. (a) Each assisted living facility shall post a residents' bill of rights in a prominent place in the facility.

(b) The residents' bill of rights must provide that each resident in the assisted living facility has the right to:

1. manage the resident's financial affairs;
2. determine the resident's dress, hair style, or other personal effects according to individual preference, except that the resident has the responsibility to maintain personal hygiene;
3. retain and use personal property in the resident's immediate living quarters and to have an individual locked cabinet in which to keep personal property;
4. receive and send unopened mail;
5. unaccompanied access to a telephone at a reasonable hour or in case of an emergency or personal crisis;
6. privacy;
7. unrestricted communication, including personal visitation with any person of the resident's choice, at any reasonable hour, including family members and representatives of advocacy groups and community service organizations;
8. make contacts with the community and to achieve the highest level of independence, autonomy, and interaction with the community of which the resident is capable;
9. present grievances on behalf of the resident or others to the operator, state agencies, or other persons without threat of reprisal in any manner;
10. a safe and decent living environment and considerate and respectful care that recognizes the dignity and individuality of the resident;
11. refuse to perform services for the facility, except as contracted for by the resident and operator;
12. practice the religion of the resident's choice;
13. leave the facility temporarily or permanently, subject to contractual or financial obligations; and
14. not be deprived of any constitutional, civil, or legal right solely by reason of residence in an assisted living facility.

(c) The residents' bill of rights must be written in the primary language of each resident of the facility and must also provide the toll-free telephone number of the department for reporting abuse or neglect.

(d) The rights provided under this section do not take precedence over health and safety rights of other residents of the facility.

(e) The department shall develop a residents' bill of rights in accordance with this section and provide a copy to each facility. The copy shall be written in the primary language of each resident of the facility.

PROVIDERS' BILL OF RIGHTS

Sec. 247.065. (a) Each assisted living facility shall post a providers' bill of rights in a prominent place in the facility.

(b) The providers' bill of rights must provide that a provider of personal care services has the right to:

1. be shown consideration and respect that recognizes the dignity and individuality of the provider and assisted living facility;
2. terminate a resident's contract for just cause after a written 30-day notice;
(3) terminate a contract immediately, after notice to the department, if the provider finds that a resident creates a serious or immediate threat to the health, safety, or welfare of other residents of the assisted living facility;

(4) present grievances, file complaints, or provide information to state agencies or other persons without threat of reprisal or retaliation;

(5) refuse to perform services for the resident or the resident's family other than those contracted for by the resident and the provider;

(6) contract with the community to achieve the highest level of independence, autonomy, interaction, and services to residents;

(7) access to patient information concerning a client referred to the facility, which must remain confidential as provided by law;

(8) refuse a person referred to the facility if the referral is inappropriate;

(9) maintain an environment free of weapons and drugs; and

(10) be made aware of a resident's problems, including self-abuse, violent behavior, alcoholism, or drug abuse.

APPROPRIATE PLACEMENT DETERMINATION

Sec. 247.066. (a) The department may not require the removal and relocation of a resident of an assisted living facility if the resident's presence in the facility does not endanger other residents and the resident can receive adequate care at the facility through services:

(1) provided by the facility in accordance with its license; or

(2) obtained by the resident from other providers.

(b) In assessing whether a resident can receive adequate care at a facility, the department shall consider all relevant factors, including the placement preference expressed by the resident with the agreement of the facility operator, the resident's physician, and the resident's family members or other representatives.

(c) If a department inspector determines that a resident is inappropriately placed at a facility, the facility is not required to move the resident if, not later than the 10th business day after the date that the facility is informed of the specific basis of the inspector's determination, the facility:

(1) obtains a written assessment from a physician that the resident is appropriately placed;

(2) obtains a written statement:

(A) from the resident that the resident wishes to remain in the facility; or

(B) from a family member of the resident that the family member wishes for the resident to remain in the facility, if the resident lacks capacity to give a statement under this subsection;

(3) states in writing that the facility wishes for the resident to remain in the facility; and

(4) applies for and obtains a waiver from the department of all applicable requirements for evacuation that the facility does not meet with respect to the resident, if the facility does not meet all requirements for the evacuation of residents with respect to the resident.

(d) If a department inspector determines that a resident is inappropriately placed at a facility and the facility either agrees with the determination or does not obtain the written statements prescribed by Subsection (c) that would allow the resident to remain in the facility notwithstanding the determination of the inspector, the department may not assess an administrative penalty against the facility because of the inappropriate placement. However, the facility shall discharge the resident. The resident is allowed 30 days after the date of discharge to move from the facility. A discharge required under this subsection must be made notwithstanding:

(1) any other law, including any law relating to the rights of residents and any obligations imposed under the Property Code; and

(2) the terms of any contract.

(e) To facilitate obtaining the written statements required under Subsections (c)(1)-(3), the department shall develop standard forms that must be used under Subsections (c)(1)-(3). The department shall develop criteria under which the department will determine, based on a resident's specific situation, whether it will grant or deny a request for a waiver under Subsection (c)(4).

HEALTH CARE PROFESSIONALS

Sec. 247.067. (a) In this section, "health care professional" means an individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term includes a physician, registered nurse, licensed vocational nurse, licensed dietitian, physical therapist, and occupational therapist.
(b) A health care professional may provide services within the professional's scope of practice to a resident of an assisted living facility at the facility. This subsection does not authorize a facility to provide ongoing services comparable to the services available in an institution licensed under Chapter 242. A health care professional providing services under this subsection shall maintain medical records of those services in accordance with the licensing, certification, or other regulatory standards applicable to the health care professional under law.

(c) A resident of an assisted living facility has the right to contract with a home and community support services agency licensed under Chapter 142 or with an independent health professional for health care services.

**RETAIATION PROHIBITED**

Sec. 247.068. (a) A person licensed under this chapter may not retaliate against a person for filing a complaint, presenting a grievance, or providing in good faith information relating to personal care services provided by the license holder.

(b) This section does not prohibit a license holder from terminating an employee for a reason other than retaliation.

**CONSUMER CHOICE FOR ASSISTED LIVING IN COMMUNITY CARE PROGRAMS**

Sec. 247.069. The community based alternatives program and the residential care programs, which provide an assisted living option to consumers, shall provide a consumer the opportunity to choose an assisted living facility that meets the department's licensing standards relating to facility construction without regard to the number of units in the facility, if

1. consumers are advised of all other community care options; and
2. the facility:
   (A) has never been licensed by the department as anything other than as assisted living facility;
   (B) is not physically connected to a skilled nursing facility;
   (C) was constructed before September 1, 2005; and
   (D) otherwise meets all other community care program standards.
CHAPTER 250. NURSE AIDE REGISTRY AND CRIMINAL HISTORY CHECKS OF EMPLOYEES AND APPLICANTS FOR EMPLOYMENT IN CERTAIN FACILITIES SERVING THE ELDERLY OR PERSONS WITH DISABILITIES

DEFINITIONS

Sec. 250.001. In this chapter:
(1) "Nurse aide registry" means a list maintained by the Texas Department of Human Services of nurse aides under the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203).
(2) "Direct contact with a consumer" means any contact with a resident or client in a facility covered by this chapter.
(3) "Facility" means:
   (A) a nursing home, custodial care home, or other institution licensed by the Texas Department of Human Services under Chapter 242;
   (B) an assisted living facility licensed by the Texas Department of Human Services under Chapter 247;
   (C) a home and community support services agency licensed under Chapter 142;
   (D) an adult day care facility licensed by the Texas Department of Human Services under Chapter 103, Human Resources Code;
   (E) a facility for persons with mental retardation licensed under Chapter 252;
   (F) an adult foster care provider that contracts with the Texas Department of Human Services;
   (G) a facility that provides mental health services and that is operated by or contracts with the Texas Department of Mental Health and Mental Retardation;
   (H) a local mental health or mental retardation authority designated under Section 533.035; or
   (I) a person exempt from licensing under Section 142.003(a)(19).
(4) "Private agency" means a person engaged in the business of obtaining criminal history checks on behalf of a facility.
(5) "Regulatory agency" means a state agency referred to in Subdivision (3).

INFORMATION OBTAINED BY FACILITY, REGULATORY AGENCY, OR PRIVATE AGENCY

Sec. 250.002. (a) A facility, a regulatory agency, or a private agency on behalf of a facility is entitled to obtain from the Department of Public Safety of the State of Texas criminal history record information maintained by the Department of Public Safety that relates to a person who is:
   (1) an applicant for employment at a facility other than a facility licensed under Chapter 142;
   (2) an employee of a facility other than a facility licensed under Chapter 142; or
   (3) an applicant for employment at or an employee of a facility licensed under Chapter 142 whose employment duties would or do involve direct contact with a consumer in the facility.
   (b) A facility may:
      (1) pay a private agency to obtain criminal history record information for an applicant or employee described by Subsection (a) directly from the Department of Public Safety of the State of Texas; or
      (2) obtain the information directly from the Department of Public Safety.
   (c) The private agency shall forward criminal history record information received under this section to the facility requesting the information.
   (d) A regulatory agency may adopt rules relating to the processing of information requested or obtained under this chapter.

VERIFICATION OF EMPLOYABILITY; DISCHARGE

Sec. 250.003. (a) A facility may not employ a person if the facility determines, as a result of a criminal history check, that a person has been convicted of an offense listed in this chapter that bars employment or that a conviction is a contraindication to employment with the consumers the facility serves, and if the applicant is a nurse aide, until the facility further verifies that the applicant is listed in the nurse aide registry and verifies that the applicant is not designated in the registry as having a finding entered into the registry concerning abuse, neglect, or mistreatment of a consumer of a facility, or misappropriation of a consumer's property. Except for an applicant for employment at or an employee of a facility licensed under Chapter 242 or 247, a person licensed under another law of this state is exempt from the requirements of this chapter.

- 196 -
(b) The facility may not employ an applicant covered by Subsection (a), except that in an emergency requiring immediate employment, a facility may hire on a temporary or interim basis a person not listed in the registry pending the results of a criminal conviction check, which must be requested:

(1) within 72 hours of employment; or
(2) if the facility is licensed under Chapter 242 or 247, within 24 hours of employment.

(c) A facility shall immediately discharge any employee who is designated in the nurse aide registry or the employee misconduct registry established under Chapter 253 as having committed an act of abuse, neglect, or mistreatment of a consumer of a facility, or misappropriation of a consumer's property, or whose criminal history check reveals conviction of a crime that bars employment or that the facility determines is a contraindication to employment as provided by this chapter.

CRIMINAL HISTORY RECORD OF EMPLOYEES

Sec. 250.004. (a) Identifying information of an employee in a covered facility shall be submitted electronically, on disk, or on a typewritten form to the Department of Public Safety to obtain the person's criminal conviction record when the person applies for employment and at other times as the facility may determine appropriate. In this subsection, "identifying information" includes:

(1) the complete name, race, and sex of the employee;
(2) any known identifying number of the employee, including social security number, driver's license number, or state identification number; and
(3) the employee's date of birth.

(b) If the Department of Public Safety reports that a person has a criminal conviction of any kind, the conviction shall be reviewed by the facility to determine if the conviction may bar the person from employment in a facility under Section 250.006 or if the conviction may be a contraindication to employment.

NOTICE AND OPPORTUNITY TO BE HEARD CONCERNING ACCURACY OF INFORMATION

Sec. 250.005. (a) If a facility believes that a conviction may bar a person from employment in a facility under Section 250.006 or may be a contraindication to employment, the facility shall notify the applicant or employee.

(b) The Department of Public Safety of the State of Texas shall give a person notified under Subsection (a) the opportunity to be heard concerning the accuracy of the criminal history record information and shall notify the facility if inaccurate information is discovered.

CONVICTIONS BARRING EMPLOYMENT

Sec. 250.006. (a) A person for whom the facility is entitled to obtain criminal history record information may not be employed in a facility if the person has been convicted of an offense listed in this subsection:

(1) an offense under Chapter 19, Penal Code (criminal homicide);
(2) an offense under Chapter 20, Penal Code (kidnapping and unlawful restraint);
(3) an offense under Section 21.02, Penal Code (continuous sexual abuse of young child or children), or Section 21.11, Penal Code (indecency with a child);
(4) an offense under Section 22.011, Penal Code (sexual assault);
(5) an offense under Section 22.02, Penal Code (aggravated assault);
(6) an offense under Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual);
(7) an offense under Section 22.041, Penal Code (abandoning or endangering child);
(8) an offense under Section 22.08, Penal Code (aiding suicide);
(9) an offense under Section 25.031, Penal Code (agreement to abduct from custody);
(10) an offense under Section 25.08, Penal Code (sale or purchase of a child);
(11) an offense under Section 28.02, Penal Code (arson);
(12) an offense under Section 29.02, Penal Code (robbery);
(13) an offense under Section 29.03, Penal Code (aggravated robbery);
(14) an offense under Section 21.08, Penal Code (indecent exposure);
(15) an offense under Section 21.12, Penal Code (improper relationship between educator and student);
(16) an offense under Section 21.15, Penal Code (improper photography or visual recording);
(17) an offense under Section 22.05, Penal Code (deadly conduct);
(18) an offense under Section 22.021, Penal Code (aggravated sexual assault);
(19) an offense under Section 22.07, Penal Code (terroristic threat);  
(20) an offense under Section 33.021, Penal Code (online solicitation of a minor);  
(21) an offense under Section 34.02, Penal Code (money laundering);  
(22) an offense under Section 35A.02, Penal Code (Medicaid fraud);  
(23) an offense under Section 42.09, Penal Code (cruelty to animals); or  
(24) a conviction under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed by this subsection.

(b) A person may not be employed in a position the duties of which involve direct contact with a consumer in a facility before the fifth anniversary of the date the person is convicted of:
   (1) an offense under Section 22.01, Penal Code (assault), that is punishable as a Class A misdemeanor or as a felony;
   (2) an offense under Section 30.02, Penal Code (burglary);
   (3) an offense under Chapter 31, Penal Code (theft), that is punishable as a felony;
   (4) an offense under Section 32.45, Penal Code (misapplication of fiduciary property or property of a financial institution), that is punishable as a Class A misdemeanor or a felony;
   (5) an offense under Section 32.46, Penal Code (securing execution of a document by deception), that is punishable as a Class A misdemeanor or a felony;
   (6) an offense under Section 37.12, Penal Code (false identification as a peace officer); or
   (7) an offense under Section 42.01(a)(7), (8), or (9), Penal Code (disorderly conduct).

(c) In addition to the prohibitions on employment prescribed by Subsections (a) and (b), a person for whom a facility licensed under Chapter 242 or 247 is entitled to obtain criminal history record information may not be employed in a facility licensed under Chapter 242 or 247 if the person has been convicted:
   (1) of an offense under Section 30.02, Penal Code (burglary); or
   (2) under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense under Section 30.02, Penal Code.

(d) For purposes of this section, a person who is placed on deferred adjudication community supervision for an offense listed in this section, successfully completes the period of deferred adjudication community supervision, and receives a dismissal and discharge in accordance with Section 5(c), Article 42.12, Code of Criminal Procedure, is not considered convicted of the offense for which the person received deferred adjudication community supervision.

RECORDS PRIVILEGED

Sec. 250.007. (a) The criminal history records are for the exclusive use of the regulatory agency, the requesting facility, the private agency on behalf of the requesting facility, and the applicant or employee who is the subject of the records.
(b) All criminal records and reports and the information they contain that are received by the regulatory agency or private agency for the purpose of being forwarded to the requesting facility are privileged information.
(c) The criminal records and reports and the information they contain may not be released or otherwise disclosed to any person or agency except on court order or with the written consent of the person being investigated.

CRIMINAL PENALTY

Sec. 250.008. (a) A person commits an offense if the person releases or otherwise discloses any information received under this chapter except as prescribed by Section 250.007(b) or (c).
(b) An offense under this section is a Class A misdemeanor.

CIVIL LIABILITY

Sec. 250.009. (a) A facility or an officer or employee of a facility is not civilly liable for failure to comply with this chapter if the facility makes a good faith effort to comply.
(b) A regulatory agency is not civilly liable to a person for criminal history record information forwarded to a requesting facility in accordance with this chapter.
CHAPTER 252. INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

SUBCHAPTER A. GENERAL PROVISIONS

PURPOSE

Sec. 252.001. The purpose of this chapter is to promote the public health, safety, and welfare by providing for the development, establishment, and enforcement of standards for the provision of services to individuals residing in intermediate care facilities for the mentally retarded and the establishment, construction, maintenance, and operation of facilities providing this service that, in light of advancing knowledge, will promote quality in the delivery of services and treatment of residents.

DEFINITIONS

Sec. 252.002. In this chapter:
(1) "Board" means the Texas Board of Human Services.
(2) "Department" means the Texas Department of Human Services.
(3) "Designee" means a state agency or entity with which the department contracts to perform specific, identified duties related to the fulfillment of a responsibility prescribed by this chapter.
(4) "Facility" means a home or an establishment that:
   (A) furnishes food, shelter, and treatment or services to four or more persons unrelated to the owner;
   (B) is primarily for the diagnosis, treatment, or rehabilitation of persons with mental retardation or related conditions; and
   (C) provides in a protected setting continuous evaluation, planning, 24-hour supervision, coordination, and integration of health or rehabilitative services to help each resident function at the resident's greatest ability.
(5) "Governmental unit" means the state or a political subdivision of the state, including a county or municipality.
(6) "Person" means an individual, firm, partnership, corporation, association, or joint stock company and includes a legal successor of those entities.
(7) "Resident" means an individual, including a client, with mental retardation or a related condition who is residing in a facility licensed under this chapter.

EXEMPTIONS

Sec. 252.003. Except as otherwise provided by this chapter, this chapter does not apply to an establishment that:
(1) provides training, habilitation, rehabilitation, or education to individuals with mental retardation or a related condition;
(2) is operated under the jurisdiction of a state or federal agency, including the department, the Texas Rehabilitation Commission, the Texas Department of Mental Health and Mental Retardation, the Texas Commission for the Blind, the Texas Commission on Alcohol and Drug Abuse, the institutional division of the Texas Department of Criminal Justice, or the Veterans' Administration;
(3) is certified through inspection or evaluation as meeting the standards established by the state or federal agency; and
(4) is conducted by or for the adherents of a well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend exclusively on prayer or spiritual means for healing, without the use of any drug or material remedy, if the establishment complies with safety, sanitary, and quarantine laws and rules.

ALLOCATED FEDERAL MONEY

Sec. 252.004. The department may accept and use any money allocated by the federal government to the department for administrative expenses.

LANGUAGE REQUIREMENTS PROHIBITED

Sec. 252.005. A facility may not prohibit a resident or employee from communicating in the person's native language with another resident or employee for the purpose of acquiring or providing care, training, or treatment.
RIGHTS OF RESIDENTS
Sec. 252.006. Each facility shall implement and enforce Chapter 102, Human Resources Code.

PAPERWORK REDUCTION RULES
Sec. 252.007. (a) The department and any designee of the department shall:
(1) adopt rules to reduce the amount of paperwork a facility must complete and retain; and
(2) attempt to reduce the amount of paperwork to the minimum amount required by state and federal law unless the reduction would jeopardize resident safety.
(b) The department, any designee of the department, and each facility shall work together to review rules and propose changes in paperwork requirements so that additional time is available for direct resident care.

RULES GENERALLY
Sec. 252.008. (a) The board shall adopt rules related to the administration and implementation of this chapter.
(b) The department and the Texas Department of Mental Health and Mental Retardation shall cooperate in developing proposed rules under this section. Before the board adopts a rule applicable to a facility, the board shall present the proposed rule to the commissioner of mental health and mental retardation for review of the effects of the proposed rule. Not later than the 31st day after the date the proposed rule is received, the commissioner of mental health and mental retardation shall provide the board a written statement of the effects of the proposed rule. The board shall consider the statement in adopting a rule under this section.

RERAINT AND SECLUSION
Sec. 252.0085. A person providing services to a resident of a facility licensed by the department under this chapter or operated by the department and exempt under Section 252.003 from the licensing requirements of this chapter shall comply with Chapter 322 and the rules adopted under that chapter.

CONSULTATION AND COORDINATION
Sec. 252.009. (a) Whenever possible, the department shall:
(1) use the services of and consult with state and local agencies in carrying out the department's functions under this chapter; and
(2) use the facilities of the department or a designee of the department, particularly in establishing and maintaining standards relating to the humane treatment of residents.
(b) The department may cooperate with local public health officials of a municipality or county in carrying out this chapter and may delegate to those officials the power to make inspections and recommendations to the department under this chapter.
(c) The department may coordinate its personnel and facilities with a local agency of a municipality or county and may provide advice to the municipality or county if the municipality or county decides to supplement the state program with additional rules required to meet local conditions.

CHANGE OF ADMINISTRATORS; FEE
Sec. 252.010. A facility that hires a new administrator or other person designated as the chief management officer for the facility shall:
(1) notify the department in writing of the change not later than the 30th day after the date on which the change becomes effective; and
(2) pay a $20 administrative fee to the department.

PROHIBITION OF REMUNERATION
Sec. 252.011. (a) A facility may not receive monetary or other remuneration from a person or agency that furnishes services or materials to the facility or residents for a fee.
(b) The department may revoke the license of a facility that violates Subsection (a).
SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

LICENSE REQUIRED

Sec. 252.031. A person or governmental unit, acting severally or jointly with any other person or governmental unit, may not establish, conduct, or maintain a facility in this state without a license issued under this chapter.

LICENSE APPLICATION

Sec. 252.032. (a) An application for a license is made to the department on a form provided by the department and must be accompanied by the license fee adopted under Section 252.034.

(b) The application must contain information that the department requires. The department may require affirmative evidence of ability to comply with the standards and rules adopted under this chapter.

ISSUANCE AND RENEWAL OF LICENSE

Sec. 252.033. (a) After receiving the application, the department shall issue a license if, after inspection and investigation, it finds that the applicant and facility meet the requirements established under this chapter.

(b) The department may issue a license only for:
(1) the premises and persons or governmental unit named in the application; and
(2) the maximum number of beds specified in the application.

(c) A license may not be transferred or assigned.

(d) A license is renewable on the second anniversary of issuance or renewal of the license after:
(1) an inspection;
(2) filing and approval of a renewal report; and
(3) payment of the renewal fee.

(e) The renewal report required under Subsection (d)(2) must be filed in accordance with rules adopted by the department that specify the form of the report, the date it must be submitted, and the information it must contain.

(f) The department may not issue a license for new beds or an expansion of an existing facility under this chapter unless the addition of new beds or the expansion is included in the plan approved by the Health and Human Services Commission in accordance with Section 533.062.

(g) A license or renewal fee imposed under this chapter is an allowable cost for reimbursement under the state Medicaid program. An increase in the amount of a fee shall be reflected in reimbursement rates prospectively.

(h) The department by rule shall define specific, appropriate, and objective criteria on which it may deny an initial license application or license renewal or revoke a license.

LICENSE FEES

Sec. 252.034. (a) The board by rule may adopt a fee for a license issued under this chapter. The fee may not exceed $150 plus $5 for each unit of capacity or bed space for which the license is sought.

(b) The license fee must be paid with each application for an initial license or for a renewal or change of ownership of a license.

(c) A facility operated by the state is not required to pay a license fee.

(d) The board may adopt an additional fee for the approval of an increase in bed space.

(e) All license fees collected under this section shall be deposited in the state treasury to the credit of the department and may be appropriated to the department to administer and enforce this chapter.

(f) An applicant who submits an application for license renewal later than the 45th day before the expiration date of a current license is subject to a late fee in accordance with department rules.

DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

Sec. 252.035. (a) The department, after providing notice and opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a license if the department finds that the applicant or license holder has substantially failed to comply with the requirements established under this chapter.

(b) The status of an applicant for a license or a license holder is preserved until final disposition of the contested matter, except as the court having jurisdiction of a judicial review of the matter may order in the public interest for the welfare and safety of the residents.

MINIMUM STANDARDS

Sec. 252.036. The board may adopt, publish, and enforce minimum standards relating to:
(1) the construction or remodeling of a facility, including plumbing, heating, lighting, ventilation, and other housing conditions, to ensure the residents' health, safety, comfort, and protection from fire hazard;
(2) sanitary and related conditions in a facility and its surroundings, including water supply, sewage disposal, food handling, and general hygiene in order to ensure the residents' health, safety, and comfort;
(3) equipment essential to the residents' health and welfare;
(4) the reporting and investigation of injuries, incidents, and unusual accidents and the establishment of other policies and procedures necessary to ensure resident safety;
(5) behavior management, including use of seclusion and physical restraints;
(6) policies and procedures for the control of communicable diseases in employees and residents;
(7) the use and administration of medication in conformity with applicable law and rules for pharmacy services;
(8) specialized nutrition support such as delivery of enteral feedings and parenteral nutrients;
(9) requirements for in-service education of each employee who has any contact with residents;
(10) the regulation of the number and qualification of all personnel, including management and professional support personnel, responsible for any part of the care given to residents; and
(11) the quality of life and the provision of active treatment to residents.

**REASONABLE TIME TO COMPLY**

**Sec. 252.037.** The board by rule shall give a facility that is in operation when a rule or standard is adopted under this chapter a reasonable time to comply with the rule or standard.

**EARLY COMPLIANCE REVIEW**

**Sec. 252.0375.** (a) The department by rule shall adopt a procedure under which a person proposing to construct or modify a facility may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the department shall set reasonable deadlines by which the department must complete review of submitted plans.

(b) The department shall, within 30 days, review plans submitted under this section for compliance with the department's architectural requirements and inform the person in writing of the results of the review. If the plans comply with the department's architectural requirements, the department may not subsequently change the architectural requirements applicable to the project unless:

(1) the change is required by federal law; or
(2) the person fails to complete the project within a reasonable time.

(c) The department may charge a reasonable fee for conducting a review under this section.

(d) A fee collected under this section shall be deposited in the general revenue fund and may be appropriated only to the department to conduct reviews under this section.

(e) The review procedure provided by this section does not include review of building plans for compliance with the Texas Accessibility Standards as administered and enforced.

**FIRE SAFETY REQUIREMENTS**

**Sec. 252.038.** (a) A facility shall comply with fire safety requirements established under this section.

(b) The board by rule shall adopt the fire safety standards applicable to the facility. The fire safety standards must be the same as the fire safety standards established by an edition of the Life Safety Code of the National Fire Protection Association. If required by federal law or regulation, the edition selected may be different for facilities or portions of facilities operated or approved for construction at different times.

(c) A facility that is licensed under applicable law on September 1, 1997, must comply with the fire safety standards, including fire safety standards imposed by municipal ordinance, applicable to the facility on that date.

(d) The rules adopted under this section do not prevent a facility licensed under this chapter from voluntarily conforming to fire safety standards that are compatible with, equal to, or more stringent than those adopted by the board.

(e) Notwithstanding any other provision of this section, a municipality may enact additional and more stringent fire safety standards applicable to new construction begun on or after September 1, 1997.

**POSTING**

**Sec. 252.039.** Each facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to residents, employees, and visitors:

(1) the license issued under this chapter;
(2) a sign prescribed by the department that specifies complaint procedures established under this chapter or rules adopted under this chapter and that specifies how complaints may be registered with the department;

(3) a notice in a form prescribed by the department stating that inspection and related reports are available at the facility for public inspection and providing the department's toll-free telephone number that may be used to obtain information concerning the facility;

(4) a concise summary of the most recent inspection report relating to the facility; and

(5) notice that employees, other staff, residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by Sections 252.132 and 252.133.

INSPECTIONS

Sec. 252.040. (a) The department or the department's designee may make any inspection, survey, or investigation that it considers necessary and may enter the premises of a facility at reasonable times to make an inspection, survey, or investigation in accordance with board rules.

(b) The department is entitled to access to books, records, and other documents maintained by or on behalf of a facility to the extent necessary to enforce this chapter and the rules adopted under this chapter.

(c) A license holder or an applicant for a license is considered to have consented to entry and inspection of the facility by a representative of the department in accordance with this chapter.

(d) The department shall establish procedures to preserve all relevant evidence of conditions the department finds during an inspection, survey, or investigation that the department reasonably believes threaten the health and safety of a resident. The procedures may include photography or photocopying of relevant documents, such as license holder's notes, physician's orders, and pharmacy records, for use in any legal proceeding.

(e) When photographing a resident, the department:

(1) shall respect the privacy of the resident to the greatest extent possible; and

(2) may not make public the identity of the resident.

(f) A facility, an officer or employee of a facility, and a resident's attending physician are not civilly liable for surrendering confidential or private material under this section, including physician's orders, pharmacy records, notes and memoranda of a state office, and resident files.

(g) The department shall establish in clear and concise language a form to summarize each inspection report and complaint investigation report.

(h) The department shall establish proper procedures to ensure that copies of all forms and reports under this section are made available to consumers, service recipients, and the relatives of service recipients as the department considers proper.

(i) The department shall have specialized staff conduct inspections, surveys, or investigations of facilities under this section.

UNANNOUNCED INSPECTIONS

Sec. 252.041. (a) Each licensing period, the department shall conduct at least two unannounced inspections of each facility.

(b) In order to ensure continuous compliance, the department shall randomly select a sufficient percentage of facilities for unannounced inspections to be conducted between 5 p.m. and 8 a.m. Those inspections must be cursory to avoid to the greatest extent feasible any disruption of the residents.

(c) The department may require additional inspections.

(d) As considered appropriate and necessary by the department, the department may invite at least one person as a citizen advocate to participate in inspections. The invited advocate must be an individual who has an interest in or who is employed by or affiliated with an organization or entity that represents, advocates for, or serves individuals with mental retardation or a related condition.

DISCLOSURE OF UNANNOUNCED INSPECTIONS; CRIMINAL PENALTY

Sec. 252.042. (a) Except as expressly provided by this chapter, a person commits an offense if the person intentionally, knowingly, or recklessly discloses to an unauthorized person the date, time, or any other fact about an unannounced inspection of a facility before the inspection occurs.

(b) In this section, "unauthorized person" does not include:

(1) the department;

(2) the office of the attorney general;

(3) a representative of an agency or organization when a Medicaid survey is made concurrently with a licensing inspection; or
(4) any other person or entity authorized by law to make an inspection or to accompany an
inspector.
(c) An offense under this section is a Class B misdemeanor.
(d) A person convicted under this section is not eligible for state employment.

LICENSING SURVEYS
Sec. 252.043. The department shall provide a team to conduct surveys to validate findings of licensing
surveys. The purpose of a validation survey is to assure that survey teams throughout the state survey in a fair and
consistent manner. A facility subjected to a validation survey must correct deficiencies cited by the validation team
but is not subject to punitive action for those deficiencies.

REPORTING VIOLATIONS
Sec. 252.044. (a) The department or the department's representative conducting an inspection, survey, or
investigation under this chapter shall:
(1) list each violation of a law or rule on a form designed by the department for inspections; and
(2) identify the specific law or rule the facility violates.
(b) At the conclusion of an inspection, survey, or investigation under this chapter, the department or the
department's representative conducting the inspection, survey, or investigation shall discuss the violations with the
facility's management in an exit conference. The department or the department's representative shall leave a written
list of the violations with the facility and the person designated by the facility to receive notice under Section
252.066 at the time of the exit conference. If the department or the department's representative discovers any
additional violations during the review of field notes or preparation of the official final list, the department or the
department's representative shall give the facility an additional exit conference regarding the additional violations.
An additional exit conference must be held in person and may not be held by telephone, e-mail, or facsimile
transmission.
(c) The facility shall submit a plan to correct the violations to the regional director not later than the 10th
working day after the date the facility receives the final official statement of violations.

ADMISSIBILITY OF CERTAIN DOCUMENTS OR TESTIMONY
Sec. 252.045. Sections 32.021(i) and (k), Human Resources Code, govern the admissibility in a civil action
against a facility of:
(1) a record of the department described by Section 32.021(i), Human Resources Code; or
(2) the testimony of a department surveyor or investigator described by Section 32.021(k),
Human Resources Code.

SUBCHAPTER C. GENERAL ENFORCEMENT

EMERGENCY SUSPENSION OR CLOSING ORDER
Sec. 252.061. (a) The department shall suspend a facility's license or order an immediate closing of part of
the facility if:
(1) the department finds the facility is operating in violation of the standards prescribed by this
chapter; and
(2) the violation creates an immediate threat to the health and safety of a resident.
(b) The board by rule shall provide for the placement of residents during the facility's suspension or
closing to ensure their health and safety.
(c) An order suspending a license or closing a part of a facility under this section is immediately effective
on the date on which the license holder receives written notice or a later date specified in the order.
(d) An order suspending a license or ordering an immediate closing of a part of a facility is valid for 10
days after the effective date of the order.

INJUNCTION
Sec. 252.062. (a) The department may petition a district court for a temporary restraining order to restrain
a person from continuing a violation of the standards prescribed by this chapter if the department finds that the
violation creates an immediate threat to the health and safety of the facility's residents.
(b) A district court, on petition of the department, may by injunction:
Texas Laws Relating to DADS

Health and Safety Code

(1) prohibit a person from continuing a violation of the standards or licensing requirements prescribed by this chapter;
(2) restrain or prevent the establishment, conduct, management, or operation of a facility without a license issued under this chapter; or
(3) grant the injunctive relief warranted by the facts on a finding by the court that a person is violating the standards or licensing requirements prescribed by this chapter.

(c) The attorney general, on request by the department, shall bring and conduct on behalf of the state a suit authorized by this section.
(d) A suit for a temporary restraining order or other injunctive relief must be brought in Travis County or the county in which the alleged violation occurs.

LICENSE REQUIREMENTS; CRIMINAL PENALTY

Sec. 252.063. (a) A person commits an offense if the person violates Section 252.031.
(b) An offense under this section is punishable by a fine of not more than $1,000 for the first offense and not more than $500 for each subsequent offense.
(c) Each day of a continuing violation after conviction is a separate offense.

CIVIL PENALTY

Sec. 252.064. (a) A person who violates this chapter or a rule adopted under this chapter is liable for a civil penalty of not less than $100 or more than $10,000 for each violation if the department determines the violation threatens the health and safety of a resident.
(b) Each day of a continuing violation constitutes a separate ground for recovery.
(c) On request of the department, the attorney general may institute an action in a district court to collect a civil penalty under this section. Any amount collected shall be remitted to the comptroller for deposit to the credit of the general revenue fund.

ADMINISTRATIVE PENALTY

Sec. 252.065. (a) The department may assess an administrative penalty against a person who:
(1) violates this chapter or rule, standard, or order adopted or license issued under this chapter;
(2) makes a false statement, that the person knows or should know is false, of a material fact:
   (A) on an application for issuance or renewal of a license or in an attachment to the application; or
   (B) with respect to a matter under investigation by the department;
(3) refuses to allow a representative of the department to inspect:
   (A) a book, record, or file required to be maintained by the institution; or
   (B) any portion of the premises of an institution.
(4) willfully interferes with the work of a representative of the department or the enforcement of this chapter;
(5) willfully interferes with a representative of the department preserving evidence of a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter;
(6) fails to pay a penalty assessed by the department under this chapter not later than the 10th day after the date the assessment of the penalty becomes final
(7) fails to submit a plan of correction within 10 days after receiving a statement of licensing violations; or
(8) fails to notify the department of a change in ownership before the effective date of that change of ownership.
(b) The penalty for a facility with fewer than 60 beds shall be not less than $100 or more than $1,000 for each violation. The penalty for a facility with 60 beds or more shall be not less than $100 or more than $5,000 for each violation. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed $5,000 for a facility with fewer than 60 beds or $25,000 for a facility with 60 beds or more. Each day a violation occurs or continues is a separate violation for purposes of imposing a penalty.
(c) The department by rule shall specify each violation for which an administrative penalty may be assessed. In determining which violations warrant penalties, the department shall consider:
(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients; and
(2) whether the affected facility had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction.

(d) The department by rule shall establish a specific and detailed schedule of appropriate and graduated penalties for each violation based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients;
(2) the history of previous violations;
(3) whether the affected facility had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction;
(4) the amount necessary to deter future violations;
(5) efforts made to correct the violation;
(6) the size of the facility; and
(7) any other matters that justice may require.

(e) The department by rule shall provide the facility with a reasonable period of time, not less than 45 days, following the first day of a violation to correct the violation before assessing an administrative penalty if a plan of correction has been implemented. This subsection does not apply to a violation described by Subsections (a) (2)-(8) or to a violation that the department determines:

(1) has resulted in serious harm to or the death of a resident;
(2) constitutes a serious threat to the health or safety of a resident; or
(3) substantially limits the institution’s capacity to provide care.

(f) The department may not assess an administrative penalty for a minor violation if the person corrects the violation not later than the 46th day after the date the person receives notice of the violation.

(g) The department shall establish a system to ensure standard and consistent application of penalties regardless of the facility location.

(h) All proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001, Government Code.

(i) The department may not assess an administrative penalty against a state agency.

(j) Notwithstanding any other provision of this section, an administrative penalty ceases to be incurred on the date a violation is corrected. The administrative penalty ceases to be incurred only if the facility:

(1) notifies the department in writing of the correction of the violation and of the date the violation was corrected; and
(2) shows later that the violation was corrected.

(k) Rules adopted under this section shall include specific, appropriate, and objective criteria that describe the scope and severity of a violation that results in a recommendation for each specific penalty.

APPLICATION OF OTHER LAW

Sec. 252.0651. The department may not assess more than one monetary penalty under this chapter for a violation arising out of the same act or failure to act.

NOTICE; REQUEST FOR HEARING

Sec. 252.066. (a) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department shall give written notice of the violation to the person designated by the facility to receive notice. The notice shall include:

(1) a brief summary of the alleged violation;
(2) a statement of the amount of the proposed penalty based on the factors listed in Section 252.065(d); and
(3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Not later than the 20th day after the date on which the notice is received, the person notified may accept the determination of the department made under this section, including the proposed penalty, or may make a written request for a hearing on that determination.

(c) If the person notified under this section of the violation accepts the determination of the department or if the person fails to respond in a timely manner to the notice, the commissioner of human services or the commissioner's designee shall issue an order approving the determination and ordering that the person pay the proposed penalty.
HEARING; ORDER

Sec. 252.067. (a) If the person notified requests a hearing, the department shall:
(1) set a hearing;
(2) give written notice of the hearing to the person; and
(3) designate a hearings examiner to conduct the hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to
the commissioner of human services or the commissioner's designee a proposal for decision as to the occurrence
of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be
warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings
examiner, the commissioner of human services or the commissioner's designee by order may find that a violation
has occurred and may assess a penalty or may find that no violation has occurred.

NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND

Sec. 252.068. (a) The department shall give notice of the order under Section 252.067(c) to the person
alleged to have committed the violation and the person designated by the facility to receive notice under Section
252.066. The notice must include:
(1) separate statements of the findings of fact and conclusions of law;
(2) the amount of any penalty assessed; and
(3) a statement of the right of the person to judicial review of the order.

(b) Not later than the 30th day after the date on which the decision becomes final as provided by Chapter
2001, Government Code, the person shall:
(1) pay the penalty; or
(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the
penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a person who acts under Subsection (b)(2) may:
(1) stay enforcement of the penalty by:
   (A) paying the penalty to the court for placement in an escrow account; or
   (B) giving to the court a supersedeas bond that is approved by the court for the amount
of the penalty and that is effective until all judicial review of the order becomes final; or
(2) request the court to stay enforcement of the penalty by:
   (A) filing with the court a sworn affidavit of the person stating that the person is
financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and
   (B) giving a copy of the affidavit to the department by certified mail.

(d) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with
the court, within 10 days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing
on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding
that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is
financially unable to pay the penalty and to give a supersedeas bond.

(e) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the department
may refer the matter to the attorney general for collection of the penalty.

(f) Judicial review of the order:
(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government
Code; and
(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the
penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the
occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the
person paid the amount of the penalty under Subsection (c)(1)(A) and if that amount is reduced or is not upheld by
the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate
of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the
interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is
remitted. If the person gave a supersedeas bond and if the penalty is not upheld by the court, the court shall order
the release of the escrow account or bond. If the person gave a supersedeas bond and if the amount of the penalty is
reduced, the court shall order the release of the bond after the person pays the amount.
USE OF ADMINISTRATIVE PENALTY

Sec. 252.069. An administrative penalty collected under this subchapter may be appropriated for the purpose of funding the grant program established under Section 161.074, Human Resources Code.

EXPENSES AND COSTS FOR COLLECTION OF CIVIL OR ADMINISTRATIVE PENALTY

Sec. 252.070. (a) If the attorney general brings an action against a person under Section 252.062 or 252.064 or to enforce an administrative penalty assessed under Section 252.065 and an injunction is granted against the person or the person is found liable for a civil or administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

(b) For purposes of this section, reasonable expenses and costs include expenses incurred by the department and the attorney general in the investigation, initiation, and prosecution of an action, including reasonable investigative costs, attorney's fees, witness fees, and deposition expenses.

AMELIORATION OF VIOLATION

Sec. 252.071. Text of section as amended by Acts 2001, 77th Leg., ch. 619, Sec. 2

(a) In lieu of demanding payment of an administrative penalty authorized by this subchapter, the department may allow a person subject to the penalty to use, under the supervision of the department, all or part of the amount of the penalty to ameliorate the violation or to improve services, other than administrative services, in the facility affected by the violation.

(b) The department shall offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of a facility resident.

(c) The department may not offer amelioration to a person if the department determines that the charged violation constitutes immediate jeopardy to the health and safety of a facility resident.

(d) The department shall offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of assessment of administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 252.067.

(e) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. In submitting the plan, the person must agree to waive the person's right to an administrative hearing under Section 252.067 if the department approves the plan.

(f) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the facility that will improve services to or quality of care of residents of the facility;

(2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents of the facility;

(3) establish clear goals to be achieved through the proposed changes;

(4) establish a timeline for implementing the proposed changes; and

(5) identify specific actions necessary to implement the proposed changes.

(g) A plan for amelioration may include proposed changes to:

(1) improve staff recruitment and retention;

(2) offer or improve dental services for residents; and

(3) improve the overall quality of life for residents.

(h) The department may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.

(i) The department shall approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. On approval of a person's plan, the department shall deny a pending request for a hearing submitted by the person under Section 252.066(b).

(j) The department may not offer amelioration to a person:

(1) more than three times in a two-year period; or

(2) more than one time in a two-year period for the same or similar violation.

(k) In this section, "immediate jeopardy to health and safety" means a situation in which there is a high probability that serious harm or injury to a resident could occur at any time or already has occurred and may occur again if the resident is not protected from the harm or if the threat is not removed.

For text of section as amended by Acts 2001, 77th Leg., ch. 1284, Sec. 8.02, see Sec. 252.071, post
AMELIORATION OF VIOLATION

Sec. 252.071. Text of section as amended by Acts 2001, 77th Leg., ch. 1284, Sec. 8.02
(a) In lieu of demanding payment of an administrative penalty authorized by this subchapter, the department may allow a person subject to the penalty to use, under the supervision of the department, all or part of the amount of the penalty to ameliorate the violation or to improve services, other than administrative services, in the facility affected by the violation.
(b) The department shall offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of a facility resident.
(c) The department may not offer amelioration to a person if the department determines that the charged violation constitutes immediate jeopardy to the health and safety of a facility resident.
(d) The department shall offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of assessment of administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 252.067.
(e) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. In submitting the plan, the person must agree to waive the person's right to an administrative hearing under Section 252.067 if the department approves the plan.
(f) At a minimum, a plan for amelioration must:
   (1) propose changes to the management or operation of the facility that will improve services to or quality of care of residents of the facility;
   (2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents of the facility;
   (3) establish clear goals to be achieved through the proposed changes;
   (4) establish a timeline for implementing the proposed changes; and
   (5) identify specific actions necessary to implement the proposed changes.
(g) The department may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.
(h) The department shall approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. On approval of a person's plan, the department shall deny a pending request for a hearing submitted by the person under Section 252.066(b).
(i) The department may not offer amelioration to a person:
   (1) more than three times in a two-year period; or
   (2) more than one time in a two-year period for the same or similar violation.
(j) In this section, "immediate jeopardy to health and safety" means a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in the facility.

For text of section as amended by Acts 2001, 77th Leg., ch. 619, Sec. 2, see Sec. 252.071, ante

SUBCHAPTER D. TRUSTEES FOR FACILITIES

FINDINGS AND PURPOSE

Sec. 252.091. (a) The legislature finds that, under some circumstances, closing a facility for a violation of a law or rule may:
(1) have an adverse effect on the facility's residents and their families; and
(2) result in a lack of readily available financial resources to meet the basic needs of the residents for food, shelter, medication, and personal services.
(b) The purpose of this subchapter is to provide for:
(1) the appointment of a trustee to assume the operations of the facility in a manner that emphasizes resident care and reduces resident trauma; and
(2) a fund to assist a court-appointed trustee in meeting the basic needs of the residents.
APPOINTMENT BY AGREEMENT

Sec. 252.092. (a) A person who holds a controlling interest in a facility may request the department to assume the operation of the facility through the appointment of a trustee under this subchapter.

(b) After receiving the request, the department may enter into an agreement providing for the appointment of a trustee to take charge of the facility under conditions both parties consider appropriate if the department considers the appointment desirable.

(c) An agreement under this section must:
   (1) specify the terms and conditions of the trustee's appointment and authority; and
   (2) preserve the rights of the residents as granted by law.

(d) The agreement terminates at the time:
   (1) specified by the parties; or
   (2) either party notifies the other in writing that the party is terminating the appointment agreement.

INvoluntary Appointment

Sec. 252.093. (a) The department may request the attorney general to bring an action on behalf of the state for the appointment of a trustee to operate a facility if:

   (1) the facility is operating without a license;
   (2) the department has suspended or revoked the facility's license;
   (3) license suspension or revocation procedures against the facility are pending and the department determines that an imminent threat to the health and safety of the residents exists;
   (4) the department determines that an emergency exists that presents an immediate threat to the health and safety of the residents; or
   (5) the facility is closing and arrangements for relocation of the residents to other licensed facilities have not been made before closure.

(b) A trustee appointed under Subsection (a)(5) may only ensure an orderly and safe relocation of the facility's residents as quickly as possible.

(c) After a hearing, a court shall appoint a trustee to take charge of a facility if the court finds that involuntary appointment of a trustee is necessary.

(d) If possible, the court shall appoint as trustee an individual whose background includes mental retardation service administration.

(e) An action under this section must be brought in Travis County or the county in which the violation is alleged to have occurred.

Fee; Release of Money

Sec. 252.094. (a) A trustee appointed under this subchapter is entitled to a reasonable fee as determined by the court.

(b) The trustee may petition the court to order the release to the trustee of any payment owed the trustee for care and services provided to the residents if the payment has been withheld, including a payment withheld by a governmental agency or other entity during the appointment of the trustee, such as payments:

   (1) for Medicaid or insurance;
   (2) by a third party; or
   (3) for medical expenses borne by the residents.

Emergency Assistance Fee

Sec. 252.095. (a) In addition to the licensing and renewal fee collected under Section 252.034, the department may collect an annual fee to be used to make emergency assistance money available to a facility licensed under this chapter.

(b) The fee collected under this section shall be in the amount prescribed by Section 242.097(b) and shall be deposited to the credit of the nursing and convalescent home trust fund established under Section 242.096.

(c) The department may disburse money to a trustee for a facility licensed under this chapter to alleviate an immediate threat to the health or safety of the facility's residents. Payments under this section may include payments described by Section 242.096(b).

(d) A court may order the department to disburse emergency assistance money to a trustee for a facility licensed under this chapter if the court makes the findings provided by Section 242.096(c).
REIMBURSEMENT

Sec. 252.096.  (a) A facility that receives emergency assistance money under this subchapter shall reimburse the department for the amounts received, including interest.

(b) Interest on unreimbursed amounts begins to accrue on the date on which the money is disbursed to the facility. The rate of interest is the rate determined under Section 2, Article 1.05, Title 79, Revised Statutes (Article 5069-1.05, Vernon's Texas Civil Statutes), to be applicable to judgments rendered during the month in which the money is disbursed to the facility.

(c) The owner of the facility when the trustee is appointed is responsible for the reimbursement.

(d) The amount that remains unreimbursed on the first anniversary of the date on which the money is received is delinquent and the Texas Department of Mental Health and Mental Retardation may determine that the facility is ineligible for a Medicaid provider contract.

(e) The department shall deposit the reimbursement and interest received under this section to the credit of the nursing and convalescent home trust fund.

(f) The attorney general shall institute an action to collect money due under this section at the request of the department. An action under this section must be brought in Travis County.

NOTIFICATION OF CLOSURE

Sec. 252.097.  (a) A facility that is closing temporarily or permanently, voluntarily or involuntarily, shall notify the residents of the closing and make reasonable efforts to notify in writing each resident's nearest relative or the person responsible for the resident's support within a reasonable time before the facility closes.

(b) If the department orders a facility to close or the facility's closure is in any other way involuntary, the facility shall make the notification, orally or in writing, immediately on receiving notice of the closing.

(c) If the facility's closure is voluntary, the facility shall make the notification not later than one week after the date on which the decision to close is made.

CRIMINAL PENALTY FOR FAILURE TO NOTIFY

Sec. 252.098.  (a) A facility commits an offense if the facility knowingly fails to comply with Section 252.097.

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

COOPERATION IN FACILITY CLOSURE

Sec. 252.099. The department and the Texas Department of Mental Health and Mental Retardation shall cooperate closely to ensure that the closure and transition plans for a facility that is closing, and the execution of those plans, ensure the short-term and long-term well-being of the clients of the facility.

SUBCHAPTER E. REPORTS OF ABUSE AND NEGLECT

DEFINITION

Sec. 252.121. In this subchapter, "designated agency" means an agency designated by a court to be responsible for the protection of a resident who is the subject of a report of abuse or neglect.

REPORTING OF ABUSE AND NEGLECT

Sec. 252.122.  (a) A person, including an owner or employee of a facility, who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse or neglect caused by another person shall report the abuse or neglect to the department, to a designated agency, or to both the department and the designated agency, as specified in department rules.

(b) Each facility shall require each employee of the facility, as a condition of employment with the facility, to sign a statement that the employee realizes that the employee may be criminally liable for failure to report abuse or neglect.

(c) A person shall make an oral report immediately on learning of abuse or neglect and shall make a written report to the same agency not later than the fifth day after the oral report is made.

CONTENTS OF REPORT

Sec. 252.123.  (a) A report of abuse or neglect is nonaccusatory and reflects the reporting person's belief that a resident has been or will be abused or neglected or has died of abuse or neglect.

(b) The report must contain:
(1) the name and address of the resident;  
(2) the name and address of the person responsible for the care of the resident, if available;  and  
(3) other relevant information.

**ANONYMOUS REPORTS OF ABUSE OR NEGLECT**

**Sec. 252.124.** (a) An anonymous report of abuse or neglect, although not encouraged, shall be received and acted on in the same manner as an acknowledged report.  
(b) A local or state law enforcement agency that receives a report of abuse or neglect shall refer the report to the department or the designated agency.

**INVESTIGATION AND REPORT OF RECEIVING AGENCY**

**Sec. 252.125.** (a) The department or the designated agency shall make a thorough investigation promptly after receiving either the oral or written report.  
(b) The primary purpose of the investigation is the protection of the resident.  
(c) In the investigation, the department or the designated agency shall determine:  
(1) the nature, extent, and cause of the abuse or neglect;  
(2) the identity of the person responsible for the abuse or neglect;  
(3) the names and conditions of the other residents;  
(4) an evaluation of the persons responsible for the care of the residents;  
(5) the adequacy of the facility environment;  and  
(6) any other information required by the department.  
(d) The investigation may include a visit to the resident's facility and an interview with the resident, if considered appropriate by the department.  
(e) If the department attempts to carry out an on-site investigation and it is shown that admission to the facility or any place where a resident is located cannot be obtained, a probate or county court shall order the person responsible for the care of the resident or the person in charge of a place where the resident is located to allow admission for the investigation and any interview with the resident.  
(f) Before the completion of the investigation, the department shall file a petition for temporary care and protection of the resident if the department determines that immediate removal is necessary to protect the resident from further abuse or neglect.  
(g) The department or the designated agency shall make a complete written report of the investigation and submit the report and its recommendations to the district attorney and the appropriate law enforcement agency and, if necessary, to the department on the department's request.

**CONFIDENTIALITY**

**Sec. 252.126.** A report, record, or working paper used or developed in an investigation made under this subchapter is confidential and may be disclosed only for purposes consistent with the rules adopted by the board or the designated agency.

**IMMUNITY**

**Sec. 252.127.** (a) Except as provided by Section 252.131, a person who reports an act of abuse or neglect as provided by this subchapter is immune from civil or criminal liability that, in the absence of the immunity, might result from making the report.  
(b) The immunity provided by this section extends to participation in any judicial proceeding that results from the report.

**PRIVILEGED COMMUNICATIONS**

**Sec. 252.128.** In a proceeding regarding the abuse or neglect of a resident or the cause of any abuse or neglect, evidence may not be excluded on the ground of privileged communication except in the case of a communication between an attorney and client.

**CENTRAL REGISTRY**

**Sec. 252.129.** (a) The department shall maintain in the city of Austin a central registry of reported cases of resident abuse or neglect. The department shall include the registry in the registry maintained under Section 242.130.  
(b) The board may adopt rules necessary to carry out this section.
(c) The rules shall provide for cooperation with hospitals and clinics in the exchange of reports of resident abuse or neglect.

**FAILURE TO REPORT; CRIMINAL PENALTY**

**Sec. 252.130.** (a) A person commits an offense if the person has cause to believe that a resident's physical or mental health or welfare has been or may be further adversely affected by abuse or neglect and knowingly fails to report in accordance with Section 252.122.

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

**BAD FAITH, MALICIOUS, OR RECKLESS REPORTING; CRIMINAL PENALTY**

**Sec. 252.131.** (a) A person commits an offense if the person reports under this subchapter in bad faith, maliciously, or recklessly.

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

(c) The criminal penalty provided by this section is in addition to any civil penalties for which the person may be liable.

**SUIT FOR RETALIATION**

**Sec. 252.132.** (a) In this section, "employee" means a person who is an employee of a facility or any other person who provides services for a facility for compensation, including a contract laborer for the facility.

(b) An employee has a cause of action against a facility, the owner of the facility, or another employee of the facility that suspends or terminates the employment of the employee or otherwise disciplines, discriminates against, or retaliates against the employee for:

1. reporting to the employee's supervisor, an administrator of the facility, a state regulatory agency, or a law enforcement agency a violation of law, including a violation of this chapter or a rule adopted under this chapter; or
2. initiating or cooperating in any investigation or proceeding of a governmental entity relating to the care, services, or conditions at the facility.

(c) A plaintiff who prevails in a suit under this section may recover:

1. the greater of $1,000 or actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown and damages for lost wages if the petitioner's employment was suspended or terminated;
2. exemplary damages;
3. court costs; and
4. reasonable attorney's fees.

(d) In addition to the amounts that may be recovered under Subsection (c), a person whose employment is suspended or terminated is entitled to appropriate injunctive relief, including, if applicable:

1. reinstatement in the person's former position; and
2. reinstatement of lost fringe benefits or seniority rights.

(e) The petitioner, not later than the 90th day after the date on which the person's employment is suspended or terminated, must bring suit or notify the Texas Workforce Commission of the petitioner's intent to sue under this section. A petitioner who notifies the Texas Workforce Commission under this subsection must bring suit not later than the 90th day after the date of the delivery of the notice to the commission. On receipt of the notice, the commission shall notify the facility of the petitioner's intent to bring suit under this section.

(f) The petitioner has the burden of proof, except that there is a rebuttable presumption that the person's employment was suspended or terminated for reporting abuse or neglect if the person is suspended or terminated within 60 days after the date on which the person reported in good faith.

(g) A suit under this section may be brought in the district court of the county in which:

1. the plaintiff resides;
2. the plaintiff was employed by the defendant; or
3. the defendant conducts business.

(h) Each facility shall require each employee of the facility, as a condition of employment with the facility, to sign a statement that the employee understands the employee's rights under this section. The statement must be part of the statement required under Section 252.122(b). If a facility does not require an employee to read and sign the statement, the periods prescribed by Subsection (e) do not apply, and the petitioner must bring suit not later than the second anniversary of the date on which the person's employment is suspended or terminated.
SUIT FOR RETALIATION AGAINST VOLUNTEER, RESIDENT, OR FAMILY MEMBER OR GUARDIAN OF RESIDENT

Sec. 252.133. (a) A facility may not retaliate or discriminate against a volunteer, a resident, or a family member or guardian of a resident because the volunteer, the resident, the resident's family member or guardian, or any other person:

(1) makes a complaint or files a grievance concerning the facility;
(2) reports a violation of law, including a violation of this chapter or a rule adopted under this chapter; or
(3) initiates or cooperates in an investigation or proceeding of a governmental entity relating to the care, services, or conditions at the facility.

(b) A volunteer, a resident, or a family member or guardian of a resident against whom a facility retaliates or discriminates in violation of Subsection (a) is entitled to sue for:

(1) injunctive relief;
(2) the greater of $1,000 or actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown;
(3) exemplary damages;
(4) court costs; and
(5) reasonable attorney's fees.

(c) A volunteer, a resident, or a family member or guardian of a resident who seeks relief under this section must report the alleged violation not later than the 180th day after the date on which the alleged violation of this section occurred or was discovered by the volunteer, the resident, or the family member or guardian of the resident through reasonable diligence.

(d) A suit under this section may be brought in the district court of the county in which the facility is located or in a district court of Travis County.

REPORTS RELATING TO RESIDENT DEATHS; STATISTICAL INFORMATION

Sec. 252.134. (a) A facility licensed under this chapter shall submit a report to the department concerning the death of:

(1) a resident of the facility; and
(2) a former resident that occurs 24 hours or less after the former resident is transferred from the facility to a hospital.

(b) The report must be submitted not later than the 10th working day after the last day of each month in which a resident of the facility dies. The facility must make the report on a form prescribed by the department. The report must contain the name and social security number of the deceased.

(c) The department shall correlate reports under this section with death certificate information to develop data relating to the:

(1) name and age of the deceased;
(2) official cause of death listed on the death certificate;
(3) date, time, and place of death; and
(4) name and address of the facility in which the deceased resided.

(d) Unless specified by board rule, a record under this section is confidential and not subject to the provisions of Chapter 552, Government Code.

(e) The department shall develop statistical information on official causes of death to determine patterns and trends of incidents of death among persons with mental retardation and related conditions and in specific facilities. Information developed under this subsection is not confidential.

(f) A licensed facility shall make available on the request of an applicant or an applicant's representative historical statistics on all required information.

SUBCHAPTER F. MEDICAL CARE

ADMINISTRATION OF MEDICATION

Sec. 252.151. The department shall adopt rules relating to the administration of medication in facilities.

REQUIRED MEDICAL EXAMINATION

Sec. 252.152. (a) The department shall require each resident to be given at least one medical examination each year.
(b) The department shall specify the details of the examination.

**SUBCHAPTER G. RESPITE CARE**

**DEFINITIONS**

Sec. 252.181. In this subchapter:

1. "Plan of care" means a written description of the care, training, and treatment needed by a person during respite care.
2. "Respite care" means the provision by a facility to a person, for not more than two weeks for each stay in the facility, of:
   A. room and board; and
   B. care at the level ordinarily provided for permanent residents.

**RESPITE CARE**

Sec. 252.182. (a) A facility licensed under this chapter may provide respite care for an individual who has a diagnosis of mental retardation or a related condition without regard to whether the individual is eligible to receive intermediate care services under federal law.

(b) The board may adopt rules for the regulation of respite care provided by a facility licensed under this chapter.

**PLAN OF CARE**

Sec. 252.183. (a) The facility and the person arranging the care must agree on the plan of care and the plan must be filed at the facility before the facility admits the person for the care.

(b) The plan of care must be signed by:
   1. a licensed physician if the person for whom the care is arranged needs medical care or treatment; or
   2. the person arranging for the respite care if medical care or treatment is not needed.

(c) The facility may keep an agreed plan of care for a person for not longer than six months from the date on which it is received. After each admission, the facility shall review and update the plan of care. During that period, the facility may admit the person as frequently as is needed and as accommodations are available.

**NOTIFICATION**

Sec. 252.184. A facility that offers respite care shall notify the department in writing that it offers respite care.

**INSPECTIONS**

Sec. 252.185. The department, at the time of an ordinary licensing inspection or at other times determined necessary by the department, shall inspect a facility's records of respite care services, physical accommodations available for respite care, and the plan of care records to ensure that the respite care services comply with the licensing standards of this chapter and with any rules the board may adopt to regulate respite care services.

**SUSPENSION**

Sec. 252.186. (a) The department may require a facility to cease providing respite care if the department determines that the respite care does not meet the standards required by this chapter and that the facility cannot comply with those standards in the respite care it provides.

(b) The department may suspend the license of a facility that continues to provide respite care after receiving a written order from the department to cease.

**SUBCHAPTER H. QUALITY ASSURANCE FEE**

**DEFINITION**

Sec. 252.201. In this subchapter, "gross receipts" means money paid as compensation for services provided to residents, including client participation. The term does not include charitable contributions to a facility.
COMPUTING QUALITY ASSURANCE FEE

Sec. 252.202. (a) A quality assurance fee is imposed on each facility for which a license fee must be paid under Section 252.034, on each facility owned by a community mental health and mental retardation center, as described by Subchapter A, Chapter 534, and on each facility owned by the Texas Department of Mental Health and Mental Retardation. The fee:

(1) is an amount established under Subsection (b) multiplied by the number of patient days as determined in accordance with Section 252.203;
(2) is payable monthly; and
(3) is in addition to other fees imposed under this chapter.

(b) The Health and Human Services Commission or the department at the direction of the commission shall set the quality assurance fee for each day in the amount necessary to produce annual revenues equal to an amount that is not more than six percent of the facility's total annual gross receipts in this state. The fee is subject to a prospective adjustment as necessary.

(c) The amount of the quality assurance fee must be determined using patient days and gross receipts reported to the department and covering a period of at least six months.

(d) The quality assurance fee is an allowable cost for reimbursement under the Medicaid program.

PATIENT DAYS

Sec. 252.203. For each calendar day, a facility shall determine the number of patient days by adding the following:

(1) the number of patients occupying a facility bed immediately before midnight of that day; and
(2) the number of beds that are on hold on that day and that have been placed on hold for a period not to exceed three consecutive calendar days during which a patient is on therapeutic leave.

REPORTING AND COLLECTION

Sec. 252.204. (a) The Health and Human Services Commission or the department at the direction of the commission shall collect the quality assurance fee.  

(b) Each facility shall:

(1) not later than the 20th day after the last day of a month file a report with the Health and Human Services Commission or the department, as appropriate, stating the total patient days for the month; and
(2) not later than the 30th day after the last day of the month pay the quality assurance fee.

RULES; ADMINISTRATIVE PENALTY

Sec. 252.205. (a) The Health and Human Services Commission shall adopt rules for the administration of this subchapter, including rules related to the imposition and collection of the quality assurance fee.

(b) The Health and Human Services Commission may not adopt rules granting any exceptions from the quality assurance fee.

(c) An administrative penalty assessed under this subchapter in accordance with Section 252.065 may not exceed one-half of the amount of the outstanding quality assurance fee or $20,000, whichever is greater.

QUALITY ASSURANCE FUND

Sec. 252.206. (a) The quality assurance fund is a fund outside the state treasury held by the Texas Treasury Safekeeping Trust Company. Notwithstanding any other law, the comptroller shall deposit fees collected under this subchapter to the credit of the fund.

(b) The quality assurance fund is composed of:

(1) fees deposited to the credit of the fund under this subchapter; and
(2) the earnings of the fund.

(c) Money deposited to the quality assurance fund remains the property of the fund and may be used only for the purposes of this subchapter.

(d) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1).

REIMBURSEMENT OF FACILITIES

Sec. 252.207. (a) Subject to legislative appropriation and state and federal law, the Health and Human Services Commission may use money in the quality assurance fund, together with any federal money available to match that money:

(1) to offset expenses incurred to administer the quality assurance fee under this chapter;
(2) to increase reimbursement rates paid under the Medicaid program to facilities or waiver programs for persons with mental retardation operated in accordance with 42 U.S.C. Section 1396n(c) and its subsequent amendments; or

(3) for any other health and human services purpose approved by the governor and Legislative Budget Board.

(b) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1) and Acts 2003, 78th Leg., ch. 1251, Sec. 4(b).

(c) If money in the quality assurance fund is used to increase a reimbursement rate in the Medicaid program, the Health and Human Services Commission shall ensure that the reimbursement methodology used to set that rate describes how the money in the fund will be used to increase the rate and provides incentives to increase direct care staffing and direct care wages and benefits.

(d) The increased Medicaid reimbursement paid to a facility under this section may not be based solely on the amount of the quality assurance fee paid by that facility unless authorized by 42 C.F.R. Section 433.68 or other federal law.

INVALIDITY; FEDERAL FUNDS

Sec. 252.208. If any portion of this subchapter is held invalid by a final order of a court that is not subject to appeal, or if the Health and Human Services Commission determines that the imposition of the fee and the expenditure as prescribed by this subchapter of amounts collected will not entitle the state to receive additional federal funds under the Medicaid program, the commission shall stop collection of the quality assurance fee and shall return, not later than the 30th day after the date collection is stopped, any money collected, but not spent, under this subchapter to the facilities that paid the fees in proportion to the total amount paid by those facilities.
CHAPTER 253. EMPLOYEE MISCONDUCT REGISTRY

DEFINITIONS

Sec. 253.001. In this chapter:
(1) "Commissioner" means the commissioner of human services.
(2) "Department" means the Texas Department of Human Services.
(3) "Employee" means a person who:
   (A) works at a facility;
   (B) is an individual who provides personal care services, active treatment, or any other personal services to a resident or consumer of the facility;
   (C) is not licensed by an agency of the state to perform the services the employee performs at the facility; and
   (D) is not a nurse aide employed by a nursing facility.
(4) "Facility" means:
   (A) a facility licensed by the department;
   (B) an adult foster care provider that contracts with the department.; or
   (C) a home and community support services agency licensed by the department under Chapter 142.
(5) "Reportable conduct" includes:
   (A) abuse or neglect that causes or may cause death or harm to a resident or consumer of a facility;
   (B) sexual abuse of a resident or consumer of a facility;
   (C) financial exploitation of a resident or consumer of a facility in an amount of $25 or more; and
   (D) emotional, verbal, or psychological abuse that causes harm to a resident or consumer of a facility.

INVESTIGATION BY DEPARTMENT

Sec. 253.002. If the department receives a report that an employee of a facility committed reportable conduct, the department shall investigate the report to determine whether the employee has committed the reportable conduct.

DETERMINATION; NOTICE

Sec. 253.003. (a) If, after an investigation, the department determines that the reportable conduct occurred, the department shall give written notice of the department's findings. The notice must include:
   (1) a brief summary of the department's findings; and
   (2) a statement of the person's right to a hearing on the occurrence of the reportable conduct.
(b) Not later than the 30th day after the date on which the notice is received, the employee notified may accept the determination of the department made under this section or may make a written request for a hearing on that determination.
(c) If the employee notified of the violation accepts the determination of the department or fails to timely respond to the notice, the commissioner or the commissioner's designee shall issue an order approving the determination and ordering that the reportable conduct be recorded in the registry under Section 253.007.

HEARING; ORDER

Sec. 253.004. (a) If the employee requests a hearing, the department shall:
   (1) set a hearing;
   (2) give written notice of the hearing to the employee; and
   (3) designate a hearings examiner to conduct the hearing.
(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commissioner or the commissioner's designee a proposal for decision as to the occurrence of the reportable conduct.
(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commissioner or the commissioner's designee by order may find that the reportable conduct has
occurred. If the commissioner or the commissioner's designee finds that the reportable conduct has occurred, the commissioner or the commissioner's designee shall issue an order approving the determination.

**NOTICE; JUDICIAL REVIEW**

**Sec. 253.005.** (a) The department shall give notice of the order under Section 253.004 to the employee alleged to have committed the reportable conduct. The notice must include:

1. separate statements of the findings of fact and conclusions of law;
2. a statement of the right of the employee to judicial review of the order; and
3. a statement that the reportable conduct will be recorded in the registry under Section 253.007 if:
   (A) the employee does not request judicial review of the determination; or
   (B) the determination is sustained by the court.

(b) Not later than the 30th day after the date on which the decision becomes final as provided by Chapter 2001, Government Code, the employee may file a petition for judicial review contesting the finding of the reportable conduct. If the employee does not request judicial review of the determination, the department shall record the reportable conduct in the registry under Section 253.007.

(c) Judicial review of the order:

1. is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and
2. is under the substantial evidence rule.

(d) If the court sustains the finding of the occurrence of the reportable conduct, the department shall record the reportable conduct in the registry under Section 253.007.

**INFORMAL PROCEEDINGS**

**Sec. 253.006.** The department by rule shall adopt procedures governing informal proceedings held in compliance with Section 2001.056, Government Code.

**EMPLOYEE MISCONDUCT REGISTRY**

**Sec. 253.007.** (a) If an employee commits reportable conduct, the department shall make a record of the employee's name, the employee's address, the employee's social security number, the name of the facility, the address of the facility, the date the reportable conduct occurred, and a description of the reportable conduct.

(b) If an agency of another state or the federal government finds that an employee has committed an act that constitutes reportable conduct, the department may make a record in the employee misconduct registry of the employee's name, the employee's address, the employee's social security number, the name of the facility, the address of the facility, the date of the act, and a description of the act.

(c) The department shall make the registry available to the public.

**RECORDING REPORTABLE CONDUCT REPORTED BY DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES**

**Sec. 253.0075.** On receipt of a finding of reportable conduct by the Department of Protective and Regulatory Services under Subchapter I, Chapter 48, Human Resources Code, the department shall record the information in the employee misconduct registry.

**VERIFICATION OF EMPLOYABILITY**

**Sec. 253.008.** (a) Before a facility or a person exempt from licensing under Section 142.003(a)(19) may hire an employee, the facility or person shall search the employee misconduct registry under this chapter and the nurse aide registry maintained under the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203) to determine whether the applicant for employment is designated in either registry as having abused, neglected, or exploited a resident or consumer of a facility or an individual receiving services from a facility or from a person exempt from licensing under Section 142.003(a)(19).

(b) A facility or a person exempt from licensing under Section 142.003(a)(19) may not employ a person who is listed in either registry as having abused, neglected, or exploited a resident or consumer of a facility or an individual receiving services from a facility or from a person exempt from licensing under Section 142.003(a)(19).
NOTIFICATION

Sec. 253.009. (a) Each facility and each person exempt from licensing under Section 142.003(a)(19) shall notify its employees in a manner prescribed by the department:
   (1) about the employee misconduct registry; and
   (2) that an employee may not be employed if the employee is listed in the registry.
   (b) The department shall adopt rules to implement this section.

REMOVAL FROM REGISTRY

Sec. 253.010. The department may remove a person from the employee misconduct registry if, after receiving a written request from the person, the department determines that the person does not meet the requirements for inclusion in the employee misconduct registry.
CHAPTER 255. QUALITY ASSURANCE EARLY WARNING SYSTEM FOR LONG-TERM CARE FACILITIES; RAPID RESPONSE TEAMS

DEFINITIONS

Sec. 255.001. In this chapter:
(1) "Department" means the Department of Aging and Disability Services.
(2) "Long-term care facility" means a nursing institution, an assisted living facility, or an intermediate care facility for the mentally retarded licensed under Chapter 242, 247, or 252, or certified under Chapter 32, Human Resources Code.
(3) "Quality-of-care monitor" means a registered nurse, pharmacist, or nutritionist who:
   (A) is employed by the department;
   (B) is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of patient care; and
   (C) functions independently of other divisions of the department.

EARLY WARNING SYSTEM

Sec. 255.002. The department shall establish an early warning system to detect conditions that could be detrimental to the health, safety, and welfare of residents. The early warning system shall include analysis of financial and quality-of-care indicators that would predict the need for the department to take action.

QUALITY-OF-CARE MONITORS

Sec. 255.003. (a) The department shall establish regional offices with one or more quality-of-care monitors, based on the number of long-term care facilities in the region, to monitor the facilities in the region on a regular, aperiodic basis, including nights, evenings, weekends, and holidays. A monitoring visit conducted under this chapter may be announced or unannounced.
   (b) Priority for monitoring visits shall be given to long-term care facilities with a history of patient care deficiencies.
   (c) Quality-of-care monitors may not be deployed by the department as a part of the regional survey team in the conduct of routine, scheduled surveys.
   (d) A quality-of-care monitor may not interfere with, impede, or otherwise adversely affect the performance of the duties of a surveyor, inspector, or investigator of the department.
   (e) Quality-of-care monitors shall assess:
      (1) the overall quality of life in the long-term care facility; and
      (2) specific conditions in the facility directly related to patient care.
   (f) The quality-of-care monitor shall include in a monitoring visit:
      (1) observation of the care and services rendered to residents; and
      (2) formal and informal interviews with residents, family members, facility staff, resident guests, volunteers, other regulatory staff, and representatives of a human rights advocacy committee.
   (g) The identity of a resident or a family member of a resident interviewed by a quality-of-care monitor as provided by Subsection (f)(2) shall remain confidential and may not be disclosed to any person under any other provision of this section.
   (h) The findings of a monitoring visit, both positive and negative, shall be provided orally and in writing to the long-term care facility administrator or, in the absence of the facility administrator, to the administrator on duty or the director of nursing.
   (i) The quality-of-care monitor may recommend to the long-term care facility administrator procedural and policy changes and staff training to improve the care or quality of life of facility residents.
   (j) Conditions observed by the quality-of-care monitor that create an immediate threat to the health or safety of a resident shall be reported immediately to the regional office supervisor for appropriate action and, as appropriate or as required by law, to law enforcement, adult protective services, other divisions of the department, or other responsible agencies.

RAPID RESPONSE TEAMS

Sec. 255.004. (a) The department shall create rapid response teams composed of health care experts that can visit long-term care facilities identified through the department's early warning system.
(b) Rapid response teams may visit long-term care facilities that request the department's assistance. A visit under this subsection may not occur before the 60th day after the date of an exit interview following an annual or follow-up survey or inspection.

(c) The rapid response teams may not be deployed for the purpose of helping a long-term care facility prepare for a regular inspection or survey conducted under Chapter 242, 247, or 252 or in accordance with Chapter 32, Human Resources Code.

REPORT

Sec. 255.005. The department shall assess and evaluate the effectiveness of the quality assurance early warning system and shall report its findings annually to the governor, the lieutenant governor, and the speaker of the house of representatives.
CHAPTER 313. CONSENT TO MEDICAL TREATMENT ACT

SHORT TITLE
Sec. 313.001. This chapter may be cited as the Consent to Medical Treatment Act.

DEFINITIONS
Sec. 313.002. In this chapter:
(1) "Adult" means a person 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed.
(2) "Attending physician" means the physician with primary responsibility for a patient's treatment and care.
(3) "Decision-making capacity" means the ability to understand and appreciate the nature and consequences of a decision regarding medical treatment and the ability to reach an informed decision in the matter.
(3-a) “Home and community support services agency” means a facility licensed under Chapter 142.
(4) "Hospital" means a facility licensed under Chapter 241.
(5) "Incapacitated" means lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to any proposed treatment decision.
(6) "Medical treatment" means a health care treatment, service, or procedure designed to maintain or treat a patient's physical or mental condition, as well as preventative care.
(7) "Nursing home" means a facility licensed under Chapter 242.
(8) "Patient" means a person who:
(A) is admitted to a hospital;
(B) is residing in a nursing home; or
(C) is receiving services from a home and community support services agency.
(9) "Physician" means:
(A) a physician licensed by the Texas State Board of Medical Examiners; or
(B) a physician with proper credentials who holds a commission in a branch of the armed services of the United States and who is serving on active duty in this state.
(10) "Surrogate decision-maker" means an individual with decision-making capacity who is identified as the person who has authority to consent to medical treatment on behalf of an incapacitated patient in need of medical treatment.

EXCEPTIONS AND APPLICATION
Sec. 313.003. (a) This chapter does not apply to:
(1) a decision to withhold or withdraw life-sustaining treatment from qualified terminal or irreversible patients under Subchapter B, Chapter 166;
(2) a health care decision made under a medical power of attorney under Subchapter D, Chapter 166, or under Chapter XII, Texas Probate Code;
(3) consent to medical treatment of minors under Chapter 32, Family Code;
(4) consent for emergency care under Chapter 773;
(5) hospital patient transfers under Chapter 241; or
(6) a patient's legal guardian who has the authority to make a decision regarding the patient's medical treatment.
(b) This chapter does not authorize a decision to withhold or withdraw life-sustaining treatment.

CONSENT FOR MEDICAL TREATMENT
Sec. 313.004. (a) If an adult patient of a home and community support services agency or in a hospital or nursing home is comatose, incapacitated, or otherwise mentally or physically incapable of communication, an adult surrogate from the following list, in order of priority, who has decision-making capacity, is available after a reasonably diligent inquiry, and is willing to consent to medical treatment on behalf of the patient may consent to medical treatment on behalf of the patient:
(1) the patient's spouse;
(2) an adult child of the patient who has the waiver and consent of all other qualified adult children of the patient to act as the sole decision-maker;
(3) a majority of the patient's reasonably available adult children;
(4) the patient's parents; or
(5) the individual clearly identified to act for the patient by the patient before the patient became incapacitated, the patient's nearest living relative, or a member of the clergy.

(b) Any dispute as to the right of a party to act as a surrogate decision-maker may be resolved only by a court of record having jurisdiction under Chapter V, Texas Probate Code.

(c) Any medical treatment consented to under Subsection (a) must be based on knowledge of what the patient would desire, if known.

(d) Notwithstanding any other provision of this chapter, a surrogate decision-maker may not consent to:
(1) voluntary inpatient mental health services;
(2) electro-convulsive treatment; or
(3) the appointment of another surrogate decision-maker.

PREREQUISITES FOR CONSENT

Sec. 313.005. (a) If an adult patient of a home and community support services agency or in a hospital or nursing home is comatose, incapacitated, or otherwise mentally or physically incapable of communication and, according to reasonable medical judgment, is in need of medical treatment, the attending physician shall describe the:

(1) patient's comatose state, incapacity, or other mental or physical inability to communicate in the patient's medical record; and
(2) proposed medical treatment in the patient's medical record.

(b) The attending physician shall make a reasonably diligent effort to contact or cause to be contacted the persons eligible to serve as surrogate decision-makers. Efforts to contact those persons shall be recorded in detail in the patient's medical record.

(c) If a surrogate decision-maker consents to medical treatment on behalf of the patient, the attending physician shall record the date and time of the consent and sign the patient's medical record. The surrogate decision-maker shall countersign the patient's medical record or execute an informed consent form.

(d) A surrogate decision-maker's consent to medical treatment that is not made in person shall be reduced to writing in the patient's medical record, signed by the home and community support services agency, hospital, or nursing home staff member receiving the consent, and countersigned in the patient's medical record or on an informed consent form by the surrogate decision-maker as soon as possible.

LIABILITY FOR MEDICAL TREATMENT COSTS

Sec. 313.006. Liability for the cost of medical treatment provided as a result of consent to medical treatment by a surrogate decision-maker is the same as the liability for that cost if the medical treatment were provided as a result of the patient's own consent to the treatment.

LIMITATION ON LIABILITY

Sec. 313.007. (a) A surrogate decision-maker is not subject to criminal or civil liability for consenting to medical care under this chapter if the consent is made in good faith.

(b) An attending physician, home and community support services agency, hospital, or nursing home or a person acting as an agent for or under the control of the physician, home and community support services agency, hospital, or nursing home is not subject to criminal or civil liability and has not engaged in unprofessional conduct if the medical treatment consented to under this chapter:

(1) is done in good faith under the consent to medical treatment; and
(2) does not constitute a failure to exercise due care in the provision of the medical treatment.
CHAPTER 322. USE OF RESTRAINT AND SECLUSION IN CERTAIN HEALTH CARE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

DEFINITIONS

Sec. 322.001. In this chapter:

(1) "Facility" means:

(A) a child-care institution, as defined by Section 42.002, Human Resources Code, including a state-operated facility, that is a residential treatment center or a child-care institution serving children with mental retardation;

(B) an intermediate care facility licensed by the Department of Aging and Disability Services under Chapter 252 or operated by that department and exempt under Section 252.003 from the licensing requirements of that chapter;

(C) a mental hospital or mental health facility, as defined by Section 571.003;

(D) an institution, as defined by Section 242.002;

(E) an assisted living facility, as defined by Section 247.002; or

(F) a treatment facility, as defined by Section 464.001.

(2) "Health and human services agency" means an agency listed in Section 531.001, Government Code.

(3) "Seclusion" means the involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

SUBCHAPTER B. RESTRAINTS AND SECLUSION

CERTAIN RESTRAINTS PROHIBITED

Sec. 322.051. (a) A person may not administer to a resident of a facility a restraint that:

(1) obstructs the resident's airway, including a procedure that places anything in, on, or over the resident's mouth or nose;

(2) impairs the resident's breathing by putting pressure on the torso; or

(3) interferes with the resident's ability to communicate.

(b) A person may use a prone or supine hold on the resident of a facility only if the person:

(1) limits the hold to no longer than the period specified by rules adopted under Section 322.052;

(2) uses the hold only as a last resort when other less restrictive interventions have proven to be ineffective; and

(3) uses the hold only when an observer, who is trained to identify the risks associated with positional, compression, or restraint asphyxiation and with prone and supine holds and who is not involved in the restraint, is ensuring the resident's breathing is not impaired.

(c) Small residential facilities and small residential service providers are exempt from Subsection (b)(3).

ADOPTION OF RESTRAINT AND SECLUSION PROCEDURES

Sec. 322.052. (a) For each health and human services agency that regulates the care or treatment of a resident at a facility, the executive commissioner of the Health and Human Services Commission shall adopt rules to:

(1) define acceptable restraint holds that minimize the risk of harm to a facility resident in accordance with this subchapter;

(2) govern the use of seclusion of facility residents; and

(3) develop practices to decrease the frequency of the use of restraint and seclusion.

(b) The rules must permit prone and supine holds only as transitional holds for use on a resident of a facility.

(c) A facility may adopt procedures for the facility's use of restraint and seclusion on a resident that regulate, more restrictively than is required by a rule of the regulating health and human services agency, the use of restraint and seclusion.
NOTIFICATION
Sec. 322.052. The executive commissioner of the Health and Human Services Commission by rule shall ensure that each resident at a facility regulated by a health and human services agency and the resident's legally authorized representative are notified of the rules and policies related to restraints and seclusion.

RETIATION PROHIBITED
Sec. 322.054. (a) A facility may not discharge or otherwise retaliate against:
(1) an employee, client, resident, or other person because the employee, client, resident, or other person files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility; or
(2) a client or resident of the facility because someone on behalf of the client or resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility.
(b) A health and human services agency that registers or otherwise licenses or certifies a facility may:
(1) revoke, suspend, or refuse to renew the license, registration, or certification of a facility that violates Subsection (a); or
(2) place on probation a facility that violates Subsection (a).
(c) A health and services agency that regulates a facility and that is authorized to impose an administrative penalty against the facility under other law may impose an administrative penalty against the facility for violating Subsection (a). Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The amount of the penalty may not exceed the maximum amount that the agency may impose against the facility under the other law. The agency must follow the procedures it would follow in imposing an administrative penalty against the facility under the other law.
(d) A facility may contest and appeal the imposition of an administrative penalty under Subsection (c) by following the same procedures the facility would follow in contesting or appealing an administrative penalty imposed against the facility by the agency under the other law.

MEDICAID WAIVER PROGRAM
Sec. 322.055. A Medicaid waiver program provider, when providing supervised living or residential support, shall comply with this chapter and rules adopted under this chapter.

CHAPTER 323. EMERGENCY SERVICES FOR SURVIVORS OF SEXUAL ASSAULT

DEFINITIONS
Sec. 323.001. In this chapter:
(1) "Community-wide plan" means an agreement entered into between one or more health care facilities, entities administering a sexual assault program, district attorney's offices, or law enforcement agencies that designates one or more health care facilities in the community as a primary health care facility to furnish emergency medical services and evidence collection to sexual assault survivors on a community or area-wide basis.
(2) "Department" means the Department of State Health Services.
(3) "Health care facility" means a general or special hospital licensed under Chapter 241 or a general or special hospital owned by this state.
(4) "Sexual assault" means any act as described by Section 22.011 or 22.021, Penal Code.
(5) "Sexual assault survivor" means an individual who is a victim of a sexual assault, regardless of whether a report is made or a conviction is obtained in the incident.

PLAN FOR EMERGENCY SERVICES
Sec. 323.002. (a) At the request of the department, a health care facility shall submit to the department for approval a plan for providing the services required by Section 323.004 to sexual assault survivors who arrive for treatment at the emergency department of the health care facility.
(b) The department shall adopt procedures for submission, approval, and modification of a plan required under this section.
(c) A health care facility shall submit the plan required by this section not later than the 60th day after the date the department requests the plan.
(d) The department shall approve or reject the plan not later than the 120th day after the date the plan is submitted.

**REJECTION OF PLAN**

Sec. 323.003. (a) If a plan required under Section 323.002 is not approved, the department shall:
   (1) return the plan to the health care facility; and
   (2) identify the specific provisions under Section 323.004 with which the plan conflicts or does not comply.
   (b) Not later than the 90th day after the date the department returns a plan to a health care facility under Subsection (a), the facility shall correct and resubmit the plan to the department for approval.

**MINIMUM STANDARDS FOR EMERGENCY SERVICES**

Sec. 323.004. (a) After a sexual assault survivor arrives at a health care facility following an alleged sexual assault, the facility shall:
   (1) provide care to the survivor in accordance with Subsection (b); or
   (2) stabilize and transfer the survivor to a health care facility designated in a community-wide plan as the primary health care facility in the community for treating sexual assault survivors, which shall provide care to the survivor in accordance with Subsection (b).
   (b) A health care facility providing care to a sexual assault survivor shall provide the survivor with:
      (1) a forensic medical examination in accordance with Subchapter B, Chapter 420, Government Code, if the examination has been approved by a law enforcement agency;
      (2) a private area, if available, to wait or speak with the appropriate medical, legal, or sexual assault crisis center staff or volunteer until a physician, nurse, or physician assistant is able to treat the survivor;
      (3) access to a sexual assault program advocate, if available, as provided by Article 56.045, Code of Criminal Procedure;
      (4) the information form required by Section 323.005;
      (5) a private treatment room, if available;
      (6) if indicated by the history of contact, access to appropriate prophylaxis for exposure to sexually transmitted infections; and
      (7) the name and telephone number of the nearest sexual assault crisis center.
   (c) A health care facility must obtain documented consent before providing the forensic medical examination and treatment.

**INFORMATION FORM**

Sec. 323.005. (a) The department shall develop a standard information form for sexual assault survivors that must include:
   (1) a detailed explanation of the forensic medical examination required to be provided by law, including a statement that photographs may be taken of the genitalia;
   (2) information regarding treatment of sexually transmitted infections and pregnancy, including:
      (A) generally accepted medical procedures;
      (B) appropriate medications; and
      (C) any contraindications of the medications prescribed for treating sexually transmitted infections and preventing pregnancy;
   (3) information regarding drug-facilitated sexual assault, including the necessity for an immediate urine test for sexual assault survivors who may have been involuntarily drugged;
   (4) information regarding crime victims compensation, including:
      (A) a statement that a law enforcement agency will pay for the forensic portion of the examination; and
      (B) reimbursement information for the medical portion of the examination;
   (5) an explanation that consent for the forensic medical examination may be withdrawn at any time during the examination;
   (6) the name and telephone number of sexual assault crisis centers statewide; and
   (7) information regarding postexposure prophylaxis for HIV infection.
   (b) A health care facility shall use the standard form developed under this section.
   (c) An individual employed by or under contract with a health care facility may refuse to provide the information form required by this section for ethical or religious reasons. If an individual employed by or under
contract with a health care facility refuses to provide the survivor with the information form, the health care facility must ensure that the information form is provided without delay to the survivor by another individual employed by or under contract with the facility.

INSPECTION

Sec. 323.006. The department may conduct an inspection of a health care facility to ensure compliance with this chapter.
CHAPTER 531. PROVISIONS GENERALLY APPLICABLE TO THE TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

PURPOSE; POLICY

Sec. 531.001. (a) It is the purpose of this subtitle to provide for the effective administration and coordination of mental health and mental retardation services at the state and local levels.

(b) Recognizing that a variety of alternatives for serving the mentally disabled exists, it is the purpose of this subtitle to ensure that a continuum of services is provided. The continuum of services includes facilities operated by the Texas Department of Mental Health and Mental Retardation and community services provided by the department and other entities through contracts with the department.

(c) It is the goal of this state to provide a comprehensive range of services for persons with mental illness or mental retardation who need publicly supported care, treatment, or habilitation. In providing those services, efforts will be made to coordinate services and programs with services and programs provided by other governmental entities to minimize duplication and to share with other governmental entities in financing those services and programs.

(d) It is the policy of this state that, when appropriate and feasible, persons with mental illness or mental retardation shall be afforded treatment in their own communities.

(e) It is the public policy of this state that mental health and mental retardation services be the responsibility of local agencies and organizations to the greatest extent possible. The department shall assist the local agencies and organizations by coordinating the implementation of a statewide system of services. The department shall ensure that mental health and mental retardation services are provided. The department shall provide technical assistance for and regulation of the programs that receive funding through contracts with the department.

(f) It is the public policy of this state to offer services first to those persons who are most in need. Therefore, funds appropriated by the legislature for mental health and mental retardation services may be spent only to provide services to the priority populations identified in the department's long-range plan.

(g) It is the goal of this state to establish at least one special officer for mental health assignment in each county. To achieve this goal, the department shall assist a local law enforcement agency that desires to have an officer certified under Section 1701.404 Occupations Code.

(h) It is the policy of this state that the board serves as the state's mental health and mental retardation authority and is responsible for the planning, policy development, and resource development and allocation for and oversight of mental health and mental retardation services in this state. It is the policy of this state that, when appropriate and feasible, the board may delegate the board's authority to a single entity in each region of the state that may function as the local mental health or mental retardation authority for one or more service areas in the region.

DEFINITIONS

Sec. 531.002. In this subtitle:

(1) "Board" means the Texas Board of Mental Health and Mental Retardation.

(2) "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

(3) "Chemical dependency" has the meaning assigned by Section 461.002.

(4) "Commissioner" means the commissioner of mental health and mental retardation.

(5) "Community center" means a center established under Subchapter A, Chapter 534.

(6) "Department" means the Texas Department of Mental Health and Mental Retardation.

(7) "Effective administration" includes continuous planning and evaluation within the system that result in more efficient fulfillment of the purposes and policies of this subtitle.

(8) "ICF-MR" means the medical assistance program serving persons with mental retardation who receive care in intermediate care facilities.

(9) "Local agency" means:

(A) a municipality, county, hospital district, rehabilitation district, school district, state-supported institution of higher education, or state-supported medical school; or

(B) any organizational combination of two or more of those entities.

(10) "Local mental health authority" means an entity to which the board delegates its authority and responsibility within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of...
mental health services to persons with mental illness in the most appropriate and available setting to meet individual needs in one or more local service areas.

(11) "Local mental retardation authority" means an entity to which the board delegates its authority and responsibility within a specified region for planning, policy development, coordination, and resource development and allocation and for supervising and ensuring the provision of mental retardation services to persons with mental retardation in one or more local service areas.

(12) "Mental health services" includes all services concerned with research, prevention, and detection of mental disorders and disabilities, and all services necessary to treat, care for, control, supervise, and rehabilitate persons who have a mental disorder or disability, including persons whose mental disorders or disabilities result from alcoholism or drug addiction.

(13) "Mental retardation services" includes all services concerned with research, prevention, and detection of mental retardation, and all services related to the education, training, habilitation, care, treatment, supervision, and control of persons with mental retardation, but does not include the education of school-age persons that the public educational system is authorized to provide.

(14) "Person with mental retardation" means a person, other than a person with a mental disorder, whose mental deficit requires the person to have special training, education, supervision, treatment, care, or control in the person's home or community or in a state school.

(15) "Priority population" means those groups of persons with mental illness or mental retardation identified by the department as being most in need of mental health or mental retardation services.

(16) "Region" means the area within the boundaries of the local agencies participating in the operation of community centers established under Subchapter A, Chapter 534.

(17) "State school" means a state-supported and structured residential facility operated by the department to provide to clients with mental retardation a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills.
CHAPTER 532. ORGANIZATION OF TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

COMPOSITION OF DEPARTMENT

Sec. 532.001. (a) The Texas Department of Mental Health and Mental Retardation is composed of:

(1) the Texas Board of Mental Health and Mental Retardation;
(2) the commissioner of mental health and mental retardation; and
(3) a staff under the direction of the commissioner.

(b) The department also includes community services operated by the department and the following facilities:

(1) the central office of the department;
(2) the Austin State Hospital;
(3) the Big Spring State Hospital;
(4) the Kerrville State Hospital;
(5) the Rusk State Hospital;
(6) the San Antonio State Hospital;
(7) the Terrell State Hospital;
(8) the North Texas State Hospital;
(9) the Abilene State School;
(10) the Austin State School;
(11) the Brenham State School;
(12) the Corpus Christi State School;
(13) the Denton State School;
(14) the Lubbock State School;
(15) the Lufkin State School;
(16) the Mexia State School;
(17) the Richmond State School;
(18) the San Angelo State School;
(19) the San Antonio State School;
(20) the El Paso State Center;
(21) the Rio Grande State Center; and
(22) the Waco Center for Youth;

SUNSET PROVISION

Sec. 532.002. The Texas Department of Mental Health and Mental Retardation is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that Act, the department is abolished and this chapter expires September 1, 2011.

COMPOSITION OF BOARD

Sec. 532.003. (a) The board is composed of nine members appointed by the governor with the advice and consent of the senate.

(b) The members must be representatives of the public. At least one member must be a consumer of services for persons with mental illness or mental retardation or a family member of a consumer of those services.

(b-1) The members must be representatives of the public who have demonstrated interest in mental health, mental retardation, developmental disabilities, or the health and human services system.

(c) Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

BOARD TRAINING

Sec. 532.0035. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training session that complies with this section.

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

(1) the legislation that created the department and board;
(2) the programs operated by the department;
(3) the roles and functions of the department;
(4) the rules of the department with an emphasis on the rules that relate to disciplinary and investigatory authority;
(5) the current budget for the department;
(6) the results of the most recent formal audit of the department;
(7) the requirements of:
(A) the open meetings law, Chapter 551, Government Code;
(B) the public information law, Chapter 552, Government Code;
(C) the administrative procedure law, Chapter 2001, Government Code; and
(D) other laws relating to public officials, including conflict-of-interest laws; and
(8) any applicable ethics policies adopted by the department or the Texas Ethics Commission.
(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

RESTRICTIONS ON BOARD APPOINTMENT AND MEMBERSHIP
AND ON DEPARTMENT EMPLOYMENT

Sec. 532.004. (a) A person is not eligible for appointment as a board member if the person or the person's spouse:

(1) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the department or receiving funds from the department; or
(2) uses or receives a substantial amount of tangible goods, services, or funds from the department, other than:

(A) compensation or reimbursement authorized by law for board membership, attendance, or expenses; or
(B) as a parent or guardian of a client or patient receiving services from the department.

(b) An officer, employee, or paid consultant of a trade association in the field of mental health or mental retardation may not be a member of the board or an employee of the department.

(c) A person who is the spouse of an officer, employee, or paid consultant of a trade association in the field of mental health or mental retardation may not be a board member or a department employee grade 17 or over, including exempt employees, according to the position classification schedule under the General Appropriations Act.

(d) A person may not serve as a member of the board or act as the general counsel to the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

(e) For purposes of this section, a trade association is a nonprofit, cooperative, voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

TERMS

Sec. 532.005. Board members serve six-year terms.

CHAIRMAN

Sec. 532.006. The governor shall designate a board member as chairman.

REMOVAL OF BOARD MEMBERS

Sec. 532.007. (a) It is a ground for removal from the board if a member:

(1) is not eligible for appointment to the board at the time of appointment as provided by Section 532.004(a);
(2) does not maintain during service on the board the qualifications required by Section 532.004(a);
(3) violates a prohibition established by Section 532.004(b), (c), or (d);
(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or
(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.
(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the commissioner has knowledge that a potential ground for removal exists, the commissioner shall notify the chairman of the board of the ground. The chairman shall then notify the governor that a potential ground for removal exists.

REPEALED

Sec. 532.008.

REIMBURSEMENT FOR EXPENSES; PER DIEM
Sec. 532.009. A board member is entitled to receive:
(1) reimbursement for actual and necessary expenses incurred in discharging the member's duties; and
(2) the per diem compensation as provided by appropriation for each day the member actually performs official duties.

BOARD MEETINGS
Sec. 532.010. (a) The board shall hold at least four regular meetings each year in the city of Austin on dates set by board rule. The board shall adopt rules that provide for holding special meetings.
(b) A board meeting, other than a meeting to deliberate the appointment of the commissioner, is open to the public.
(c) The board shall adopt policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

COMMISSIONER
Sec. 532.011. (a) The commissioner of health and human services shall employ a commissioner in accordance with Section 531.0056, Government Code.
(b) To be qualified for employment as commissioner, a person must have:
(1) professional training and experience in the administration or management of comprehensive health care or human service operations; and
(2) proven administrative and management ability, preferably in the health care area.
(c) Repealed.
(d) The commissioner:
(1) has the administrative and decisional powers granted under this subtitle; and
(2) shall administer the department and this subtitle and ensure the effective administration of the department and its programs and services.
(e) The commissioner shall:
(1) establish qualifications for department personnel that balance clinical and programmatic knowledge and management experience; and
(2) standardize qualifications for personnel positions throughout the department.
(f) The commissioner shall:
(1) establish an organizational structure within the department that will promote the effective administration of this subtitle; and
(2) establish the duties and functions of the department's staff.
(g) The commissioner is responsible for implementation of the board's planning, policy, resource development and allocation, and oversight related to mental health and mental retardation services.

MEDICAL DIRECTOR
Sec. 532.012. (a) The commissioner shall appoint a medical director.
(b) To be qualified for appointment as medical director, a person must:
(1) be a physician licensed to practice in this state; and
(2) have proven administrative experience and ability in comprehensive health care or human service operations.
(c) The medical director reports to the commissioner and is responsible for:
(1) oversight of the quality and appropriateness of clinical services delivered in department facilities or under contract to the department; and
(2) leadership in physician recruitment and retention and peer review.
REPEALED

Sec. 532.013.

HEADS OF DEPARTMENTAL FACILITIES

Sec. 532.014. (a) The commissioner shall appoint the head of each facility the department administers.
(b) The head of a facility serves at the will of the commissioner.

RULES AND POLICIES

Sec. 532.015. (a) The board shall adopt rules and develop basic and general policies to guide the department in administering this subtitle. The rules and policies must be consistent with the purposes, policies, principles, and standards stated in this subtitle.
(b) The board shall adopt policies that clearly define the respective responsibilities of the board and the staff of the department.

PERSONNEL

Sec. 532.016. (a) The commissioner shall develop an intra-agency career ladder program. The program shall require intra-agency posting of all nonentry level positions concurrently with any public posting.
(b) The commissioner shall develop a system of annual job performance evaluations. All merit pay for department employees must be based on the system established under this subsection.
(c) The department shall provide to its members and employees, as often as necessary, information regarding their qualifications under this subtitle and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.
(d) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:
   (1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel that show the intent of the department to avoid the unlawful employment practices described by Chapter 21, Labor Code;
   (2) an analysis of the extent to which the composition of the department's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law; and
   (3) procedures by which a determination can be made of significant underutilization in the department work force of all persons for whom federal or state guidelines encourage a more equitable balance and reasonable methods to appropriately address those areas of significant underutilization.
   (e) The policy statement must:
      (1) be updated annually;
      (2) be reviewed by the Commission on Human Rights for compliance with Subsection (d) (1);
      and
      (3) be filed with the governor's office.
(f) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (e)(3). The report may be made separately or as a part of other biennial reports made to the legislature.

ANNUAL REPORTS

Sec. 532.017. (a) The department shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the department during the preceding fiscal year. The report must be in the form and reported in the time provided by the General Appropriations Act.
(b) The report must include the activities of the Interstate Compact on Mental Health, the amount and types of transfers by the department in and out of the state using the compact, and an accounting of any funds received and disbursed by the office of the Interstate Compact on Mental Health Administrator for Texas.

AUDITS

Sec. 532.018. (a) The financial transactions of the department are subject to audit by the state auditor in accordance with Chapter 321, Government Code.
(b) The director of the internal audit unit shall report directly to the commissioner.
(c) Each audit report shall be submitted directly to the board.

PUBLIC INTEREST INFORMATION AND COMPLAINTS
Sec. 532.019. (a) The department shall prepare information of public interest describing the functions of
the department and the procedures by which complaints are filed with and resolved by the department. The
department shall make the information available to the public and appropriate state agencies.
(b) The board by rule shall establish methods by which consumers and service recipients are notified of the
name, mailing address, and telephone number of the department for the purpose of directing complaints to the
department. The board may provide for that notification:
(1) on each registration form, application, or written contract for services of an entity regulated
under this subtitle or of an entity the creation of which is authorized by this subtitle;
(2) on a sign that is prominently displayed in the place of business of each entity regulated under
this subtitle or of each entity the creation of which is authorized by this subtitle; or
(3) in a bill for service provided by an entity regulated under this subtitle or by an entity the
creation of which is authorized by this subtitle.
(c) If a written complaint is filed with the department relating to an entity regulated by the department, the
department, at least quarterly and until final disposition of the complaint, shall notify the complainant and the entity
regulated by the department of the status of the complaint unless notice would jeopardize an undercover
investigation.
(d) The department shall keep an information file about each complaint filed with the department relating
to an entity regulated by the department.

ADVISORY COMMITTEES
Sec. 532.020. (a) The board shall appoint a medical advisory committee and any other advisory
committees the board considers necessary to assist in the effective administration of the department's mental health
and mental retardation programs.
(b) The department may reimburse committee members for travel costs incurred in performing their duties
at the rates authorized for state officers and employees under the General Appropriations Act.

CITIZENS' PLANNING ADVISORY COMMITTEE
Sec. 532.021. (a) The board shall appoint a citizens' planning advisory committee that is composed of:
(1) three persons who have demonstrated an interest in and knowledge of the department system
and the legal, political, and economic environment in which the department operates;
(2) three persons who have expertise in the development and implementation of long-range plans;
and
(3) three members of the public.
(b) In addition to the requirements of Subsection (a), at least one member must be a consumer of services
for persons with mental illness or a family member of a consumer of those services, and at least one member must
be a consumer of services for persons with mental retardation or a family member of a consumer of those services.
(c) The committee shall:
(1) advise the department on all stages of the development and implementation of the long-range
plan required by Section 533.032;
(2) review the development, implementation, and any necessary revisions of the long-range plan;
(3) review the department's biennial budget request and assess the degree to which the request
allows for implementation of the long-range plan; and
(4) advise the board on:
   (A) the appropriateness of the long-range plan;
   (B) any identified problems related to the implementation of the plan;
   (C) any necessary revisions to the plan; and
   (D) the adequacy of the department's budget request.
(d) The board shall review the committee's reports in conjunction with information provided by the
department on the long-range plan or the biennial budget request.
(e) The board shall allow the committee opportunities to appear before the board as needed.
(f) Before a board meeting relating to the development, implementation, or revision of the department's long-range plan, the department shall, in a timely manner, provide the committee with any information that will be presented to the board.

(g) Before submitting the department's biennial budget request to the board for discussion or approval, the department shall, in a timely manner, provide the committee with a copy of the budget request.

(h) The department shall provide the committee with the staff support necessary to allow the committee to fulfill its duties.

(i) The committee shall provide copies of its reports to the board, governor, lieutenant governor, speaker of the house of representatives, and appropriate legislative committees.
CHAPTER 533. POWERS AND DUTIES

SUBCHAPTER A. GENERAL POWERS AND DUTIES

POWERS AND DUTIES OF COMMISSIONER OF HEALTH AND HUMAN SERVICES

Sec. 533.0001. The commissioner of health and human services has the powers and duties relating to the board and commissioner as provided by Section 531.0055, Government Code. To the extent a power or duty given to the board or commissioner by this title or another law conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

GIFTS AND GRANTS

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

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

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

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

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

COMPETITIVE REVIEW REQUIREMENT

Sec. 533.002. The department shall establish procedures to:

(1) promote more efficient use of public funds;

(2) ensure periodic review of department management and support activities in order to:

   (A) improve department operations;

   (B) improve the determination of costs;

   (C) increase department productivity; and

   (D) remain competitive with the private sector; and

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

USE OF FUNDS FOR VOLUNTEER PROGRAMS IN LOCAL AUTHORITIES AND COMMUNITY CENTERS

Sec. 533.003. (a) To develop or expand a volunteer program in a local mental health or mental retardation authority or a community center, the department may allocate available funds appropriated for providing volunteer services.

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

LIENS

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

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

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

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

(c) The lien attaches to:

   (1) all nonexempt real and personal property owned or later acquired by the patient or client or by a person legally responsible for the patient's or client's support;
(2) a judgment of a court in this state or a decision of a public agency in a proceeding brought by or on behalf of the patient or client to recover damages for an injury for which the patient or client was admitted to a department facility or community center; and
(3) the proceeds of a settlement of a cause of action or a claim by the patient or client for an injury for which the patient or client was admitted to a department facility or community center.
(d) To secure the lien, the department or community center must file written notice of the lien with the county clerk of the county in which:
(1) the patient or client, or the person legally responsible for the patient's or client's support, owns property; or
(2) the patient or client received or is receiving services.
(e) The notice must contain:
(1) the name and address of the patient or client;
(2) the name and address of the person legally responsible for the patient's or client's support, if applicable;
(3) the period during which the department facility or community center provided services or a statement that services are currently being provided; and
(4) the name and location of the department facility or community center.
(f) Not later than the 31st day before the date on which the department files the notice of the lien with the county clerk, the department shall notify by certified mail the patient or client and the person legally responsible for the patient's or client's support. The notice must contain a copy of the charges, the statutory procedures relating to filing a lien, and the procedures to contest the charges. The board by rule shall prescribe the procedures to contest the charges.
(g) The county clerk shall record on the written notice the name of the patient or client, the name and address of the department facility or community center, and, if requested by the person filing the lien, the name of the person legally responsible for the patient's or client's support. The clerk shall index the notice record in the name of the patient or client and, if requested by the person filing the lien, in the name of the person legally responsible for the patient's or client's support.
(h) The notice record must include an attachment that contains an account of the charges made by the department facility or community center and the amount due to the facility or center. The superintendent or director of the facility or center must swear to the validity of the account. The account is presumed to be correct, and in a suit to cancel the debt and discharge the lien or to foreclose on the lien, the account is sufficient evidence to authorize a court to render a judgment for the facility or center.
(i) To discharge the lien, the superintendent or director of the department facility or community center or a claims representative of the facility or center must execute and file with the county clerk of the county in which the lien notice is filed a certificate stating that the debt covered by the lien has been paid, settled, or released and authorizing the clerk to discharge the lien. The county clerk shall record a memorandum of the certificate and the date on which it is filed. The filing of the certificate and recording of the memorandum discharge the lien.

EASEMENTS
Sec. 533.005. The department may grant a temporary or permanent easement or right-of-way on land held by the department. The department must grant an easement or right-of-way on terms and conditions the department considers to be in the state's best interest.

REPORTING OF ALLEGATIONS AGAINST PHYSICIAN
Sec. 533.006. (a) The department shall report to the Texas State Board of Medical Examiners any allegation received by the department that a physician employed by or under contract with the department has committed an action that constitutes a ground for the denial or revocation of the physician's license under Section 164.051, Occupations Code. The report must be made in the manner provided by Section 154.051, Occupations Code.
(b) The department shall provide to the Texas State Board of Medical Examiners a copy of any report or finding relating to an investigation of an allegation reported to that board.

ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: CRIMINAL PENALTY FOR UNLAWFUL DISCLOSURE
Sec. 533.007. (a) The department, a local mental health or mental retardation authority, or a community center may deny employment or volunteer status to an applicant if:
(1) the department, authority, or community center determines that the applicant's criminal history record information indicates that the person is not qualified or suitable; or

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

(b) The board shall adopt rules relating to the use of information obtained under section, including rules that prohibit an adverse personnel action based on arrest warrant or wanted persons information received by the department.

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

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

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

(i) Rerelatered as subsection (b) by Laws 1999, 76th Leg., ch. 1209, eff. Sept. 1, 1993.

*Pursuant to the repeal of substantive portions of 533.007, section 411.115 of the Government Code reads as follows:

Sec. 411.115. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION; LOCAL AUTHORITIES, COMMUNITY CENTERS.

(a) In this section, "local mental health authority," local mental retardation authority," and "community center" have the meanings assigned by Section 531.002, Health and Safety Code.

(b) The Texas Department of Mental Health and Mental Retardation, a local mental health or mental retardation authority, or a community center is entitled to obtain from the department criminal history record information maintained by the department that relates to a person;

(1) who is:

(A) an applicant for employment with the Texas Department of Mental Health and Mental Retardation, a local mental health or mental retardation authority, or a community center;

(B) an employee of the Texas Department of Mental Health and Mental Retardation, a local mental health or mental retardation authority, or a community center;

(C) an applicant for employment with or an employee of a business or person that contracts with the Texas Department of Mental Health and Mental Retardation, a local mental health or mental retardation authority, or a community center to provide residential services to patients with mental illness or clients with mental retardation who were furloughed or discharged from a Texas Department of Mental Health and Mental Retardation facility or community center;

(D) a volunteer with the Texas Department of Mental Health and Mental Retardation, a local mental health or mental retardation authority, or a community center;

(E) a volunteer applicant; and

(2) who would be placed in direct contact with patients with mental illness or clients with mental retardation.

(c) Repealed

(d) Criminal history record information obtained by the mental health department, a local mental health or mental retardation authority, or a community center under Subsection (b) may not be released or disclosed to a person, other than the contractor that employs the person who is the subject of the criminal history record information, except on court order or with the consent of the person who is the subject of the criminal history record information.

(e) The Texas Department of Mental Health and Mental Retardation, a local mental health or mental retardation authority, or a community center shall collect and destroy criminal history record information that relates to a person immediately after making an employment decision or taking a personnel action relating to the person who is the subject of the criminal history record information.

EXCHANGE OF EMPLOYMENT RECORDS

Sec. 533.0075. The department, a local mental health or mental retardation authority, or a community center may exchange with one another the employment records of an employee or former employee who applies for employment at the department, authority or community center.
EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS WITH MENTAL ILLNESS
AND MENTAL RETARDATION

Sec. 533.008. (a) Each department facility and community center shall annually assess the feasibility of
converting entry level support positions into employment opportunities for individuals with mental illness and
mental retardation in the facility's or center's service area.
(b) In making the assessment, the department facility or community center shall consider the feasibility of
using an array of job opportunities that may lead to competitive employment, including sheltered employment and
supported employment.
(c) Each department facility and community center shall annually submit to the department a report
showing that the facility or center has complied with Subsection (a).
(d) The department shall compile information from the reports and shall make the information available to
each designated provider in a service area.
(e) Each department facility and community center shall ensure that designated staff are trained to:
(1) assist clients through the Social Security Administration disability determination process;
(2) provide clients and their families information related to the Social Security Administration
Work Incentive Provisions; and
(3) assist clients in accessing and utilizing the Social Security Administration Work Incentive
Provisions to finance training, services, and supports needed to obtain career goals.

EXCHANGE OF PATIENT AND CLIENT RECORDS

Sec. 533.009. (a) Department facilities, local mental health or mental retardation authorities, community
centers, other designated providers, and subcontractees of mental health and mental retardation services are
component parts of one service delivery system within which patient or client records may be exchanged without the
patient's or client's consent.
(b) The board shall adopt rules to carry out the purposes of this section.

COLLECTION AND MAINTENANCE OF INFORMATION REGARDING
PERSONS FOUND NOT GUILTY BY REASON OF INSANITY

Sec. 533.0095. (a) The executive commissioner of the Health and Human Services Commission by rule
shall require the department to collect information and maintain current records regarding a person found not guilty
of an offense by reason of insanity under Chapter 46C, Code of Criminal Procedure, who is:
(1) ordered by a court to receive inpatient mental health services under Chapter 574 or
under Chapter 46C, Code of Criminal Procedure;
(2) committed by a court for long-term placement in a residential care facility under
Chapter 593 or under Chapter 46C, Code of Criminal Procedure; or
(3) ordered by a court to receive outpatient or community-based treatment and
supervision.
(b) Information maintained by the department under this section must include the name and address of
any facility to which the person is committed, the length of the person's commitment to the facility, and any post-
release outcome.
(c) The department shall file annually with the presiding officer of each house of the legislature a written
report containing the name of each person described by Subsection (a), the name and address of any facility to
which the person is committed, the length of the person's commitment to the facility, and any post-release outcome.

INFORMATION RELATING TO PATIENT'S CONDITION

Sec. 533.010. (a) A person, including a hospital, sanitarium, nursing or rest home, medical society, or
other organization, may provide to the department or a medical organization, hospital, or hospital committee any
information, including interviews, reports, statements, or memoranda relating to a person's condition and treatment
for use in a study to reduce mental disorders and mental disabilities.
(b) The department or a medical organization, hospital, or hospital committee receiving the information
may use or publish the information only to advance mental health and mental retardation research and education in
order to reduce mental disorders and mental disabilities. A summary of the study may be released for general
publication.
(c) The identity of a person whose condition or treatment is studied is confidential and may not be revealed
under any circumstances. Information provided under this section and any finding or conclusion resulting from the
study is privileged information.
(d) A person is not liable for damages or other relief if the person:
   (1) provides information under this section;
   (2) releases or publishes the findings and conclusions of the person or organization to
       advance mental health and mental retardation research and education; or
   (3) releases or publishes generally a summary of a study.

RETURN OF PERSON WITH MENTAL RETARDATION TO STATE OF RESIDENCE

Sec. 533.011. (a) The department may return a nonresident person with mental retardation who is
committed to a facility for persons with mental retardation in this state to the proper agency of the person's state of
residence.
   (b) The department may permit the return of a resident of this state who is committed to a facility for
persons with mental retardation in another state.
   (c) The department may enter into reciprocal agreements with the proper agencies of other states to
facilitate the return of persons committed to facilities for persons with mental retardation in this state or another state
to the state of their residence.
   (d) The superintendent of a department facility for persons with mental retardation may detain for not more
than 96 hours pending a court order in a commitment proceeding in this state a person with mental retardation
returned to this state.
   (e) The state returning a person with mental retardation to another state shall bear the expenses of returning
the person.

COOPERATION OF STATE AGENCIES

Sec. 533.012. At the department's request, all state departments, agencies, officers, and employees shall
cooperate with the department in activities that are consistent with their functions.

DUPLICATION OF REHABILITATION SERVICES

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

RESPONSIBILITY OF LOCAL MENTAL HEALTH AUTHORITIES IN MAKING TREATMENT
RECOMMENDATIONS

Sec. 533.014. (a) The board shall adopt rules that:
   (1) relate to the responsibility of the of local mental health authorities to make recommendations
       relating to the most appropriate and available treatment alternatives for individuals in need of mental health services,
       including individuals who are in contact with the criminal justice system and individuals detained in local jails and
       juvenile detention facilities;
   (2) govern commitments to a local mental health authority;
   (3) govern transfers of patients that involve a local mental health authority; and
   (4) provide for emergency admission to a department mental health facility if obtaining approval
       from the authority could result in a delay that might endanger the patient or others.
   (b) The board's first consideration in developing rules under this section must be to satisfy individual
       patient treatment needs in the most appropriate setting. The board shall also consider reducing patient
       inconvenience resulting from admissions and transfers between providers.
   (c) The department shall notify each judge who has probate jurisdiction in the service area and any other
       person the local mental health authority considers necessary of the responsibility of the local mental health authority
to make recommendations relating to the most appropriate and available treatment alternatives and the procedures
       required in the area.

UNANNOUNCED INSPECTIONS

Sec. 533.015. The department may make any inspection of a facility or program under the department's
jurisdiction without announcing the inspection.
CERTAIN PROCUREMENTS OF GOODS AND SERVICES BY SERVICE PROVIDERS

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

(1) Section 2155.144, Government Code, if the entity is a state agency subject to that law;
(2) Section 32.043 or 32.044, Human Resources Code, if the entity is a public hospital subject to those laws; or
(3) this section, if the entity is not covered by Subdivision (1) or (2).

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

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

(1) any installation costs;
(2) the delivery terms;
(3) the quality and reliability of the vendor's goods or services;
(4) the extent to which the goods or services meet the agency's or authority's needs;
(5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience and responsibility, and the vendor's ability to provide reliable maintenance agreements;
(6) the impact on the ability of the agency or authority to comply with laws and rules relating to historically underutilized businesses or relating to the procurement of goods and services from the persons with disabilities;
(7) the total long-term cost to the agency or authority of acquiring the vendor's goods or services;
(8) the cost of any employee training associated with the acquisition;
(9) the effect of an acquisition on the agency's or authority's productivity;
(10) the acquisition price; and
(11) any other factor relevant to determining the best value for the agency or authority in the context of a particular acquisition.

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

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

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

PARTICIPATION IN DEPARTMENT PURCHASING CONTRACTS OR GROUP PURCHASING PROGRAM

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

(1) a contract the department has made to purchase goods or services; or
(2) a group purchasing program established or designated by the department that offers discounts to providers of mental health and mental retardation services.

SPECIAL OLYMPICS TEXAS ACCOUNT

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

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

[Sections 533.019-533.030 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES RELATING TO PROVISION OF SERVICES

DEFINITIONS

Sec. 533.031. In this subchapter:
(1) "Elderly resident" means a person 65 years of age or older residing in a department facility.
(2) "Extended care unit" means a residential unit in a department facility that contains patients with chronic mental illness who require long-term care, maintenance, limited programming, and constant supervision.
(3) "Transitional living unit" means a residential unit that is designed for the primary purpose of facilitating the return of hard-to-place psychiatric patients with chronic mental illness from acute care units to the community through an array of services appropriate for those patients.
(4) “Commission” means the Health and Human Services Commission.
(5) “Executive commissioner” means the executive commissioner of the Health and Human Services Commission.
(6) "ICF-MR and related waiver programs" includes ICF-MR Section 1915(c) waiver programs, home and community-based services, Texas home living waiver services, or another Medicaid program serving persons with mental retardation.
(7) “Section 1915(c) waiver program” means a federally funded Medicaid program of the state that is authorized under Section 1915 (c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)).
(8) “Qualified service provider” means an entity that meets requirements for service providers established by the executive commissioner.

LONG-RANGE PLANNING

Sec. 533.032. (a) The department shall have a long-range plan covering at least six years that includes at least the provisions required by Sections 531.022 and 531.023, Government Code and Chapter 2056, Government Code. The plan must cover the provision of services in and policies for state-operated institutions and ensure that the medical needs of the most medically fragile persons the department serves are met.

(b) In developing the plan, the department shall:
(1) solicit input from:
   (A) local authorities for mental health and mental retardation;
   (B) community representatives;
   (C) consumers of mental health and mental retardation services, including consumers of campus-based and community-based services, and family members of consumers of those services; and
   (D) other interested persons; and
(2) consider the report developed under Subsection (c).

(c) The department shall develop a report containing information and recommendations regarding the most efficient long-term use and management of the department’s campus-based facilities. The report must:
(1) project future bed requirements for state schools and state hospitals;
(2) document the methodology used to develop the projection of future bed requirements;
(3) project maintenance costs for institutional facilities;
(4) recommend strategies to maximize the use of institutional facilities; and
(5) specify how each state school and state hospital will:
   (A) serve and support the communities and consumers in its service area; and
   (B) fulfill statewide needs for specialized services.

(d) In developing the report under Subsection (c), the department shall:
(1) conduct two public meetings, one meeting to be held at the beginning of the process and the second meeting to be held at the end of the process, to receive comments from interest parties; and
(2) consider:
(A) the medical needs of the most medically fragile of its clients;
(B) the provision of services to clients with severe and profound mental retardation and to persons with mental retardation who are medically fragile or have behavioral problems;
(C) the program and service preference information collected under Section 533.038; and
(D) input solicited from consumers of services of state schools and state hospitals.

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

1. determine any disparity in cost and quality outcomes achieved between services provided in state-operated programs, including but not limited to ICFs-MR and HCS, and the same or comparable services provided by private sector providers; and
2. identify and quantify the reasons for any disparity that exists.

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

(g) The department shall:

1. attach the reports required by Subsections (c) and (e) to the department’s legislative appropriations request for each biennium;
2. at the time the department presents its legislative appropriations request, present the reports to the:
   (A) governor;
   (B) governor’s budget office;
   (C) lieutenant governor;
   (D) speaker of the house of representatives;
   (E) Legislative Budget Board; and
   (F) Health and Human Services Commission; and
3. update the department’s long-range plan biennially and include the reports in the plan.

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

CONTINUUM OF SERVICES IN CAMPUS FACILITIES

Sec. 533.0325. The board by rule shall establish criteria regarding the uses of the department’s campus-based facilities as part of a full continuum of services.

DETERMINATION OF REQUIRED RANGE OF MENTAL HEALTH SERVICES

Sec. 533.033. (a) Consistent with the purposes and policies of this subtitle, the commissioner biennially shall determine:

1. the types of mental health services that can be most economically and effectively provided at the community level for persons exhibiting various forms of mental disability; and
2. the types of mental health services that can be most economically and effectively provided by department facilities.

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

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

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

(e) The commissioner shall report the commissioner’s findings to the legislature, the Legislative Budget Board, and the governor’s budget office with the department’s biennial appropriations request.
AUTHORITY TO CONTRACT FOR COMMUNITY-BASED SERVICES

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

(b) The department may adopt a schedule of initial and annual renewal compliance fees for persons that provide services under a home and community-based services waiver program for persons with mental retardation adopted in accordance with Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n), as amended, and that is funded wholly or partly by the department and monitored by the department or by a designated local authority in accordance with standards adopted by the department. This subsection expires September 1, 2005.

STATE AGENCY SERVICES STANDARDS

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

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

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

AUTHORITY TO TRANSFER SERVICES TO COMMUNITY CENTERS

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

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

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

(d) At the time the operations and services are transferred to the community center, money supporting the cost of providing operations and services at a state center shall be transferred to the community center to ensure continuity of services.

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

LOCAL MENTAL HEALTH AND MENTAL RETARDATION AUTHORITIES

Sec. 533.035. (a) The executive commissioner shall designate a local mental health authority and a local mental retardation authority in one or more local service areas. The executive commissioner may delegate to the local authorities the authority and responsibility of the executive commissioner, the commission, or a department of the commission related to planning, policy development, coordination, including coordination with criminal justice entities, resource allocation, and resource development for and oversight of mental health and mental retardation services in the most appropriate and available setting to meet individual needs in that service area. The executive commissioner may designate a single entity as the local mental health authority and the local mental retardation authority for a service area.
(b) The department by contract or other method of allocation, including a case-rate or capitated arrangement, may disburse to a local mental health and mental retardation authority department federal and department state funds to be spent in the local service area for:

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

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

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

(2) evaluate the effect of each proposed payment methodology on:
   (A) the availability of services in urban and rural service areas;
   (B) the availability of services for persons who are indigent;
   (C) the cost certainty of the delivery of Medicaid rehabilitation mental health services; and
   (D) the ability of the local mental health authority to meet unique local needs and develop and manage a network of providers;

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

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

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

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

(1) assembling a network of service providers;

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

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

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

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

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

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

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

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

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

Sec. 533.0351.  (a) The executive commissioner shall establish a local authority network advisory committee to advise the executive commissioner and the Department of State Health Services on technical and administrative issues that directly affect local mental health authority responsibilities.

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

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

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

(d) The advisory committee shall:

(1) review rules and proposed rules and participate in any negotiated rulemaking process related to local mental health authority operations;
(2) advise the executive commissioner and the Department of State Health Services regarding evaluation and coordination of initiatives related to local mental health authority operations;
(3) advise the executive commissioner and the Department of State Health Services in developing a method of contracting with local mental health authorities that will result in contracts that are flexible and responsive to:
   (A) the needs and services of local communities; and
   (B) the department’s performance expectations;
(4) coordinate with work groups whose actions may affect local mental health authority operations;
(5) report to the executive commissioner and the Department of State Health Services on the committee’s activities and recommendations at least once each fiscal quarter; and
(6) work with the executive commissioner or the Department of State Health Services as the executive commissioner directs.

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

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

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

LOCAL AUTHORITY PLANNING FOR LOCAL SERVICE AREA

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

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

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

   (1) solicit information regarding community needs from:

   (A) representatives of the local community;
   (B) consumers of community-based mental health and mental retardation services and
   members of the families of those consumers;
   (C) consumers of services of state schools for persons with mental retardation, members of
   families of those consumers, and members of state school volunteer services councils, if a state school is located in
   the local service area of the local authority; and
   (D) other interested persons; and

   (2) consider:

   (A) criteria for assuring accountability for, cost-effectiveness of, and relative value of service delivery options;
   (B) goals to minimize the need for state hospital and community hospital care;
   (C) goals to ensure a client with mental retardation is placed in the least restrictive environment appropriate to the person's care;
   (D) opportunities for innovation to ensure that the local authority is communicating to all potential and incoming consumers about the availability of services of state schools for persons with mental retardation in the local service area of the local authority;
   (E) goals to divert consumers of services from the criminal justice system;
   (F) goals to ensure that a child with mental illness remains with the child's parent or guardian as appropriate to the child's care; and
   (G) opportunities for innovation in services and service delivery.

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

(f) The department and the local mental health or mental retardation authority shall provide an opportunity for community centers and advocacy groups to provide information or assistance in developing the specified performance outcomes under Subsection (e).

LOCAL NETWORK DEVELOPMENT PLAN CREATION AND APPROVAL

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

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

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

   (1) complies with the criteria established by Section 533.0358 if the local mental health authority is providing services under that section; and
   (2) indicates that the local mental health authority is reasonably attempting to solicit the development of a provider base that is:

   (A) available and appropriate; and
   (B) sufficient to meet the needs of consumers in the local authority’s local service area.

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

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

(f) As part of a local network development plan, a local mental health authority annually shall post on the local authority’s website a list of persons with whom the local authority had a contract or agreement in effect during all or part of the previous year, or on the date the list is posted, related to the provision of mental health services.
DISEASE MANAGEMENT PRACTICES AND JAIL DIVERSION MEASURES OF LOCAL MENTAL HEALTH AUTHORITIES

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

1. ongoing and matched to the needs of the individual in type, duration, and intensity;
2. focused on a process of recovery designed to allow the individual to progress through levels of service;
3. guided by evidence-based protocols and a strength-based paradigm of service; and
4. monitored by a system that holds the local authority accountable for specific outcomes, while allowing flexibility to maximize local resources.

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

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

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

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

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

LOCAL MENTAL RETARDATION AUTHORITY RESPONSIBILITIES

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

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

1. access;
2. intake;
3. eligibility functions;
4. enrollment, initial person-centered assessment, and service authorization;
5. utilization management;
6. safety net functions, including crisis management services and assistance in accessing facility-based care;
7. service coordination functions;
8. provision and oversight of state general revenue services;
9. local planning functions, including stakeholder involvement, technical assistance and training; and
10. processes to assure accountability in performance, compliance, and monitoring.

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

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

- 249 -
(1) base the local authority’s provider capacity on the local authority’s August 2004 enrollment levels for the waiver programs the local authority operates and, if the local authority’s enrollment levels exceed those levels, to reduce the levels by attrition; and

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

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

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

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

(D) other extenuating circumstances that:

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

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

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

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

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

(1) program stability and viability;

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

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

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

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

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

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

LOCAL BEHAVIORAL HEALTH AUTHORITIES

Sec. 533.0356. (a) In this section, “commission” means the Texas Commission on Alcohol and Drug Abuse.

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

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

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

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

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

(e) The department and commission, by contract or by a case-rate or capitated arrangement or another method of allocation, may disburse money, including federal money, to a local behavioral health authority for services.
(f) A local behavioral health authority, with the approval of the department or the commission as provided by contract, shall use money received under Subsection (e) to ensure that mental health and chemical dependency services are provided in the local service area at the same level as the level of services previously provided through:
   (1) the local mental health authority; and
   (2) the commission.

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

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

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

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

(b) The department shall solicit and collect from local mental health authorities that meet established outcome and performance measures, community centers, consumers and advocates with expertise in mental health or in the provision of mental health services, and other local entities concerned with mental health issues examples of best practices related to:
   (1) developing and implementing a local network development plan;
   (2) assembling and expanding a local provider network to increase consumer choice;
   (3) creating and enforcing performance standards for providers;
   (4) managing limited resources;
   (5) maximizing available funding;
   (6) producing the best client outcomes;
   (7) ensuring consumers of mental health services have control over decisions regarding their health;
   (8) developing procurement processes to protect public funds;
   (9) achieving the best mental health consumer outcomes possible; and
   (10) implementing strategies that effectively incorporate consumer and family involvement to develop and evaluate the provider network.

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

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

(e) Before the executive commissioner may remove a local mental health authority’s designation under Section 533.035(a) as a local mental health authority, the executive commissioner shall:
   (1) assist the local mental health authority in attaining training and mentorship in using the best practices established in accordance with this section; and
   (2) track and document the local mental health authority’s improvements in the provision of service or continued service deficiencies.

(f) Subsection (e) does not apply to the removal of a local mental health authority’s designation initiated at the request of a local government official who has the responsibility for the provision of mental health services.

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

(h) The Department of State Health Services shall ensure that a local mental health authority providing best practices information to the department or mentoring another local mental health authority complies with Section 533.03521(f).
LOCAL MENTAL HEALTH AUTHORITY’S PROVISION OF SERVICES
AS PROVIDER OF LAST RESORT

Sec. 533.0358. (a) A local mental health authority may serve as a provider of services under Section 533.035(e) only if, through the local network development plan process, the local authority determines that at least one of the following applies:

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

(2) the local authority’s network of providers does not provide a minimum level of consumer choice by:
   (A) presenting consumers with two or more qualified service providers in the local authority’s network for service packages; and
   (B) presenting consumers with two or more qualified service providers in the local authority’s network for specific services within a service package;

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

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

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

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

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

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

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

RULEMAKING FOR LOCAL MENTAL HEALTH AUTHORITIES

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

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

REPORT ON APPLICATION FOR SERVICES

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

(b) The information must include:

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

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

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

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

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

SERVICE PROGRAMS AND SHELTERED WORKSHOPS

Sec. 533.037. (a) The department may provide mental health and mental retardation services through halfway houses, sheltered workshops, community centers, and other mental health and mental retardation services programs.
(b) The department may operate or contract for the provision of part or all of the sheltered workshop services and may contract for the sale of goods produced and services provided by a sheltered workshop program. The goods and services may be sold for cash or on credit.

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

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

1. purchase supplies, materials, services, and equipment;
2. pay salaries of and wages to participants and employees;
3. construct, maintain, repair, and renovate facilities and equipment; and
4. establish and maintain a petty cash fund of not more than $100.

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

(f) This section does not affect the authority or jurisdiction of a community center as prescribed by Chapter 534.

FACILITIES AND SERVICES FOR CLIENTS WITH MENTAL RETARDATION

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

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

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

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

(e) The department shall ensure that the information regarding program and service preferences collected under Subsection (d) is documented and maintained in a manner that permits the department to access and use the information for planning activities conducted under Section 533.032.

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

CLIENT SERVICES OMBUDSMAN

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

(b) The ombudsman shall:

1. explain and provide information on department and local mental health or mental retardation authority services, facilities, and programs and the rules, procedures, and guidelines applicable to the person denied services; and
2. assist the person in gaining access to an appropriate program or in placing the person on an appropriate waiting list.

SERVICES FOR CHILDREN AND YOUTH

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

1. prepare and review budgets for services for children;
2. develop departmental policies relating to children's programs and service delivery; and
(3) increase interagency coordination activities to enhance the provision of services for children.

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

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

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

   (1) jointly develop:
      (A) a continuum of care for children younger than seven years of age who have mental illness; and
      (B) a plan to increase the expertise of the department's service providers in mental health issues involving children younger than seven years of age; and

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

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

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

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

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

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

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

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

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

      (C) monitor, evaluate, and revise the training program, including the development of additional curricula based on future training needs identified by staff and professionals; and

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

(b) The task force consists of:

   (1) one clinical professional and one training staff member from each agency, appointed by that agency; and
(2) 10 private sector clinical professionals with expertise in dealing with troubled children, youth, and dysfunctional families, two of whom are appointed by each agency.

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

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

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

**ANNUAL EVALUATION OF ELDERLY RESIDENTS**

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

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

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

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

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

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

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

**PROPOSALS FOR GERIATRIC, EXTENDED, AND TRANSITIONAL CARE**

Sec. 533.043. (a) The department shall solicit proposals from community providers to operate:

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

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

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

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

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

(e) The department shall require each provider to:

(1) offer adequate assurances of ability to:

(A) provide the required services;

(B) meet department standards; and

(C) safeguard the safety and well-being of each resident; and

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

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

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

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

MEMORANDUM OF UNDERSTANDING ON ASSESSMENT TOOLS

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

(b) The memorandum must prescribe:
   (1) the facilities that must use the assessment; and
   (2) the circumstances in which the facilities must use the assessment.

(c) Each agency shall review and modify the memorandum as necessary not later than the last month of each state fiscal year.

USE OF CERTAIN DRUGS FOR CERTAIN PATIENTS

Sec. 533.045. (a) The department may place on a clozapine treatment plan each patient in a state hospital for whom the treatment is medically feasible and appropriate. The department may place a patient on a treatment plan using a drug other than clozapine if the drug produces results that are similar to or better than clozapine in treating schizophrenics.

(b) If a patient in a state hospital responds to a treatment plan required or authorized by Subsection (a) to the extent that the patient can be discharged from the hospital, the department may:
   (1) assist the patient in applying for disability benefits and for Medicaid if the patient is potentially eligible;
   (2) place the patient in a community setting with continuing drug treatments and with medical monitoring;
   (3) provide or ensure that the patient is provided supportive housing, rehabilitation services, and job placement, as appropriate; and
   (4) provide outpatient care at state hospitals or require a local mental health authority to provide outpatient care, as appropriate.

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

FEDERAL FUNDING FOR MENTAL HEALTH SERVICES FOR CHILDREN AND FAMILIES

Sec. 533.046. (a) The department shall enter into an interagency agreement with the Texas Department of Human Services to:
   (1) amend the eligibility requirements of the state's emergency assistance plan under Title IV-A, Social Security Act (42 U.S.C. Section 601 et seq.), to include mental health emergencies; and
   (2) prescribe the procedures the agencies will use to delegate to the department and to local mental health and mental retardation authorities the administration of mental health emergency assistance.

(b) The interagency agreement must provide that:
   (1) the department certify to the Texas Department of Human Services the nonfederal expenditures for which the state will claim federal matching funds; and
   (2) the Texas Department of Human Services retain responsibility for making final eligibility decisions.

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

MANAGED CARE ORGANIZATIONS: MEDICAID PROGRAM

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

GUARDIANSHIP ADVISORY COMMITTEE

Sec. 533.048. (a) In this section, “institution” means:
   (1) an ICF-MR; or
(2) a state hospital, state school, or state center maintained and managed by the department.

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

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

(d) The advisory committee shall meet at the call of the presiding officer. (e) A Member of the advisory committee serves at the will of the commissioner. (f) A member of the advisory committee may not receive compensation for serving on the advisory committee but is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the advisory committee as provided by the General Appropriations Act.

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

**PRIVATIZATION OF STATE SCHOOL***

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

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

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

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

(4) the state school, when operated under the contract, treats a population with the same characteristics and need levels as the population treated by the state school when operated by the department.

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

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

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


**PRIVATIZATION OF STATE MENTAL HOSPITAL***

Sec. 533.050. (a) After August 31, 2004, and before September 1, 2005, the department may contract with a private service provider to operate a state mental hospital owned by the department only if:

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

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

(3) the hospital, when operated under the contract, treats a population with the same characteristics and acuity levels as the population treated at the hospital when operated by the department; and

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

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

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

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


[Sections 533.051-533.060 reserved for expansion]

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

Sec.533.061. REPEALED

Sec.533.062. PLAN ON LONG-TERM CARE FOR PERSONS WITH MENTAL RETARDATION

(a) The department shall biennially develop a proposed plan on long-term care for persons with mental retardation.

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

(1) the needs of the population to be served;
(2) projected appropriation amounts for the biennium; and
(3) the requirements of applicable federal law.

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

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

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

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

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

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

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

Sec.533.063. (a) The department, Texas Department of Health, and Texas Department of Human Services shall meet as necessary to discuss proposed changes in the rules or the interpretation of the rules that govern the ICF-MR program.
(b) The departments shall jointly adopt a written policy interpretation letter that describes the proposed change and shall make a copy of the letter available to providers.

REPEALED

Sec.533.064.

ICF-MR APPLICATION CONSOLIDATION LIST

Sec.533.065. (a) The department shall maintain a consolidated list of applications for certification for participation in the ICF-MR program.
(b) The department shall list the applications in descending order using the date on which the department received the completed application.
(c) The department shall approve applications in the order in which the applications are listed.
(d) The department shall notify the Texas Department of Health of each application for a license or for compliance with licensing standards the department approves.

INFORMATION RELATING TO ICF-MR PROGRAM

Sec.533.066. (a) At least annually, the department, Texas Department of Health, and Texas Department of Human Services shall jointly sponsor a conference on the ICF-MR program to:
(1) assist providers in understanding survey rules;
(2) review deficiencies commonly found in ICF-MR facilities; and
(3) inform providers of any recent changes in the rules or in the interpretation of the rules relating to the ICF-MR program.
(b) The departments also may use any other method to provide necessary information to providers, including publications.

[Sections 533.067-533.080 reserved for expansion]

SUBCHAPTER D. POWERS AND DUTIES RELATING TO DEPARTMENT FACILITIES

DEVELOPMENT OF FACILITY BUDGETS

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

DETERMINATION OF SAVINGS IN FACILITIES

Sec.533.082. (a) The department shall determine the degree to which the costs of operating department facilities for persons with mental illness or mental retardation in compliance with applicable standards are affected as populations in the facilities fluctuate.
(b) In making the determination, the department shall:
(1) assume that the current level of services and necessary state of repair of the facilities will be maintained; and
(2) include sufficient funds to allow the department to comply with the requirements of litigation and applicable standards.
(c) The department shall allocate to community-based mental health programs any savings realized in operating department facilities for persons with mental illness.
(d) The department shall allocate to community-based mental retardation programs any savings realized in operating department facilities for persons with mental retardation.

CRITERIA FOR EXPANSION, CLOSURE, OR CONSOLIDATION OF FACILITY

Sec.533.083. The department shall establish objective criteria for determining when a new facility may be needed and when a facility may be expanded, closed, or consolidated.
MANAGEMENT OF SURPLUS REAL PROPERTY

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

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

(b-1) Notwithstanding Subsection (b) or any other law, the proceeds from the disposal of any surplus real property by the department that occurs before September 1, 2005:

(1) are not required to be deposited to the credit of the department in the Texas capital trust fund established under Chapter 2201, Government Code; and

(2) may be appropriated for any general governmental purpose.

(b-2) Subsection (b-1) and this subsection expire September 1, 2005.

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

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

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

MENTAL HEALTH COMMUNITY SERVICES ACCOUNT

Sec. 533.0844. (a) The mental health community services account is an account in the general revenue fund that may be appropriated only for the provision of mental health services by or under contract with the department.

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

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

MENTAL RETARDATION COMMUNITY SERVICES ACCOUNT

Sec. 533.0846. (a) The mental retardation community services account is an account in the general revenue fund that may be appropriated only for the provision of mental retardation services by or under contract with the department.

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

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

FACILITIES FOR INMATE AND PAROLEE CARE

Sec. 533.085. (a) With the written approval of the governor, the department may contract with:

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

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

USE OF DEPARTMENT FACILITIES BY SUBSTANCE ABUSERS

Sec. 533.086. (a) The department shall annually provide the Texas Commission on Alcohol and Drug Abuse with an analysis by county of the hospitalization rates of persons with substance abuse problems. The analysis must include information indicating which admissions were for persons with only substance abuse problems and which admissions were for persons with substance abuse problems but whose primary diagnoses were other types of mental health problems.

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

LEASE OF REAL PROPERTY

Sec. 533.087. (a) The department may lease real property, including any improvements under the department's management and control, regardless of whether the property is surplus property. Except as provided by Subsection (c), the department may award a lease of real property only:

(1) at the prevailing market rate; and

(2) by competitive bid.

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

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

(2) a newspaper of statewide circulation.

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

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

(2) the property is leased to:

(A) a federal or state agency;

(B) a unit of local government;

(C) a not-for-profit organization; or

(D) an entity related to the department by a service contract.

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

(e) The board may reject any bid.

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

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

SUBCHAPTER E. JAIL DIVERSION PROGRAM

[Not Included]
CHAPTER 534. COMMUNITY SERVICES

SUBCHAPTER A. COMMUNITY CENTERS

ESTABLISHMENT

Sec.534.001. (a) A county, municipality, hospital district, school district, or an organizational combination of two or more of those local agencies may establish and operate a community center.

(b) In accordance with this subtitle a community center may be:
   (1) a community mental health center that provides mental health services;
   (2) a community mental retardation center that provides mental retardation services; or
   (3) a community mental health and mental retardation center that provides mental health and mental retardation services.

(c) A community center is:
   (1) an agency of the state, a governmental unit, and a unit of local government, as defined and specified by Chapters 101 and 102, Civil Practice and Remedies Code;
   (2) a local government, as defined by Section 791.003, Government Code;
   (3) a local government for the purposes of Chapter 2259, Government Code; and
   (4) a political subdivision for the purposes of Chapter 172, Local Government Code.

(d) A community center may be established only if:
   (1) the proposed center submits to the department a copy of the contract between the participating local agencies, if applicable;
   (2) the department approves the proposed center's plan to develop and make available to the region's residents an effective mental health or mental retardation program, or both, through a community center that is appropriately structured to include the financial, physical, and personnel resources necessary to meet the region's needs; and
   (3) the department determines that the center can appropriately, effectively, and efficiently provide those services in the region.

(e) A community center operating under this subchapter may operate only for the purposes and perform only the functions defined in the center's plan. The board by rule shall specify the elements that must be included in a plan and shall prescribe the procedure for submitting, approving, and modifying a center's plan.

(f) Each function performed by a community center under this title is a governmental function if the function is required or affirmatively approved by any statute of this state or of the United States or by a regulatory agency of this state or of the United States duly acting under any constitutional or statutory authority vesting the agency with such power. Notwithstanding any other law, a community center is subject to Chapter 554, Government Code.

(g) An entity is, for the purpose of operating a psychiatric center, a governmental unit and a unit of local government under Chapter 101, Civil Practice and Remedies Code, and a local government under Chapter 102, Civil Practice and Remedies Code, if the entity:
   (1) is not operated to make a profit;
   (2) is created through an intergovernmental agreement between a community mental health center and any other governmental unit; and
   (3) contracts with the community mental health center and any other governmental unit that created it to operate a psychiatric center.

PURPOSE AND POLICY

Sec.534.0015. (a) A community center created under this subchapter is intended to be a vital component in a continuum of services for persons in this state who are mentally ill or mentally retarded.

(b) It is the policy of this state that community centers strive to develop services for persons who are mentally ill or mentally retarded, and may provide requested services to persons with a chemical dependency, that are effective alternatives to treatment in a large residential facility.

BOARD OF TRUSTEES FOR CENTER ESTABLISHED BY ONE LOCAL AGENCY

Sec.534.002. The board of trustees of a community center established by one local agency is composed of:
   (1) the members of the local agency's governing body; or
(2) not fewer than five or more than nine qualified voters who reside in the region to be served by the center and who are appointed by the local agency's governing body.

BOARD OF TRUSTEES FOR CENTER ESTABLISHED BY AT LEAST TWO LOCAL AGENCIES

Sec. 534.003. (a) The board of trustees of a community center established by an organizational combination of local agencies is composed of not fewer than five or more than 13 members.

(b) The governing bodies of the local agencies shall appoint the board members either from among the membership of the governing bodies or from among the qualified voters who reside in the region to be served by the center.

(c) When the center is established, the governing bodies shall enter into a contract that stipulates the number of board members and the group from which the members are chosen. They may renegotiate or amend the contract as necessary to change:

(1) method of choosing the members; or
(2) membership of the board of trustees to more accurately reflect the ethnic and geographic diversity of the local service area.

PROCEDURES RELATING TO BOARD OF TRUSTEES MEMBERSHIP

Sec. 534.004. (a) The local agency or organizational combination of local agencies that establishes a community center shall prescribe:

(1) the application procedure for a position on the board of trustees;
(2) the procedure and criteria for making appointments to the board of trustees;
(3) the procedure for posting notice of and filling a vacancy on the board of trustees; and
(4) the grounds and procedure for removing a member of the board of trustees.

(b) The local agency or organizational combination of local agencies that appoints the board of trustees shall, in appointing the members, attempt to reflect the ethnic and geographic diversity of the local service area the community center serves. The local agency or organizational combination shall include on the board of trustees one or more persons otherwise qualified under this chapter who are consumers of the types of services the center provides or who are family members of consumers of the types of services the center provides.

TERMS; VACANCIES

Sec. 534.005. (a) Appointed members of the board of trustees who are not members of a local agency's governing body serve staggered two-year terms. In appointing the initial members, the appointing authority shall designate not less than one-third or more than one-half of the members to serve one-year terms and shall designate the remaining members to serve two-year terms.

(b) A vacancy on a board of trustees composed of qualified voters is filled by appointment for the remainder of the unexpired term.

TRAINING

Sec. 534.006. (a) The board by rule shall establish:

(1) an annual training program for members of a board of trustees administered by the professional staff of that community center, including the center's legal counsel; and
(2) an advisory committee to develop training guidelines that includes representatives of advocates for persons with mental illness or mental retardation and representatives of boards of trustees.

(b) Before a member of a board of trustees may assume office, the member shall attend at least one training session administered by that center's professional staff to receive information relating to:

(1) the enabling legislation that created the community center;
(2) the programs the community center operates;
(3) the community center's budget for that program year;
(4) the results of the most recent formal audit of the community center;
(5) the requirements of the open meetings law, V.T.C.A., Government Code Section 551.001 et seq., and the open records law, V.T.C.A. Government Code Section 552.001 et seq.;
(6) the requirements of conflict of interest laws and other laws relating to public officials; and
(7) any ethics policies adopted by the community center.
QUALIFICATIONS; CONFLICT OF INTEREST; REMOVAL

Sec. 534.0065. (a) As a local public official, a member of the board of trustees of a community center shall uphold the member's position of public trust by meeting and maintaining the applicable qualifications for membership and by complying with the applicable requirements relating to conflicts of interest.

(b) A person is not eligible for appointment as a member of a board of trustees if the person or the person's spouse:

1. owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the community center by contract or other method; or
2. uses or receives a substantial amount of tangible goods or funds from the community center, other than:
   A. compensation or reimbursement authorized by law for board of trustees membership, attendance, or expenses; or
   B. as a consumer or as a family member of a client or patient receiving services from the community center.

(c) The primary residence of a member of the board of trustees must be in the local service area the member represents.

(d) A member of the board of trustees is subject to Chapter 171, Local Government Code.

(e) A member of the board of trustees may not:

1. refer for services a client or patient to a business entity owned or controlled by a member of the board of trustees, unless the business entity is the only business entity that provides the needed services within the jurisdiction of the community center;
2. use a community center facility in the conduct of a business entity owned or controlled by that member;
3. solicit, accept, or agree to accept from another person or business entity a benefit in return for the member's decision, opinion, recommendation, vote, or other exercise of discretion as a local public official or for a violation of a duty imposed by law;
4. receive any benefit for the referral of a client or a patient to the community center or to another business entity;
5. appoint, vote for, or confirm the appointment of a person to a paid office or position with the community center if the person is related to a member of the board of trustees by affinity within the second degree or by consanguinity within the third degree; or
6. solicit or receive a political contribution from a supplier to or contractor with the community center.

(f) Not later than the date on which a member of the board of trustees takes office by appointment or reappointment and not later than the anniversary of that date, each member shall annually execute and file with the community center an affidavit acknowledging that the member has read the requirements for qualification, conflict of interest, and removal prescribed by this article.

(g) In addition to any grounds for removal adopted under Section 534.004(a), it is a ground for removal of a member of a board of trustees if the member:

1. violates Chapter 171, Local Government Code;
2. is not eligible for appointment to the board of trustees at the time of appointment as provided by
   Subsections (b) and (c) of this section;
3. does not maintain during service on the board of trustees the qualifications required by Subsections (b) and (c) of this section;
4. violates a provision of Subsection (e) of this section;
5. violates a provision of Section 534.0115; or
6. does not execute the affidavit required by Subsection (f) of this section.

(h) If a board of trustees is composed of members of the governing body of a local agency or organizational combination of local agencies, this section applies only to the qualifications for and removal from membership on the board of trustees.

PROHIBITED ACTIVITIES BY FORMER OFFICERS OR EMPLOYEES

Sec. 534.007. (a) A former officer or employee of a community center who ceases service or employment with the center may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of employment,
either through personal involvement or because the case or proceeding was a matter within the officer’s or employee’s official responsibility.

(b) This section does not apply to:

(1) a former employee who is compensated on the last date of service or employment below the amount prescribed by the General Appropriations Act for salary group 17, Schedule A or salary group 9, Schedule B, of the position classification salary schedule; or

(2) a former officer or employee who is employed by a state agency or another community center.

(c) Subsection (a) does not apply to a proceeding related to policy development that was concluded before the officer’s or employee’s service or employment ceased.

(d) A former officer or employee of a community center commits an offense if the former officer or employee violates this section. An offense under this section is a Class A misdemeanor.

(e) In this section:

(1) “Participated” means to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.

(2) “Particular matter” means a specific investigation, application, request for a ruling or determination, proceeding related to the development of policy, contract, claim, charge, accusation, arrest, or judicial or other proceeding.

ADMINISTRATION BY BOARD

Sec. 534.008. (a) The board of trustees is responsible for the effective administration of the community center.

(b) The board of trustees shall make policies that are consistent with the department's rules and standards.

MEETINGS

Sec. 534.009. (a) The board of trustees shall adopt rules for the holding of regular and special meetings.

(b) Board meetings are open to the public to the extent required by and in accordance with the open meetings law (V.T.C.A. Government Code Section 551.001 et seq.).

(c) The board of trustees shall keep a record of its proceedings in accordance with the open meetings law (V.T.C.A. Government Code Section 551.001 et seq.). The record is open to public inspection in accordance with that law.

(d) The board of trustees shall send to the department and each local agency that appoints the members a copy of the approved minutes of board of trustees meetings by:

(1) mailing a copy appropriately addressed and with the necessary postage paid using the United States postal service; or

(2) another method agreed to by the board of trustees and the local agency.

EXECUTIVE DIRECTOR

Sec. 534.010. (a) The board of trustees shall appoint an executive director for the community center.

(b) The board of trustees shall:

(1) adopt a written policy governing the powers that may be delegated to the executive director; and

(2) annually report to each local agency that appoints the members the executive director's total compensation and benefits.

PERSONNEL

Sec. 534.011. (a) The executive director, in accordance with the policies of the board of trustees, shall employ and train personnel to administer the community center's programs and services. The community center may recruit those personnel and contract for recruiting and training purposes.

(b) The board of trustees shall provide employees of the community center with appropriate rights, privileges, and benefits.

(c) The board of trustees may provide workers' compensation benefits.

(d) The board of trustees shall prescribe the number of employees and their salaries. The board of trustees may choose to set salaries and benefits in compliance with a market analysis or internal salary study. If an internal salary study is used, the board of trustees shall conduct the study in accordance with the guidelines established by the commissioner.
(e) Instead of using a market analysis or internal salary study to establish salaries and benefits, the board of trustees may use the state position classification plan and the General Appropriations Act to determine the appropriate classification and relative compensation of officers and employees. The board of trustees may pay salaries in amounts less than those provided by the General Appropriations Act. For a position not on the classification plan, the board of trustees shall set the compensation according to guidelines adopted by the commissioner. The board of trustees may petition the department for approval to exclude a position from the position classification plan and to provide a stated salary for that position that exceeds the amount prescribed by the General Appropriations Act for the classified position.

(f) During a management audit of a community center, the department is entitled to confirm the method the center used to determine salaries and benefits.

NEPOTISM

Sec. 534.0115. (a) The board of trustees or executive director may not hire as a paid officer or employee of the community center a person who is related to a member of the board of trustees by affinity within the second degree or by consanguinity within the third degree.

(b) An officer or employee who is related to a member of the board of trustees in a prohibited manner may continue to be employed if the person began the employment not later than the 31st day before the date on which the member was appointed.

(c) The officer or employee or the member of the board of trustees shall resign if the officer or employee began the employment later than the 31st day before the date on which the member was appointed.

(d) If an officer or employee is permitted to remain in employment under Subsection (b) of this section, the related member of the board of trustees may not participate in the deliberation or voting on an issue that is specifically applicable to the officer or employee unless the issue affects an entire class or category of employees.

ADVISORY COMMITTEES

Sec. 534.012. (a) The board of trustees may appoint committees, including medical committees, to advise the board of trustees on matters relating to mental health and mental retardation services.

(b) Each committee must be composed of at least three members.

(c) The appointment of a committee does not relieve the board of trustees of the final responsibility and accountability as provided by this subtitle.

COOPERATION OF DEPARTMENT

Sec. 534.013. The department shall provide assistance, advice, and consultation to local agencies, boards of trustees, and executive directors in the planning, development, and operation of a community center.

BUDGET; REQUEST FOR FUNDS

Sec. 534.014. (a) Each community center shall annually provide to each local agency that appoints members to the board of trustees a copy of the center’s:

(1) approved fiscal year operating budget;

(2) most recent annual financial audit; and

(3) staff salaries by position.

(b) The board of trustees shall annually submit to each local agency that appoints the members a request for funds or in-kind assistance to support the center.

PROVISION OF SERVICES

Sec. 534.015. (a) The board of trustees may adopt rules to regulate the administration of mental health or mental retardation services by a community center. The rules must be consistent with the purposes, policies, principles, and standards prescribed by this subtitle.

(b) The board of trustees may contract with a local agency or a qualified person or organization to provide a portion of the mental health or mental retardation services.

(c) With the commissioner's approval, the board of trustees may contract with the governing body of another county or municipality to provide mental health and mental retardation services to residents of that county or municipality.

(d) A community center may provide services to a person who voluntarily seeks assistance or who has been committed to that center.
FOR WHOM SERVICES MAY BE PROVIDED
Sec.534.0155. (a) This subtitle does not prevent a community center from providing services to a person with chemical dependency or to a person with a mental disability, as that term is defined by Section 535.001.
(b) A community center may provide those services by contracting with a public or private agency in addition to the department.

SCREENING AND CONTINUING CARE SERVICES
Sec.534.016. (a) A community center shall provide screening services for a person who requests voluntary admission to a department facility for persons with mental illness and for a person for whom proceedings for involuntary commitment to a department facility have been initiated.
(b) A community center shall provide continuing mental health and physical care services for a person referred to the center by a department facility and for whom the facility superintendent has recommended a continuing care plan.
(c) Services provided under this section must be consistent with the department's rules and standards.
(d) The commissioner may designate a facility other than the community center to provide the screening or continuing care services if:
   (1) local conditions indicate that the other facility can provide the services more economically and effectively; or
   (2) the commissioner determines that local conditions may impose an undue burden on the community center.

FEES FOR SERVICES
Sec.534.017. (a) A community center shall charge reasonable fees for the services the center provides, unless prohibited by other service contracts or law.
(b) The community center may not deny services to a person because of inability to pay for the services.
(c) The community center has the same rights, privileges, and powers for collecting fees for treating patients and clients that the department has by law.
(d) The county or district attorney of the county in which the community center is located shall represent the center in collecting fees when the center's executive director requests the assistance.

TRUST EXEMPTION
Sec.534.0175. (a) If a client is the beneficiary of a trust that has an aggregate principal of $250,000 or less, the corpus or income of the trust is not considered to be the property of the client or the client's estate and is not liable for the client's support. If the aggregate principal of the trust exceeds $250,000, only the portion of the corpus of the trust that exceeds that amount and the income attributable to that portion are considered to be the property of the client or the client's estate and are liable for the client's support.
(b) To qualify for the exemption provided by Subsection (a), the trust and the trustee must comply with the requirements prescribed by Sections 552.018 and 593.081.

GIFTS AND GRANTS
Sec.534.018. A community center may accept gifts and grants of money, personal property, and real property to use in providing the center's programs and services.

CONTRIBUTION BY LOCAL AGENCY
Sec.534.019. A participating local agency may contribute land, buildings, facilities, other real and personal property, personnel, and funds to administer the community center's programs and services.

ACQUISITION AND CONSTRUCTION OF PROPERTY AND FACILITIES BY COMMUNITY CENTER
Sec.534.020. (a) A community center may purchase or lease-purchase real and personal property and may construct buildings and facilities.
(b) The board of trustees shall require that an appraiser certified by the Texas Appraiser Licensing and Certification Board conduct an independent appraisal of real estate the community center intends to purchase. The board of trustees may waive this requirement if the purchase price is less than the value listed for the property by the local appraisal district and the property has been appraised by the local appraisal district within the preceding two years. A community center may not purchase or lease-purchase property for an amount that is greater than the property's appraised value unless:
(1) the purchase or lease-purchase of that property at that price is necessary;
(2) the board of trustees documents in the official minutes the reasons why the purchase or lease
purchase is necessary at that price;
(3) a majority of the board approves the transaction.

(c) The board of trustees shall establish in accordance with relevant department rules competitive bidding
procedures and practices for capital purchases and for purchases involving department funds or required local
matching funds.

APPROVAL AND NOTIFICATION REQUIREMENTS

Sec.534.021. (a) A community center must receive from the department prior written approval to acquire
real property, including a building, if the acquisition involves the use of department funds or local funds required to
match department funds. In addition, for acquisition of nonresidential property, the community center must notify
each local agency that appoints members to the board of trustees not later than the 31st day before it enters into a
binding obligation to acquire the property.

(b) A community center must notify the department and each local agency that appoints members to the
board of trustees not later than the 31st day before it enters into a binding obligation to acquire real property,
including a building, if the acquisition does not involve the use of department funds or local funds required to match
department funds. The commissioner, on request, may waive the 30-day requirement on a case-by-case basis.

(c) The board shall adopt rules relating to the approval and notification process.

FINANCING OF PROPERTY AND IMPROVEMENTS

Sec.534.022. (a) To acquire or to refinance the acquisition of real and personal property, to construct
improvements to property, or to finance all or part of a payment owed or to be owed on a credit agreement, a
community center may contract in accordance with Subchapter A, Chapter 271, Local Government Code, or issue,
execute, refinance, or refund bonds, notes, obligations, or contracts. The community center may secure the payment
of the bonds, notes, obligations, or contracts with a security interest in or pledge of its revenues or by granting a
mortgage on any of its properties.

(a-1) For purposes of Subsection (a), "revenues" includes the following, as those terms are defined by
Section 9.102, Business & Commerce Code:
(1) an account;
(2) a chattel paper;
(3) a commercial tort claim;
(4) a deposit account;
(5) a document;
(6) a general intangible;
(7) a health care insurance receivable;
(8) an instrument;
(9) investment property;
(10) a letter-of-credit right; and
(11) proceeds.

(b) Except as provided by Subsection (f), the community center shall issue the bonds, notes, or
obligations in accordance with Chapters 1201 and 1371, Government Code. The attorney general must approve
before issuance:
(1) notes issued in the form of public securities, as that term is defined by Section 1201.002,
Government Code;
(2) obligations, as that term is defined by Section 1371.001, Government Code; and
(3) bonds.

(c) A limitation prescribed in Subchapter A, Chapter 271, Local Government Code, relating to real property
and the construction of improvements to real property, does not apply to a community center.

(d) The board shall review the issuance of bonds or notes under this section and for each issuance shall
make a finding of whether the proceeds are to be expended on projects or purchases that are related to the provision
of services. Not later than November 1 of each year, the board shall submit to the Legislative Budget Board, the
Governor's Office of Budget and Planning, and the state auditor a report that describes the use and amount of
proceeds derived from bonds and notes issued by community centers in the preceding fiscal year.

(e) A county or municipality acting alone or two or more counties or municipalities acting jointly pursuant
to interlocal contract may create a public facility corporation to act on behalf of one or more community centers
pursuant to Chapter 303, Local Government Code. Such counties or municipalities may exercise the powers of a sponsor under that chapter, and any such corporation may exercise the powers of a corporation under that chapter (including but not limited to the power to issue bonds). The corporation may exercise its powers on behalf of community centers in such manner as may be prescribed by the articles and bylaws of the corporation, provided that in no event shall one community center ever be liable to pay the debts or obligations or be liable for the acts, actions or undertakings of another community center.

(f) The board of trustees of a community center may authorize the issuance of an anticipation note in the same manner, using the same procedure, and with the same rights under which an eligible school district may authorize issuance under Chapter 1431, Government Code, except that anticipation notes issued for the purposes described by Section 1431.004(a)(2), Government Code, may not, in the fiscal year in which the attorney general approves the notes for a community center, exceed 50 percent of the revenue anticipated to be collected in that year.

CONSTRUCTION OF FACILITIES BY DEPARTMENT
Sec.534.023. (a) The department and a community center may agree that:
(1) the community center transfer ownership of real property to the department;
(2) the department construct a community-based care or alternative living facility on the property;
and
(3) the department lease the constructed facility to the community center to provide mental health and mental retardation services.
(b) The agreement must include a provision for a lease-purchase arrangement between the community center and the department.
(c) The department may construct a facility at a site other than the present site of a department facility.

DEPARTMENT FUNDING FOR FACILITY RENOVATION
Sec.534.024. (a) A community center may request money from the department to renovate a building or facility the community center owns or leases.
(b) The department may provide renovation money under an agreement in which the community center repays the money and the department obtains a lien against the center's buildings or facilities in an amount equal to the amount to be repaid.
(c) The agreement must include a provision authorizing the department to withhold state contract funds if the community center fails to make timely payments.

PRIORITIES FOR FUNDING
Sec.534.025. (a) The board shall establish priorities for the use of facilities constructed under Section 534.023 or renovated under Section 534.024 and that relate to the appropriate types of community-based services and alternative living arrangements for persons with mental disabilities.
(b) The department shall use criteria based on those priorities to determine the eligibility of a proposal for facility construction or renovation.

TERMS OF CONSTRUCTION OR RENOVATION AGREEMENT
Sec.534.026. (a) In an agreement to construct a facility under Section 534.023 or to renovate a facility under Section 534.024, the department shall specify the lease or loan payments that include the amortization of the cost of the facility or renovation.
(b) The agreement must provide for reasonable interest to be paid by the community center on the total cost of the facility or renovation. The rate of interest may not exceed 50 percent of the market interest rate, as determined by the department, that a local agency that established the community center would pay at the time the agreement is made if the agency issued revenue bonds to construct or renovate the facility payable for the same period as the period of the agreement to construct or renovate the facility.

COMMUNITY CENTERS FACILITIES CONSTRUCTION AND RENOVATION FUND
Sec.534.027. (a) The community centers facilities construction and renovation fund is in the state treasury.
(b) The fund may be used only to finance:
(1) the construction of facilities by the department under Section 534.023; and
(2) the renovation of buildings and facilities by community centers under Section 534.024.
(c) Lease payments made by a community center under Section 534.023 shall be credited to the fund and applied to the purchase of the facility by the community center.

(d) Payments made by a community center under Section 534.024 shall be credited to the fund and applied to repayment of the renovation funding and release of the lien.

TRANSFER OF TITLE; RELEASE OF LIEN

Sec. 534.028. (a) When a community center has paid to the department the amount specified under the terms of a lease-purchase agreement made under Section 534.023, the department shall transfer to the center full title to the property and all improvements.

(b) When a community center has paid to the department the amount specified under the terms of a renovation agreement made under Section 534.024, the department shall release the lien against the center's buildings or facilities.

DEFAULT

Sec. 534.029. (a) The department shall send to a community center that does not make a payment to the department by the due date established in the lease-purchase or renovation funding agreement a written notice of default and a statement that the center must make the overdue payments not later than the 60th day after the date on which the center receives the notice.

(b) If the community center does not make overdue lease-purchase payments within the 60-day period, the lease-purchase agreement is terminated, and the department may take possession of the facility.

(c) If the community center does not make overdue renovation funding payments within the 60-day period, the department may:

(1) withhold state contract funds in the amount of the overdue payments; or

(2) terminate the renovation funding agreement and sue to foreclose on the lien.

STATE FUNDS

Sec. 534.030. (a) A community center may use state funds, including state contract funds, to operate a facility constructed under Section 534.023 or renovated under Section 534.024. The total amount of state funds used in the actual operation of the facility may not exceed an amount equal to 60 percent of the facility's total operating budget.

(b) In determining a facility's total operating budget, a community center may not include lease-purchase payments or renovation funding repayments.

(c) The construction, renovation, or operation of a facility under Sections 534.023-534.029 does not constitute grounds for a community center to receive contract funds that are in addition to the contract funds the center would otherwise receive under the board's rules governing distribution of those funds.

SURPLUS PERSONAL PROPERTY

Sec. 534.031. The department may transfer, with or without reimbursement, ownership and possession of surplus personal property under the department's control or jurisdiction to a community center for use in providing mental health or mental retardation services.

RESEARCH

Sec. 534.032. A community center may engage in research and may contract for that purpose.

LIMITATION ON DEPARTMENT CONTROL AND REVIEW

Sec. 534.033. (a) It is the intent of the legislature that the department limit its control over, and routine reviews of, community center programs to those programs that:

(1) use department funds or use required local funds that are matched with department funds;

(2) provide core or required services;

(3) provide services to former clients or patients of a department facility; or

(4) are affected by litigation in which the department is a defendant.

(b) The department may review any community center program if the department has reason to suspect that a violation of a department rule has occurred or if the department receives an allegation of patient or client abuse.

(c) The department may determine whether a particular program uses department funds or uses required local matching funds.
REPEALED

Sec.534.034.

REVIEW, AUDIT AND APPEAL PROCEDURES

Sec. 534.035. (a) The department by rule shall establish review, audit and appeal procedures for community centers. The procedures must ensure that reviews and audits are conducted in sufficient quantity and type to provide reasonable assurance that a community center has adequate and appropriate fiscal controls.

(b) In a community center plan approved under Section 534.001, the center must agree to comply with the review and audit procedures established under this section.

(c) If, by a date prescribed by the commissioner, the community center fails to respond to a deficiency identified in a review or audit to the satisfaction of the commissioner, the department may sanction the center in accordance with board rules.

FINANCIAL AUDIT

Sec. 534.036. (a) The department shall prescribe procedures for financial audits of community centers. The department shall develop the procedures with the assistance of the state agencies and departments that contract with community centers. The department shall coordinate with each of those state agencies and departments to incorporate each agency's financial and compliance requirements for a community center into a single audit that meets the requirements of Section 534.068. Before prescribing or amending the procedures, the department shall set a deadline for those state agencies and departments to submit to the department proposals relating to the financial audit procedures. The procedures must be consistent with any requirements connected with federal funding received by the community center. The department may not implement the procedures without the approval of the Health and Human Services Commission.

(b) Each state agency or department that contracts with a community center shall comply with the procedures developed under this section.

(c) The department shall develop protocols for a state agency or department to conduct additional financial audit activities of a community center. A state agency or department may not conduct additional financial audit activities of a community center without the approval of the Health and Human Services Commission.

(d) – Expired

PROGRAM AUDIT

Sec. 534.037. (a) The department shall coordinate with each state agency or department that contracts with a community center to prescribe procedures based on risk assessment for coordinated program audits of the activities of a community center. The department may not implement the procedures without the approval of the Health and Human Services Commission. The procedures must be consistent with any requirements connected with federal funding received by the community center.

(b) A program audit of a community center must be performed in accordance with procedures developed under this section.

(c) This section does not prohibit a state agency or department or an entity providing funding to a community center from investigating a complaint against or performing additional contract monitoring of a community center.

(d) A program audit under this section must evaluate:

1. the extent to which the community center is achieving the desired results or benefits established by the legislature or by a state agency or department;
2. the effectiveness of the community center's organizations, programs, activities, or functions;

and

3. whether the community center is in compliance with applicable laws.

(e) – Expired

APPOINTMENT OF MANAGER OR MANAGEMENT TEAM

Sec.534.038. (a) The commissioner may appoint a manager or management team to manage and operate a community center if the commissioner finds that the center or an officer or employee of the center:

1. intentionally, recklessly, or negligently failed to discharge the center’s duties under a contract with the department;
2. misused state or federal money;
3. engaged in a fraudulent act, transaction, practice, or course of business;
(4) endangers or may endanger the life, health or safety of a person served by the center;
(5) failed to keep fiscal records or maintain proper control over center assets as prescribed by Chapter 783, Government Code;
(5) failed to respond to a deficiency in a review or audit;
(7) substantially failed to operate within the functions and purposes defined in the center’s plan; or
(8) otherwise substantially failed to comply with this subchapter or department rules.

(b) The department shall give written notification to the center and local agency or combination of agencies responsible for making appointments to the local board of trustees regarding:
(1) the appointment of the manager or management team; and
(2) the circumstances on which the appointment is based.

c. The commissioner may require the center to pay costs incurred by the manager or management team.
d. The center may appeal the commissioner’s decision to appoint a manager or management team as prescribed by board rule. The filing of a notice of appeal stays the appointment unless the commissioner based the appointment on a finding under Subsection (a) (2) or (4).

POWERS AND DUTIES OF MANAGEMENT TEAM
Sec. 534.039. (a) As the commissioner determines for each appointment, a manager or management team appointed under Section 534.038 may:
(1) evaluate, redesign, modify, administer, supervise, or monitor a procedure, operation, or the management of a community center;
(2) hire, supervise, discipline, reassign, or terminate the employment of a center employee;
(3) reallocate a resource and manage an asset of the center;
(4) provide technical assistance to an officer or employee of the center;
(5) require or provide staff development;
(6) require that a financial transaction, expenditure, or contract for goods and services must be approved by the manager or management team;
(7) redesign, modify, or terminate a center program or service;
(8) direct the executive director, local board of trustees, chief financial officer, or a fiscal or program officer of the center to take an action;
(9) exercise a power or duty of an officer or employee of the center; or
(10) make a recommendation to the local agency or combination of agencies responsible for appointments to the local board of trustees regarding the removal of a center trustee.

(b) The manager or management team shall supervise the exercise of a power or duty by the local board of trustees.

c. The manager or management team shall report monthly to the commissioner and local board of trustees on actions taken.
d. A manager or management team appointed under this section may not use an asset or money contributed by a county, municipality, or other local funding entity without the approval of the county, municipality, or entity.

RESTORING MANAGEMENT TO CENTER
Sec. 534.040. (a) Each month, the commissioner shall evaluate the performance of a community center managed by a manager or team appointed under Section 534.038 to determine the feasibility of restoring the center’s management and operation to a local board of trustees.
(b) The authority of the manager or management team continues until the commissioner determines that the relevant factors listed under Section 534.038 (a) no longer apply.
(c) Following a determination under Subsection (b), the commissioner shall terminate the authority of the manager or management team and restore authority to manage and operate the center to the center’s authorized officers and employees.

[Sections 534.041-534.050 reserved for expansion]
SUBCHAPTER B. COMMUNITY-BASED SERVICES

REPEALED

Sec.534.051.

RULES AND STANDARDS

Sec.534.052. (a) The board shall adopt rules, including standards, the board considers necessary and appropriate to ensure the adequate provision of community-based mental health and mental retardation services through a local mental health or mental retardation authority under this subchapter.

(b) The department shall send a copy of the rules to each local mental health or mental retardation authority, or other provider receiving contract funds as a local mental health or mental retardation authority or designated provider.

REQUIRED COMMUNITY-BASED SERVICES

Sec.534.053. (a) The department shall ensure that, at a minimum, the following services are available in each service area:

1. 24-hour emergency screening and rapid crisis stabilization services;
2. community-based crisis residential services or hospitalization;
3. community-based assessments, including the development of interdisciplinary treatment plans and diagnosis and evaluation services;
4. family support services, including respite care;
5. case management services;
6. medication-related services, including medication clinics, laboratory monitoring, medication education, mental health maintenance education, and the provision of medication; and
7. psychosocial rehabilitation programs, including social support activities, independent living skills, and vocational training.

(b) The department shall arrange for appropriate community-based services, including the assignment of a case manager, to be available in each service area for each person discharged from a department facility who is in need of care.

(c) To the extent that resources are available, the department shall:
   1. ensure that the services listed in this section are available for children, including adolescents, as well as adults, in each service area;
   2. emphasize early intervention services for children, including adolescents, who meet the department's definition of being at high risk of developing severe emotional disturbances or severe mental illnesses; and
   3. ensure that services listed in this section are available for defendants required to submit to mental health treatment under Article 17.032 or Section 5(a) or 11(d), Article 42.12, Code of Criminal Procedure.

JOINT DISCHARGE PLANNING

Sec.534.0535. (a) The board shall adopt, and the department shall enforce, rules that require continuity of services and planning for patient or client care between department facilities and local mental health or mental retardation authorities.

(b) At a minimum, the rules must require joint discharge planning between a department facility and a local mental health or mental retardation authority before a facility discharges a patient or client or places the patient or client on an extended furlough with an intent to discharge.

(c) The local mental health or mental retardation authority shall plan with the department facility and determine the appropriate community services for the patient or client.

(d) The local mental health or mental retardation authority shall arrange for the provision of the services if department funds are to be used and may subcontract with or make a referral to a local agency or entity.
DESIGNATION OF PROVIDER

Sec. 534.054. (a) The department shall identify and contract with a local mental health or mental retardation authority for each service area to ensure that services are provided to patient and client populations determined by the department. A local mental health or mental retardation authority shall ensure that services to address the needs of priority populations are provided as required by the department and shall comply with the rules and standards adopted under Section 534.052.

(b) The department may contract with a local agency or a private provider or organization to act as a designated provider of a service if the department:

(1) cannot negotiate a contract with a local mental health or mental retardation authority to ensure that a specific required service for priority populations is available in that service area; or

(2) determines that a local mental health or mental retardation authority does not have the capacity to ensure the availability of that service.

CONTRACTS FOR CERTAIN COMMUNITY SERVICES

Sec. 534.055. (a) A mental health or mental retardation authority and a private provider shall use a contract designed by the department as a model contract for the provision of services at the community level for persons with mental retardation or mental illness, including residential services, if the contract involves the use of department funds or funds for which the department has oversight responsibility.

(b) The department shall design one or more model contracts and shall retain copies of each model contract in the central office of the department.

(c) A model contract must:

(1) require that the services provided by the private provider be based on the patient's or client's individual treatment plan;

(2) provide that a community-based residential facility that is a family home as defined in the Community Homes for Disabled Persons Location Act (Tex. Hum. Res. Code Ann. Chapter 123.) may house only disabled persons as defined in Section 123.002 of that Act; and

(3) prohibit the use of the facility for purposes such as restitution centers, homes for substance abusers, or halfway houses.

(4) outline a dispute resolution procedure.

(d) The department shall design a competitive procurement or similar system that a mental health or mental retardation authority shall use in awarding an initial contract under this section.

(e) The system must require that each mental health or mental retardation authority:

(1) ensure public participation in the authority's decisions regarding whether to provide or to contract for a service;

(2) make a reasonable effort to give notice of the intent to contract for services to each potential private provider in the local service area of the authority; and

(3) review each submitted proposal and award the contract to the applicant that the authority determines has made the lowest and best bid to provide the needed services.

(f) Each mental health or mental retardation authority, in determining the lowest and best bid, shall consider any relevant information included in the authority's request for bid proposals, including:

(1) price;

(2) the ability of the bidder to perform the contract and to provide the required services;

(3) whether the bidder can perform the contract or provide the services within the period required, without delay or interference;

(4) the bidder's history of compliance with the laws relating to the bidder's business operations and the affected services and whether the bidder is currently in compliance;

(5) whether the bidder's financial resources are sufficient to perform the contract and to provide the services;

(6) whether necessary or desirable support and ancillary services are available to the bidder;

(7) the character, responsibility, integrity, reputation, and experience of the bidder;

(8) the quality of the facilities and equipment available to or proposed by the bidder;

(9) the ability of the bidder to provide continuity of services; and

(10) the ability of the bidder to meet all applicable written departmental policies, principles, and regulations.
COORDINATION OF ACTIVITIES

Sec.534.056. A local mental health or mental retardation authority shall coordinate its activities with the activities of other appropriate agencies that provide care and treatment for persons with drug or alcohol problems.

RESPITE CARE

Sec.534.057. (a) The board shall adopt rules relating to the provision of respite care and shall develop a system to reimburse providers of in-home respite care.

(b) The rules must:
(1) encourage the use of existing local providers;
(2) encourage family participation in the choice of a qualified provider;
(3) establish procedures necessary to administer this section, including procedures for:
   (A) determining the amount and type of in-home respite care to be authorized;
   (B) reimbursing providers;
   (C) handling appeals from providers;
   (D) handling complaints from recipients of in-home respite care;
   (E) providing emergency backup for in-home respite care providers; and
   (F) advertising for, selecting, and training in-home respite care providers; and
(4) specify the conditions and provisions under which a provider's participation in the program can be canceled.

(c) The board shall establish service and performance standards for department facilities and designated providers to use in operating the in-home respite care program. The board shall establish the standards from information obtained from the families of patients and clients receiving in-home respite care and from providers of in-home respite care. The board may obtain the information at a public hearing or from an advisory group.

(d) The service and performance standards established by the board under Subsection (c) must:
(1) prescribe minimum personnel qualifications the board determines are necessary to protect health and safety;
(2) establish levels of personnel qualifications that are dependent on the needs of the patient or client; and
(3) permit a health professional with a valid Texas practitioner's license to provide care that is consistent with the professional's training and license without requiring additional training unless the board determines that additional training is necessary.

STANDARDS OF CARE

Sec.534.058. (a) The department shall develop standards of care for the services provided by a local mental health or mental retardation authority and its subcontractors under this subchapter.

(b) The standards must be designed to ensure that the quality of the community-based services is consistent with the quality of care available in department facilities.

(c) In conjunction with local mental health or mental retardation authorities, the department shall review the standards biennially to determine if each standard is necessary to ensure the quality of care.

CONTRACT COMPLIANCE FOR LOCAL AUTHORITIES

Sec.534.059. (a) The department shall evaluate a local mental health or mental retardation authority’s compliance with its contract to ensure the provision of specific services to priority populations.

(b) If, by a date set by the commissioner, a local mental health or mental retardation authority fails to comply with its contract to ensure the provision of services to the satisfaction of the commissioner, the department may impose a sanction as provided by the applicable contract rule until the dispute is resolved. The department shall notify the authority in writing of the department’s decision to impose a sanction.

(c) A local mental health or mental retardation authority may appeal the department’s decision to impose a sanction on the authority. The board by rule shall prescribe the appeal procedure.

(d) The filing of a notice of appeal stays the imposition of the department’s decision to impose a sanction except when an act or omission by a local mental health or mental retardation authority is endangering or may endanger the life, health, welfare, or safety of a person.

(e) While an appeal under this section is pending, the department may limit general revenue allocations to a local mental health or mental retardation authority to monthly distributions.
PROGRAM AND SERVICE MONITORING AND REVIEW OF LOCAL AUTHORITIES

Sec. 534.060. (a) The department shall develop mechanisms for monitoring the services provided by a local mental health or mental retardation authority.

(b) The department shall review the program quality and program performance results of a local mental health or mental retardation authority in accordance with a risk assessment and evaluation system appropriate to the authority’s contract requirements. The department may determine the scope of the review.

(c) A contract between a local mental health or mental retardation authority and the department must authorize the department to have unrestricted access to all facilities, records, data, and other information under the control of the authority as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with department funds.

COORDINATED PROGRAM AUDITS OF LOCAL AUTHORITIES

Sec. 534.0601. (a) The department shall coordinate with each agency or department of the state that contracts with a local mental health or mental retardation authority to prescribe procedures for a coordinated program audit of the authority. The procedures must be:

(1) consistent with the requirements for the receipt of federal funding by the authority; and

(2) based on risk assessment.

(b) A program audit must evaluate:

(1) the extent to which a local mental health or mental retardation authority is achieving the results or benefits established by an agency or department of the state or by the legislature;

(2) the effectiveness of the authority’s organization, program, activities, or functions; and

(3) the authority’s compliance with law.

(c) A program audit of a local mental health or mental retardation authority must be performed in accordance with the procedures prescribed under this section.

(d) The department may not implement a procedure for a program audit under this section without the approval of the Health and Human Services Commission.

(e) This section does not prohibit an agency, department, or other entity providing funding to a local mental health or mental retardation authority from investigating a complaint against the authority or performing additional contract monitoring of the authority.

FINANCIAL AUDITS OF LOCAL AUTHORITIES

Sec. 534.0602. (a) The department shall prescribe procedures for a financial audit of a local mental health or mental retardation authority. The procedures must be consistent with requirements for the receipt of federal funding by the authority.

(b) The department shall develop the procedures with the assistance of each agency or department of the state that contracts with a local mental health or mental retardation authority. The department shall incorporate each agency’s or department’s financial or compliance requirements for an authority into a single audit that meets the requirements of Section 534.068.

(c) Before prescribing or amending a procedure under this section, the department must set a deadline for agencies and departments of the state that contract with local mental health and mental retardation authorities to submit proposals relating to the procedure.

(d) An agency or department of the state that contracts with a local mental health or mental retardation authority must comply with a procedure developed under this section.

(e) The department may not implement a procedure under this section without the approval of the Health and Human Services Commission.

ADDITIONAL FINANCIAL AUDIT ACTIVITY

Sec. 534.0603. (a) The department shall develop protocols for an agency or department of the state to conduct additional financial audit activities of a local mental health or mental retardation authority.

(b) An agency or department of the state may not conduct additional financial audit activities relating to a local mental health or mental retardation authority without the approval of the Health and Human Services Commission.

(c) This section, and a protocol developed under this section, do not apply to an audit conducted under Chapter 321, Government Code.
PROGRAM AND SERVICE MONITORING AND REVIEW OF CERTAIN COMMUNITY SERVICES

Sec.534.061. (a) The department shall develop mechanisms for periodically monitoring the services of a provider who contracts with a local mental health or mental retardation authority to provide services for persons with mental retardation or mental illness at the community level, including residential services, if state funds or funds for which the state has oversight responsibility are used to pay for at least part of the services.

(b) The local mental health or mental retardation authority shall monitor the services to ensure that the provider is delivering the services in a manner consistent with the provider’s contract.

(c) Each provider contract involving the use of state funds or funds for which the state has oversight responsibility must authorize the local mental health or mental retardation authority or the authority’s designee and the department or the department's designee to have unrestricted access to all facilities, records, data, and other information under the control of the provider as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with the contract.

(d) The department may withdraw funding from a local mental health or mental retardation authority that fails to cancel a contract with a provider involving the use of state funds or funds for which the state has oversight responsibility if:

(1) the provider is not fulfilling its contractual obligations and

(2) the authority has not taken appropriate action to remedy the problem in accordance with board rules.

(e) The board by rule shall prescribe procedures a local mental health or mental retardation authority must follow in remedying a problem with a provider.

REPEALED

Sec.534.062.

PEER REVIEW ORGANIZATION

Sec.534.063. The department shall assist a local mental health or mental retardation authority in developing a peer review organization to provide self-assessment of programs and to supplement department reviews under Section 534.060.

CONTRACT RENEWAL

Sec.534.064. The commissioner may refuse to renew a contract with a local mental health or mental retardation authority and may select other agencies, entities or organizations to be the local mental health or mental retardation authority if the department's evaluation of the authority's performance indicates that the authority cannot ensure the availability of the specific services to priority populations required by the department and this subtitle.

RENEWAL OF CERTAIN CONTRACTS FOR COMMUNITY SERVICES

Sec.534.065. (a) A mental health or mental retardation authority shall review a contract scheduled for renewal that:

(1) is between the authority and a private provider;

(2) is for the provision of mental health or mental retardation services at the community level, including residential services; and

(3) involves the use of department funds or funds for which the department has oversight responsibility.

(b) The mental health or mental retardation authority may renew the contract only if the contract meets the criteria provided by Section 533.016.

(c) The mental health or mental retardation authority and private provider shall negotiate a contract renewal at arms length and in good faith.

(d) This section applies to a contract renewal regardless of the date on which the original contract was initially executed.

LOCAL MATCH REQUIREMENT

Sec.534.066. (a) The department shall include in a contract with a local mental health or mental retardation authority a requirement that some or all of the state funds the authority receives be matched by local support in an amount or proportion jointly agreed to by the department and the board of the authority based on the
authority's financial capability and its overall commitment to other mental health or mental retardation programs, as appropriate.

(b) The department shall establish, for community services divisions of department facilities that provide community-based services required under this subchapter, a local match requirement that is consistent with the requirements applied to local mental health or mental retardation authorities.

(c) Patient fee income, third-party insurance income, services and facilities contributed by the local mental health or mental retardation authority, contributions by a county or municipality, and other locally generated contributions, including local tax funds, may be counted when calculating the local support for a local mental health or mental retardation authority. The department may disallow or reduce the value of services claimed as support.

FEE COLLECTION POLICY
Sec. 534.067. The department shall establish a uniform fee collection policy for all local mental health or mental retardation authorities that is equitable, provides for collections, and maximizes contributions to local revenue.

NOTICE OF DENIAL, REDUCTION, OR TERMINATION OF SERVICES
Sec. 534.0675. The board by rule, in cooperation with local mental health and mental retardation authorities, consumers, consumer advocates, and service providers shall establish a uniform procedure that each local mental health or mental retardation authority shall use to notify consumers in writing of the denial, involuntary reduction, or termination of services and of the right to appeal such decisions.

AUDITS
Sec. 534.068. (a) As a condition to receiving funds under this subtitle, a local mental health or mental retardation authority, except a state facility designated as an authority, must annually submit to the department a financial and compliance audit prepared by a certified public accountant or public accountant licensed by the Texas State Board of Public Accountancy. To ensure the highest degree of independence and quality, the local mental health or mental retardation authority shall use an invitation-for-proposal process as prescribed by the Department to select the auditor.

(b) The audit must meet the minimum requirements as shall be, and be in the form and in number of copies as may be, prescribed by the department and approved by the state auditor.

(c) The local mental health or mental retardation authority shall file the required number of copies of the audit report with the department by the date prescribed by the department. From the copies furnished the department, copies of each audit report shall be submitted to the Governor, the Legislative Budget Board and the Legislative Audit Committee.

(d) The local mental health or mental retardation authority shall either approve or refuse to approve the audit report. If the authority refuses to approve the report, the authority shall include with the department's copy a statement detailing the reasons for refusal.

(e) The commissioner and state auditor have access to all vouchers, receipts, journals, or other records the commissioner or auditor considers necessary to review and analyze the audit report.

(f) The department shall annually submit to the Governor, Legislative Budget Board, and Legislative Audit Committee a summary of the significant findings identified during the department's reviews of fiscal audit activities.

CRITERIA FOR PROVIDING FUNDS FOR START-UP COSTS
Sec. 534.069. (a) The board by rule shall develop criteria to regulate the provision of payment to a private provider for start-up costs associated with the development of residential and other community services for persons with mental illness or mental retardation.

(b) The criteria shall provide that start-up funds be awarded only as a last resort and shall include provisions relating to:

(1) the purposes for which start-up funds may be used;
(2) the ownership of capital property and equipment obtained by the use of start-up funds; and
(3) the obligation of the private provider to repay the start-up funds awarded by the department by direct repayment or by providing services for a period agreed to by the parties.
USE OF PROSPECTIVE PAYMENT FUNDS

Sec. 534.070. (a) Each mental health or mental retardation authority that receives prospective payment funds shall submit to the department a quarterly report that clearly identifies how the provider or program used the funds during the preceding fiscal quarter.

(b) The board by rule shall prescribe the form of the report, the specific information that must be included in the report, and the deadlines for submitting the report.

(c) The department may not provide prospective payment funds to a mental health or mental retardation authority that fails to submit the quarterly reports required by this section.

(d) In this section "prospective payment funds" means money the department prospectively provides to a mental health or mental retardation authority to provide community services to certain persons with mental retardation or mental illness.

ADVISORY COMMITTEE

Sec. 534.071. A local mental health or mental retardation authority may appoint a committee to advise its governing board on a matter relating to the oversight and provision of mental health and mental retardation services. The appointment of a committee does not relieve the authority’s governing board of a responsibility prescribed by this subtitle.

SUBCHAPTER C. HEALTH MAINTENANCE ORGANIZATIONS

HEALTH MAINTENANCE ORGANIZATION CERTIFICATE OF AUTHORITY

Sec. 534.101. (a) One or more community centers may create or operate a nonprofit corporation pursuant to the laws of this state for the purpose of accepting capitated or other at-risk payment arrangements for the provision of services designated in a plan approved by the department under Subchapter A.

(b) Before a nonprofit corporation organized or operating under Subsection (a) accepts or enters into any capitated or other at-risk payment arrangement for services designated in a plan approved by the department under Subchapter A, the nonprofit corporation must obtain the appropriate certificate of authority from the Texas Department of Insurance to operate as a health maintenance organization pursuant Chapter 843, Insurance Code.

(c) Before submitting any bids, a nonprofit corporation operating under this subchapter shall disclose in an open meeting the services to be provided by the community center through any capitated or other at-risk payment arrangement by the nonprofit corporation. Notice of the meeting must be posted in accordance with Sections 551.041, 551.043, and 551.054, Government Code. The department shall verify that the services provided under any capitated or other at-risk payment arrangement are within the scope of services approved by the department in each community center's plan required under Subchapter A.

(d) The board of the nonprofit corporation shall:

(1) provide for public notice of the nonprofit corporation's intent to submit a bid to provide or arrange services through a capitated or other at-risk payment arrangement through placement as a board agenda item on the next regularly scheduled board meeting that allows at least 15 days' public review of the plan; and

(2) provide an opportunity for public comment on the services to be provided through such arrangements and on the consideration of local input into the plan.

(e) The nonprofit corporation shall provide:

(1) public notice before verification and disclosure of services to be provided by the community center through any capitated or other at-risk payment arrangements by the nonprofit corporation;

(2) an opportunity for public comment on the community center services within the capitated or other at-risk payment arrangements offered by the nonprofit corporation;

(3) published summaries of all relevant documentation concerning community center services arranged through the nonprofit corporation, including summaries of any similar contracts the nonprofit corporation has entered into; and

(4) public access and review of all relevant documentation.

(f) A nonprofit corporation operating under this subchapter:

(1) is subject to the requirements of Chapters 551 and 552, Government Code;

(2) shall solicit public input on the operations of the nonprofit corporation and allow public access to
information on the operations, including services, administration, governance, revenues, and expenses, on request unless disclosure is expressly prohibited by law or the information is confidential under law; and
(3) shall publish an annual report detailing the services, administration, governance, revenues, and expenses of the nonprofit corporation, including the disposition of any excess revenues.

LAWS AND RULES

Sec. 534.102. A nonprofit corporation created or operated under this subchapter that obtains and holds a valid certificate of authority as a health maintenance organization may exercise the powers and authority and is subject to the conditions and limitations provided by this subchapter, Chapter 842, Insurance Code, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), and rules of the Texas Department of Insurance.

APPLICATION OF LAWS AND RULES

Sec. 534.103. A health maintenance organization created and operating under this subchapter is governed as, and is subject to the same laws and rules of the Texas Department of Insurance as, any other health maintenance organization of the same type. The commissioner of insurance may adopt rules as necessary to accept funding sources other than the sources specified by Section 843.405, Insurance Code, from a nonprofit health maintenance organization created and operating under this subchapter, to meet the minimum surplus requirements of that section.

APPLICATION OF SPECIFIC LAWS

Sec. 534.104. (a) A nonprofit health maintenance organization created under Section 534.101 is a health care provider that is a nonprofit health maintenance organization created and operated by a community center for purposes of Section 84.007(e), Civil Practice and Remedies Code. The nonprofit health maintenance organization is not a governmental unit or a unit of local government, for purposes of Chapters 101 and 102, Civil Practice and Remedies Code, respectively, or a local government for purposes of Chapter 791, Government Code.

(b) Nothing in this subchapter precludes one or more community centers from forming a nonprofit corporation under Chapter 162, Occupations Code, to provide services on a risk-sharing or capitated basis as permitted under Chapter 844, Insurance Code.

CONSIDERATION OF BIDS

Sec. 534.105. The department shall give equal consideration to bids submitted by any entity, whether it be public, for-profit, or nonprofit, if the department accepts bids to provide services through a capitated or at-risk payment arrangement and if the entities meet all other criteria as required by the department.

CONDITIONS FOR CERTAIN CONTRACTS

Sec. 534.106. A contract between the department and a health maintenance organization formed by one or more community centers must provide that the health maintenance organization may not form a for-profit entity unless the organization transfers all of the organization’s assets to the control of the boards of trustees of the community centers that formed the organization.
CHAPTER 535. SUPPORT SERVICES

SUBCHAPTER A. ASSISTANCE FOR PERSONS WITH MENTAL DISABILITIES

DEFINITIONS

Sec.535.001. In this chapter:
(1) "Assistance" means a subsidy granted by the department to provide support services to a client.
(2) "Client" means a person with a mental disability who lives independently or a family who receives assistance under this chapter.
(3) "Family" means a group that consists of a person with a mental disability and that person's parent, sibling, spouse, child, or legal guardian. The group may include others.
(4) "Legal guardian" means a person appointed by a court of competent jurisdiction to exercise powers over a person with a mental disability.
(5) "Mental illness" has the meaning assigned by Section 571.003.
(6) "Mental retardation" has the meaning assigned by Section 591.003.
(7) "Other support programs" means:
(A) all forms of local, state, or federal support services other than assistance;
(B) contract programs; or
(C) support services provided by public or private funds for persons with mental disabilities or their families.
(8) "Parent" means a natural, foster, surrogate, or adoptive parent.
(9) "Person with a mental disability" means:
(A) a person with mental illness;
(B) a person with mental retardation;
(C) a person with a pervasive developmental disorder; or
(D) a person younger than four years of age who is eligible for early childhood intervention services.
(10) "Pervasive developmental disorder" means a disorder that begins in childhood and that meets the criteria for a pervasive developmental disorder established in the Diagnostic and Statistical Manual, Edition III-R.

ADOPTION OF RULES AND IMPLEMENTATION OF PROGRAM

Sec.535.002. (a) The department shall adopt rules, procedures, guidelines, and standards to implement and administer this chapter, including:
(1) procedures and guidelines for determining eligibility standards relating to financial qualifications and the need for services and for determining eligibility criteria for selecting clients;
(2) standards and procedures for approving qualified programs and support services;
(3) procedures for conducting a periodic review of clients;
(4) procedures and guidelines for determining when assistance duplicates other support programs or results in excessive support to a client;
(5) rules establishing reasonable payment rates for qualified programs and support services under this chapter; and
(6) rules establishing a copayment system in accordance with Section 535.009.
* (b) If feasible and economical, the department may use local mental health and mental retardation authorities to implement this chapter. However, the department may not designate a local mental health or mental retardation authority as a provider of services if other providers are available.

*Changes made to this subsection are effective 9/1/2006.

ELIGIBILITY

Sec.535.003. (a) A family, or a person with a mental disability who lives independently, may apply for assistance.
(b) The department's rules must provide that an applicant for assistance is eligible to receive assistance if the applicant resides in this state and meets the department's eligibility criteria for income and need. In addition, a person with a mental disability who lives independently must be 18 years of age or older.

(c) The department shall determine eligibility and the need for support services from the results of current evaluations, program plans, and medical reports. Those documents shall be provided to the department on request. The department, if it considers necessary, may require and shall provide any additional evaluations.

(d) The department shall determine the applicant's needs and the support services for which the applicant is eligible after consulting with the applicant.

(e) In determining eligibility for support services under this chapter, the department shall determine if the applicant is eligible to receive the services from other support programs and may deny the application if it determines that the applicant is eligible to receive services that are available from another support program. If the department denies the application, the department shall provide to the applicant information on and referral to the appropriate support program.

(f) A local or state agency may not consider assistance received under this subchapter in determining eligibility for another support program unless that consideration is required by federal regulations.

(g) The department shall provide the applicant an opportunity for a hearing to contest the denial of an application.

PROVISION OF ASSISTANCE AND SUPPORT SERVICES

Sec. 535.004. (a) The department shall provide assistance to compensate a client for present and future expenses incurred to maintain in the community a family member with a mental disability or a person with a mental disability who lives independently, including:

(1) the purchase or lease of special equipment or architectural modifications of a home to improve or facilitate the care, treatment, therapy, general living conditions, or access of the person with a mental disability;

(2) medical, surgical, therapeutic, diagnostic, and other health services related to the person's mental disability;

(3) counseling or training programs that assist a family in providing proper care for the family member with a mental disability or assist the person with a mental disability who lives independently, and that provide for the special needs of the family or person;

(4) attendant care, home health aid services, homemaker services, and chore services that provide support with training, routine body functions, dressing, preparation and consumption of food, and ambulation;

(5) respite support for a family that is the client;

(6) transportation services for the person with a mental disability; and

(7) transportation, room, and board costs incurred by the family or the person with a mental disability during evaluation or treatment of the person with a mental disability that have been preapproved by the department.

(b) The department by rule may add services and programs for which the department may provide assistance.

SUPPORT SERVICES FOR CERTAIN CLIENTS

Sec. 535.005. The department may contract with the Texas Department of Human Services to provide support services to clients of the Texas Department of Human Services who are mentally disabled and eligible to receive assistance under this chapter.

LIMITATION OF DUTY

Sec. 535.006. The department's duty to provide assistance under this subchapter is determined and limited by the funds specifically appropriated to administer this chapter.

PAYMENT OF ASSISTANCE

Sec. 535.007. (a) The department may grant assistance of not more than $3,600 a year to a client. The department may distribute the assistance periodically or in a lump sum, according to the client's needs.
commissioner or the commissioner's designee may grant additional amounts on consideration of an individual client's needs.

(b) In addition to the assistance authorized by Subsection (a), the department may award to a client a onetime grant of assistance of not more than $3,600 for architectural renovation or other capital expenditure to improve or facilitate the care, treatment, therapy, general living conditions, or access of a person with a mental disability. The commissioner or the commissioner's designee may individually grant additional amounts to clients.

(c) The department shall consult with the client to determine the manner of distribution of the assistance. On agreement of the person with a mental disability or the head of the family, as appropriate, the department may distribute the assistance directly to the client or to a qualified program or provider of services serving the client.

SELECTION OF PROGRAMS OR PROVIDERS
Sec.535.008. (a) Each client may select the client's program or provider of services, except that the client may select only a program or provider that complies with the department's support services standards.
(b) The department shall require each program or provider to comply with the department's support services standards relating to the provision of support services and may disapprove payments to a program or provider that does not comply with the rules.
(c) The department shall assist each client in locating and selecting qualified programs and services.

COPAYMENT SYSTEM
Sec.535.009. The department shall establish a copayment system with each client using a sliding scale for payments determined according to:

(1) the client's need for assistance to acquire the necessary support services; and
(2) the client's ability to pay for those services.

CHARGE
Sec.535.010. (a) The department by rule shall establish a reasonable charge for each authorized support service.
(b) The department's liability for the cost of a support service is limited to the amount of the charge established by the department for the service less the amount of any copayment required from the client.

CLIENT RESPONSIBILITY FOR PAYMENT
Sec.535.011. Each client shall pay:
(1) the client's required copayment; and
(2) the amount of charges in excess of the amount the department establishes for the service or the amount incurred in excess of the maximum amount of assistance authorized by this chapter to be provided by the department.

REVIEW OF CLIENT'S NEEDS
Sec.535.012. (a) The department shall regularly review each client's needs as established by the department.
(b) The department shall review each client's needs when there is a change in the circumstances that were considered in determining eligibility or the amount of the required copayment.

NOTIFICATION OF CHANGE IN CIRCUMSTANCES
Sec.535.013. The department shall require each client to notify the department of a change in circumstances that were considered in determining eligibility or the amount of the required copayment.

CRIMINAL PENALTY
Sec.535.014. (a) A person commits an offense if the person, in obtaining or attempting to obtain assistance under this chapter for himself or another person:
(1) makes or causes to be made a statement or representation the person knows to be false; or
(2) solicits or accepts any assistance for which the person knows he, or the person for whom the solicitation is made, is not eligible.
(b) An offense under this section is a felony of the third degree.

[Sections 535.015-535.020 reserved for expansion]
SUBCHAPTER B. REGISTRATION OF BOARDING HOMES

REPEALED

[Chapters 536-550 reserved for expansion]
SUBTITLE B. STATE FACILITIES

CHAPTER 551. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL POWERS AND DUTIES
RELATING TO STATE FACILITIES

DEFINITIONS

Sec. 551.001. In this subtitle:
(1) "Board" means the Texas Board of Mental Health and Mental Retardation.
(2) "Commissioner" means the commissioner of mental health and mental retardation.
(3) "Department" means the Texas Department of Mental Health and Mental Retardation.
(4) "Department facility" means a facility under the department's jurisdiction for persons with mental illness or mental retardation.

PROHIBITION OF INTEREST

Sec. 551.002. A member of the board, the superintendent of a department facility, or a person connected with a department facility may not:
(1) sell or have a concern in the sale of merchandise, supplies, or other items to a department facility; or
(2) have an interest in a contract with a department facility.

DEPOSIT OF PATIENT OR CLIENT FUNDS

Sec. 551.003. (a) The superintendent of a department facility is the custodian of the personal funds that belong to a facility patient or client and that are on deposit with the institution.  
(b) The superintendent may deposit or invest those funds in:
(1) a bank in this state;
(2) federal bonds or obligations; or
(3) bonds or obligations for which the faith and credit of the United States are pledged.
(c) The superintendent may combine the funds of facility patients or clients only to deposit or invest the funds.
(d) The facility's business manager shall maintain records of the amount of funds on deposit for each facility patient or client.

BENEFIT FUND

Sec. 551.004. (a) The superintendent may deposit the interest or increment accruing from funds deposited or invested under Section 551.003 into a fund to be known as the benefit fund. The superintendent is the trustee of the fund.
(b) The superintendent may spend money from the benefit fund for:
(1) educating or entertaining the patients or clients;
(2) barber or cosmetology services for the patients or clients; and
(3) the actual expense incurred in maintaining the fund.

DISBURSEMENT OF PATIENT FUNDS

Sec. 551.005. Funds in the benefit fund or belonging to a facility patient or client may be disbursed only on the signatures of both the facility's superintendent and business manager.

FACILITY STANDARDS BY DEPARTMENT OF HEALTH

Sec. 551.006. (a) The Texas Department of Health by rule shall prescribe standards for department facilities relating to building safety and the number and quality of staff. The staff standards must provide that adequate staff exist to ensure a continuous plan of adequate medical, psychiatric, nursing, and social work services for patients and clients of a department facility.
(b) The Texas Department of Health shall approve department facilities that meet applicable standards and, when requested, shall certify the approval to the Texas Department of Human Services or the United States Health Care Financing Administration.
BUILDING AND IMPROVEMENT PROGRAM

Sec.551.007. (a) The department shall design, construct, equip, furnish, and maintain buildings and improvements authorized by law at department facilities.

(b) The department may employ architects and engineers to prepare plans and specifications and to supervise construction of buildings and improvements. The department shall employ professional, technical, and clerical personnel to carry out the design and construction functions prescribed by this section, subject to the General Appropriations Act and other applicable law.

(c) The board shall adopt rules in accordance with this section and other applicable law relating to awarding contracts for the construction of buildings and improvements. The department shall award contracts for the construction of buildings and improvements to the qualified bidder who makes the lowest and best bid.

(d) The department may not award a construction contract for an amount that exceeds the amount of funds available for the project.

(e) The department shall require each successful bidder to give a bond payable to the state in an amount equal to the amount of the bid and conditioned on the faithful performance of the contract.

(f) The department may reject any or all bids.

(g) The department may waive, suspend, or modify a provision of this section that might conflict with a federal statute, rule, regulation, or administrative procedure if the waiver, suspension, or modification is essential to the receipt of federal funds for a project. If a project is financed entirely from federal funds, a standard required by a federal statute, rule, or regulation controls.

TRANSFER OF FACILITIES

Sec.551.008. (a) The department may transfer the South Campus of the Vernon State Hospital to the Texas Youth Commission contingent upon the agreement of the governing board of the department and the executive commissioner of the Texas Youth Commission.

(b) In this section, "transfer" means to convey title to, lease, or otherwise convey the beneficial use of facilities, equipment, and land appurtenant to the facilities.

SUBCHAPTER B. PROVISIONS APPLICABLE TO FACILITY SUPERINTENDENT AND BUSINESS MANAGER

REPEALED

Sec.551.021.

POWERS AND DUTIES OF SUPERINTENDENT

Sec.551.022. (a) The superintendent of a department facility is the administrative head of that facility.

(b) The superintendent has the custody of and responsibility to care for the buildings, grounds, furniture, and other property relating to the facility.

(c) The superintendent shall:

(1) oversee the admission and discharge of patients and clients;
(2) keep a register of all patients and clients admitted to or discharged from the facility;
(3) supervise repairs and improvements to the facility;
(4) ensure that facility money is spent judiciously and economically;
(5) keep an accurate and detailed account of all money received and spent, stating the source of the money and to whom and the purpose for which the money is spent; and
(6) keep a full record of the facility's operations.

(d) In accordance with board rules and departmental operating procedures, the superintendent may:

(1) establish policy to govern the facility that the superintendent considers will best promote the patients' and clients' interest and welfare;
(2) appoint subordinate officers, teachers, and other employees and set their salaries, in the absence of other law; and
(3) remove an officer, teacher, or employee for good cause.
REPEALED

Sec.551.023.

SUPERINTENDENT'S DUTY TO ADMIT COMMISSIONER AND BOARD MEMBERS

Sec.551.024. (a) The superintendent shall admit into every part of the department facility the commissioner and members of the board.
(b) The superintendent shall on request show any book, paper, or account relating to the department facility's business, management, discipline, or government to the commissioner or board member.
(c) The superintendent shall give to the commissioner or a board member any requested copy, abstract, or report.

DUTY TO REPORT MISSING PATIENT OR CLIENT

Sec.551.025. If a person receiving inpatient mental retardation services or court-ordered inpatient mental health services in a department facility leaves the facility without notifying the facility or without the facility's consent, the facility superintendent shall immediately report the person as a missing person to an appropriate law enforcement agency in the area in which the facility is located.

BUSINESS MANAGER

Sec.551.026. (a) The business manager is the chief disbursing officer of the department facility.
(b) The business manager is directly responsible to the superintendent.

[Sections 551.027-551.040 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES RELATING TO PATIENT CARE

MEDICAL AND DENTAL TREATMENT

Sec.551.041. (a) The department shall provide or perform recognized medical and dental treatment or services to a person admitted or committed to the department's care. The department may perform this duty through an authorized agent.
(b) The department may contract for the support, maintenance, care, or medical or dental treatment or service with a municipal, county, or state hospital, a private physician, a licensed nursing home or hospital, or a hospital district. The authority to contract provided by this subsection is in addition to other contractual authority granted to the department. A contract entered into under this subsection may not assign a lien accruing to this state.
(c) If the department requests consent to perform medical or dental treatment or services from a person or the guardian of the person whose consent is considered necessary and a reply is not obtained immediately, or if there is no guardian or responsible relative of the person to whom a request can be made, the superintendent of a department facility shall order:
   (1) medical treatment or services for the person on the advice and consent of three physicians licensed by the Texas State Board of Medical Examiners, at least one of whom is primarily engaged in the private practice of medicine; or
   (2) dental treatment or services for the person on the advice and consent of a dentist licensed by the State Board of Dental Examiners and of two physicians licensed by the Texas State Board of Medical Examiners, at least one of whom is primarily engaged in the private practice of medicine.
(d) This section does not authorize the performance of an operation involving sexual sterilization or a frontal lobotomy.

OUTPATIENT CLINICS

Sec.551.042. (a) If funds are available, the department may establish in locations the department considers necessary outpatient clinics to treat persons with mental illness.
(b) As necessary to establish and operate the clinics, the department may:
   (1) acquire facilities;
   (2) hire personnel;
   (3) adopt rules; and
   (4) contract with persons, corporations, and local, state, and federal agencies.
MENTAL HYGIENE CLINIC SERVICE

Sec.551.043. (a) The department may establish a mental hygiene clinic service through its agents and facilities.
(b) The clinic service shall cooperate with the Central Education Agency and local boards of education in studying the mental and physical health of children:
   (1) with serious retardation in school progress or in mental development; or
   (2) who have personality development problems.

OCCUPATIONAL THERAPY PROGRAMS

Sec.551.044. (a) The department may provide equipment, materials, and merchandise for occupational therapy programs at department facilities.
(b) The superintendent of a department facility may, in accordance with department rules, contract for the provision of equipment, materials, and merchandise for occupational therapy programs. If the contractor retains the finished or semi-finished product, the contract shall provide for a fair and reasonable rental payment to the department by the contractor for the use of facility premises or equipment. The rental payment is determined by the amount of time the facility premises or equipment is used in making the products.
(c) The finished products made in an occupational therapy program may be sold and the proceeds placed in the patients' benefit fund, the patients' trust fund, or a revolving fund for use by the patients. A patient may keep the finished product if the patient purchases the material for the product from the state.
(d) The department may accept donations of money or materials for use in occupational therapy programs and may use a donation in the manner requested by the donor if not contrary to board policy.
CHAPTER 553. STATE SCHOOLS

SUBCHAPTER A. GENERAL PROVISIONS

EPILEPSY

Sec.553.001. A person may not be denied admission to a state institution or school because the person suffers from epilepsy.

[Sections 553.002-553.020 reserved for expansion]

SUBCHAPTER B. STATE SCHOOLS

REPEALED

Sec.553.021.

SAN ANTONIO STATE SCHOOL

Sec.553.022. (a) The San Antonio State School is for the education, care, and treatment of persons with mental retardation.

(b) The Texas Department of Mental Health and Mental Retardation may enter into agreements with the Texas Department of Health for use of the excess facilities of the Texas Center for Infectious Disease in the operation of the school.
CHAPTER 574. COURT-ORDERED MENTAL HEALTH SERVICES

SUBCHAPTER A. APPLICATION FOR COMMITMENT AND PREHEARING PROCEDURES

[Sections 574.001 – 574.082 not included]

RETURN TO FACILITY UNDER CERTIFICATE OF FACILITY ADMINISTRATOR OR COURT ORDER

Sec. 574.083. (a) The facility administrator of a facility to which a patient was admitted for court-ordered inpatient health care services may authorize a peace officer of the municipality or county in which the facility is located to take an absent patient into custody, detain the patient, and return the patient to the facility by issuing a certificate as prescribed by Subsection (c) to a law enforcement agency of the municipality or county.

(b) If there is reason to believe that an absent patient may be outside the municipality or county in which the facility is located, the facility administrator may file an affidavit as prescribed by Subsection (c) with a magistrate requesting the magistrate to issue an order for the patient's return. The magistrate with whom the affidavit is filed may issue an order directing a peace or health officer to take an absent patient into custody and return the patient to the facility. An order issued under this subsection extends to any part of this state and authorizes any peace officer to whom the order is directed or transferred to execute the order, take the patient into custody, detain the patient, and return the patient to the facility.

(c) The certificate or affidavit filed under Subsection (a) or (b) must set out facts establishing that the patient is receiving court-ordered inpatient mental health services at the facility and show that the facility administrator reasonably believes that:

(1) the patient is absent without authority from the facility;
(2) the patient has violated the conditions of a pass or furlough; or
(3) the patient's condition has deteriorated to the extent that the patient's continued absence from the facility under a pass or furlough is inappropriate.

(d) A peace or health officer shall take the patient into custody and return the patient to the facility as soon as possible if the patient's return is authorized by a certificate issued or court order issued under this section.

(e) A peace or health officer may take the patient into custody without having the certificate or court order in the officer's possession.

(f) A peace or health officer who cannot immediately return a patient to the facility named in the order may transport the patient to a local facility for detention. The patient may not be detained in a nonmedical facility that is used to detain persons who are charged with or convicted of a crime unless detention in the facility is warranted by an extreme emergency. If the patient is detained at a nonmedical facility:

(1) the patient:
   (A) may not be detained in the facility for more than 24 hours; and
   (B) must be isolated from all persons charged with or convicted of a crime; and
(2) the facility must notify the county health authority of the detention.

(g) The local mental health authority shall ensure that a patient detained in a nonmedical facility under Subsection (f) receives proper care and medical attention.

(h) Notwithstanding other law regarding confidentiality of patient information, the facility administrator may release to a law enforcement official information about the patient if the administrator determines the information is needed to facilitate the return of the patient to the facility.

[Sections 574.084 – 574.154 not included]
CHAPTER 575. ADMISSION AND TRANSFER PROCEDURES
FOR INPATIENT SERVICES

SUBCHAPTER B. TRANSFER PROCEDURES

[Section 575.011 not included]

TRANSFER OF PERSON WITH MENTAL RETARDATION TO AN INPATIENT MENTAL HEALTH FACILITY OPERATED BY THE DEPARTMENT

Sec.575.012. (a) An inpatient mental health facility may not transfer a patient who is also a person with mental retardation to a department mental health facility unless, before initiating the transfer, the facility administrator of the inpatient mental health facility obtains from the commissioner a determination that space is available in a department facility unit that is specifically designed to serve such a person.
(b) The department shall maintain an appropriate number of hospital-level beds for persons with mental retardation who are committed for court-ordered mental health services to meet the needs of the local mental health authorities. The number of beds the department maintains must be determined according to the previous year's need.

TRANSFER OF PERSON WITH MENTAL RETARDATION TO STATE SCHOOL

Sec.575.013. (a) The facility administrator of an inpatient mental health facility operated by the department may transfer an involuntary patient in the facility to a state school for persons with mental retardation if an examination of the patient indicates that the patient has symptoms of mental retardation to the extent that training, education, rehabilitation, care, treatment, and supervision in a state school are in the patient's best interest.
(b) A certificate containing the diagnosis and the facility administrator's recommendation of transfer to a specific state school shall be furnished to the committing court.
(c) The patient may not be transferred before the judge of the committing court enters an order approving the transfer.

[Sections 575.014-575.017 not included]
SUBTITLE D. PERSONS WITH MENTAL RETARDATION ACT

CHAPTER 591. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

SHORT TITLE

Sec. 591.001. This subtitle may be cited as the Persons with Mental Retardation Act.

PURPOSE

Sec. 591.002. (a) It is the public policy of this state that persons with mental retardation have the opportunity to develop to the fullest extent possible their potential for becoming productive members of society.

(b) It is the purpose of this subtitle to provide and assure a continuum of quality services to meet the needs of all persons with mental retardation in this state.

(c) The state's responsibility to persons with mental retardation does not replace or impede parental rights and responsibilities or terminate the activities of persons, groups, or associations that advocate for and assist persons with mental retardation.

(d) It is desirable to preserve and promote living at home if feasible. If living at home is not possible and placement in a residential facility for persons with mental retardation is necessary, a person must be admitted in accordance with basic due process requirements, giving appropriate consideration to parental desires if possible. The person must be admitted to a facility that provides habilitative training for the person's condition, that fosters the personal development of the person, and that enhances the person's ability to cope with the environment.

(e) Because persons with mental retardation have been denied rights solely because of their retardation, the general public should be educated to the fact that persons with mental retardation who have not been adjudicated incompetent and for whom a guardian has not been appointed by a due process proceeding in a court have the same rights and responsibilities enjoyed by all citizens of this state. All citizens are urged to assist persons with mental retardation in acquiring and maintaining rights and in participating in community life as fully as possible.

DEFINITIONS

Sec. 591.003. In this subtitle:

(1) "Adaptive behavior" means the effectiveness with or degree to which a person meets the standards of personal independence and social responsibility expected of the person's age and cultural group.

(2) "Board" means the Texas Board of Mental Health and Mental Retardation.

(3) "Care" means the life support and maintenance services or other aid provided to a person with mental retardation, including dental, medical, and nursing care and similar services.

(4) "Client" means a person receiving mental retardation services from the department or a community center.

(5) "Commissioner" means the commissioner of mental health and mental retardation.

(6) "Community center" means an entity organized under Subchapter A, Chapter 534, that provides mental retardation services.

(7) "Department" means the Texas Department of Mental Health and Mental Retardation.

(8) "Interdisciplinary team" means a group of mental retardation professionals and paraprofessionals who assess the treatment, training, and habilitation needs of a person with mental retardation and make recommendations for services for that person.

(9) "Director" means the director of a community center.

(10) "Group home" means a residential arrangement, other than a residential care facility, operated by the department or a community center in which not more than 15 persons with mental retardation voluntarily live and under appropriate supervision may share responsibilities for operation of the living unit.

(11) "Guardian" means the person who, under court order, is the guardian of the person of another or of the estate of another.

(12) "Habilitation" means the process, including programs of formal structured education and training, by which a person is assisted in acquiring and maintaining life skills that enable the person to cope more effectively with the person's personal and environmental demands and to raise the person's physical, mental, and social efficiency.
"Mental retardation" means significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.

"Mental retardation services" means programs and assistance for persons with mental retardation that may include a determination of mental retardation, interdisciplinary team recommendations, education, special training, supervision, care, treatment, rehabilitation, residential care, and counseling, but does not include those services or programs that have been explicitly delegated by law to other state agencies.

"Minor" means a person younger than 18 years of age who:
(A) is not and has not been married; or
(B) has not had the person's disabilities of minority removed for general purposes.

"Person with mental retardation" means a person determined by a physician or psychologist licensed in this state or certified by the department to have subaverage general intellectual functioning with deficits in adaptive behavior.

"Resident" means a person living in and receiving services from a residential care facility.

"Residential care facility" means a facility operated by the department or a community center that provides 24-hour services, including domiciliary services, directed toward enhancing the health, welfare, and development of persons with mental retardation.

"Service provider" means a person who provides mental retardation services.

"Subaverage general intellectual functioning" refers to measured intelligence on standardized psychometric instruments of two or more standard deviations below the age-group mean for the tests used.

"Superintendent" means the individual in charge of a residential care facility.

"Training" means the process by which a person with mental retardation is habilitated and may include the teaching of life and work skills.

"Treatment" means the process by which a service provider attempts to ameliorate the condition of a person with mental retardation.

RULES

Sec. 591.004. The board by rule shall ensure the implementation of this subtitle.

LEAST RESTRICTIVE ALTERNATIVE

Sec. 591.005. The least restrictive alternative is:
(1) the available program or facility that is the least confining for a client's condition; and
(2) the service and treatment that is provided in the least intrusive manner reasonably and humanely appropriate to the person's needs.

CONSENT

Sec. 591.006. (a) Consent given by a person is legally adequate if the person:
(1) is not a minor and has not been adjudicated incompetent to manage the person's personal affairs by an appropriate court of law;
(2) understands the information; and
(3) consents voluntarily, free from coercion or undue influence.
(b) The person giving the consent must be informed of and understand:
(1) the nature, purpose, consequences, risks, and benefits of and alternatives to the procedure;
(2) that the withdrawal or refusal of consent will not prejudice the future provision of care and services; and
(3) the method used in the proposed procedure if the person is to receive unusual or hazardous treatment procedures, experimental research, organ transplantation, or nontherapeutic surgery.

SUBCHAPTER B. DUTIES OF DEPARTMENT

DEPARTMENT RESPONSIBILITIES

Sec. 591.011. (a) The department shall make all reasonable efforts consistent with available resources to:
(1) assure that each identified person with mental retardation who needs mental retardation services is given while these services are needed quality care, treatment, education, training, and rehabilitation appropriate to the person's individual needs other than those services or programs explicitly delegated by law to other governmental agencies;
(2) initiate, carry out, and evaluate procedures to guarantee to persons with mental retardation the rights listed in this subtitle;
(3) carry out this subtitle, including planning, initiating, coordinating, promoting, and evaluating all programs developed;
(4) provide either directly or by cooperation, negotiation, or contract with other agencies and those persons and groups listed in Section 533.034, a continuum of services to persons with mental retardation; and
(5) provide, either directly or by contract with other agencies, a continuum of services to children, juveniles, or adults with mental retardation committed into the department's custody by the juvenile or criminal courts.

(b) The services provided by the department under Subsection (a)(4) shall include:
(1) treatment and care;
(2) education and training, including sheltered workshop programs;
(3) counseling and guidance; and
(4) development of residential and other facilities to enable persons with mental retardation to live and be habilitated in the community.

(c) The facilities provided under Subsection (b) shall include group homes, foster homes, halfway houses, and day-care facilities for persons with mental retardation to which the department has assigned persons with mental retardation.

(d) The department shall exercise periodic and continuing supervision over the quality of services provided under this section.

(e) The department shall have the right of access to all residents and records of residents who are placed with residential service providers.

(f) The department's responsibilities under this subtitle are in addition to all other responsibilities and duties of the department under other law.

COOPERATION WITH OTHER AGENCIES

Sec. 591.012. Each agency authorized to provide education, support, related services, rehabilitation, and other services shall cooperate with the department under this subtitle to the extent cooperation is consistent with the agency's functions and authority.

LONG-RANGE PLAN

Sec. 591.013. (a) The department and the Texas Department of Human Services shall jointly develop a long-range plan for services to persons with developmental disabilities, including mental retardation.

(b) The commissioner of each department shall appoint the necessary staff to develop the plan through research of appropriate topics and public hearings to obtain testimony from persons with knowledge of or interest in state services to persons with developmental disabilities, including mental retardation.

(c) In developing the plan, the department shall consider existing plans or studies made by the departments.

(d) The plan must address at least the following topics:
(1) the needs of persons with developmental disabilities, including mental retardation;
(2) how state services should be structured to meet those needs;
(3) how the ICF-MR program, the waiver program under Section 1915(c), federal Social Security Act, other programs under Title XIX, federal Social Security Act, and other federally funded programs can best be structured and financed to assist the state in delivering services to persons with developmental disabilities, including mental retardation;
(4) the statutory limits and rule or policy changes necessary to ensure the controlled growth of the programs under Title XIX, federal Social Security Act and other federally funded programs;
(5) methods for expanding services available through the ICF-MR program to persons with related conditions as defined by federal regulations relating to the medical assistance program; and
(6) the cost of implementing the plan.

(e) The departments shall, if necessary, modify their respective long-range plans and other existing plans relating to the provision of services to persons with developmental disabilities, including mental retardation, to incorporate the provisions of the joint plan.

(f) The departments shall review and revise the plan biennially. Each department shall consider the most recent revision of the plan in any modifications of that department's long-range plans and in each future budget request.
(g) This section does not affect the authority of the department and the Texas Department of Human Services to carry out their separate functions as established by state and federal law.

(h) In this section, "ICF-MR program" means the medical assistance program serving persons with mental retardation who receive care in intermediate care facilities.

**SUBCHAPTER C. PENALTIES AND REMEDIES**

**CRIMINAL PENALTY**

**Sec. 591.021.** (a) A person commits an offense if the person intentionally or knowingly causes, conspires with another to cause, or assists another to cause the unlawful continued detention in or unlawful admission or commitment of a person to a facility specified in this subtitle with the intention of harming that person.

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

(c) The district and county attorney within their respective jurisdictions shall prosecute a violation of this section.

**CIVIL PENALTY**

**Sec. 591.022.** (a) A person who intentionally violates the rights guaranteed by this subtitle to a person with mental retardation is liable to the person injured by the violation in an amount of not less than $100 or more than $5,000.

(b) A person who recklessly violates the rights guaranteed by this subtitle to a person with mental retardation is liable to the person injured by the violation in an amount of not less than $100 or more than $1,000.

(c) A person who intentionally releases confidential information or records of a person with mental retardation in violation of law is liable to the person injured by the unlawful disclosure for $1,000 or three times the actual damages, whichever is greater.

(d) A cause of action under this section may be filed by:
   (1) the injured person;
   (2) the injured person's parent, if the person is a minor;
   (3) a guardian, if the person has been adjudicated incompetent; or
   (4) the injured person's next friend in accordance with Rule 44, Texas Rules of Civil Procedure.

(e) The cause of action may be filed in a district court in Travis County or in the county in which the defendant resides.

(f) This section does not supersede or abrogate other remedies existing in law.

**INJUNCTIVE RELIEF; CIVIL PENALTY**

**Sec. 591.023.** (a) A district court, in an action brought in the name of the state by the state attorney general or a district or county attorney within the attorney's respective jurisdiction, may issue a temporary restraining order, a temporary injunction, or a permanent injunction to:
   (1) restrain and prevent a person from violating this subtitle or a rule adopted by the department under this subtitle; or
   (2) enforce compliance with this subtitle or a rule adopted by the department under this subtitle.

(b) A person who violates the terms of an injunction issued under this section shall forfeit and pay to the state a civil penalty of not more than $5,000 for each violation, but not to exceed a total of $20,000.

(c) In determining whether an injunction has been violated, the court shall consider the maintenance of procedures adopted to ensure compliance with the injunction.

(d) The state attorney general or the district or county attorney, acting in the name of the state, may petition the court issuing the injunction for recovery of civil penalties under this section.

(e) A civil penalty recovered under this section shall be paid to the state for use in mental retardation services.

(f) An action filed under this section may be brought in a district court in Travis County or in the county in which the defendant resides.

(g) This section does not supersede or abrogate other remedies existing at law.

**CIVIL ACTION AGAINST DEPARTMENT EMPLOYEE**

**Sec. 591.024.** (a) The state attorney general shall provide legal counsel to represent a department employee in a civil action brought against the person under this subtitle for a claim of alleged negligence or other act of the
person while employed by the department. The person shall cooperate fully with the state attorney general in the
defense of the claim, demand, or suit.

(b) The state shall hold harmless and indemnify the person against financial loss arising out of a claim,
demand, suit, or judgment by reason of the negligence or other act by the person, if:

(1) at the time the claim arose or damages were sustained, the person was acting in the scope of
the person's authorized duties; and

(2) the claim or cause of action or damages sustained did not result from an intentional and
wrongful act or the person's reckless conduct.

(c) To be eligible for assistance under this section, the person must deliver to the department the original or
a copy of the summons, complaint, process, notice, demand, or pleading not later than the 10th day after the date on
which the person is served with the document. The state attorney general may assume control of the person's
representation on delivery of the document or a copy of the document to the department.

(d) This section does not impair, limit, or modify rights and obligations existing under an insurance policy.

(e) This section applies only to a person named in this section and does not affect the rights of any other
person.

LIABILITY

Sec. 591.025. An officer or employee of the department or a community center, acting reasonably within
the scope of the person's employment and in good faith, is not civilly or criminally liable under this subtitle.
CHAPTER 592. RIGHTS OF PERSONS WITH MENTAL RETARDATION

SUBCHAPTER A. GENERAL PROVISIONS

PURPOSE

Sec. 592.001. The purpose of this chapter is to recognize and protect the individual dignity and worth of each person with mental retardation.

RULES

Sec. 592.002. The board by rule shall ensure the implementation of the rights guaranteed in this chapter.

SUBCHAPTER B. BASIC BILL OF RIGHTS

RIGHTS GUARANTEED

Sec. 592.011. (a) Each person with mental retardation in this state has the rights, benefits, and privileges guaranteed by the constitution and laws of the United States and this state.

(b) The rights specifically listed in this subtitle are in addition to all other rights that persons with mental retardation have and are not exclusive or intended to limit the rights guaranteed by the constitution and laws of the United States and this state.

PROTECTION FROM EXPLOITATION AND ABUSE

Sec. 592.012. Each person with mental retardation has the right to protection from exploitation and abuse because of the person's mental retardation.

LEAST RESTRICTIVE LIVING ENVIRONMENT

Sec. 592.013. Each person with mental retardation has the right to live in the least restrictive setting appropriate to the person's individual needs and abilities and in a variety of living situations, including living:

1. alone;
2. in a group home;
3. with a family; or
4. in a supervised, protective environment.

EDUCATION

Sec. 592.014. Each person with mental retardation has the right to receive publicly supported educational services, including those services provided under the Education Code, that are appropriate to the person's individual needs regardless of the person's:

1. chronological age;
2. degree of retardation;
3. accompanying disabilities or handicaps; or
4. admission or commitment to mental retardation services.

EMPLOYMENT

Sec. 592.015. An employer, employment agency, or labor organization may not deny a person equal opportunities in employment because of the person's mental retardation, unless:

1. the person's mental retardation significantly impairs the person's ability to perform the duties and tasks of the position for which the person has applied; or
2. the denial is based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise.

HOUSING

Sec. 592.016. An owner, lessee, sublessee, assignee, or managing agent or other person having the right to sell, rent, or lease real property, or an agent or employee of any of these, may not refuse to sell, rent, or lease to any person or group of persons solely because the person is a person with mental retardation or a group that includes one or more persons with mental retardation.
TREATMENT AND SERVICES

Sec. 592.017. Each person with mental retardation has the right to receive for mental retardation adequate treatment and habilitative services that:

(1) are suited to the person's individual needs;
(2) maximize the person's capabilities;
(3) enhance the person's ability to cope with the person's environment; and
(4) are administered skillfully, safely, and humanely with full respect for the dignity and personal integrity of the person.

DETERMINATION OF MENTAL RETARDATION

Sec. 592.018. A person thought to be a person with mental retardation has the right promptly to receive a determination of mental retardation using diagnostic techniques that are adapted to that person's cultural background, language, and ethnic origin to determine if the person is in need of mental retardation services as provided by Subchapter A, Chapter 593.

ADMINISTRATIVE HEARING

Sec. 592.019. A person who files an application for a determination of mental retardation has the right to request and promptly receive an administrative hearing under Subchapter A, Chapter 593, to contest the findings of the determination of mental retardation.

INDEPENDENT DETERMINATION OF MENTAL RETARDATION

Sec. 592.020. A person for whom a determination of mental retardation is performed or a person who files an application for a determination of mental retardation under Section 593.004 and who questions the validity or results of the determination of mental retardation has the right to an additional, independent determination of mental retardation performed at the person's own expense.

ADDITIONAL RIGHTS

Sec. 592.021. Each person with mental retardation has the right to:

(1) presumption of competency;
(2) due process in guardianship proceedings; and
(3) fair compensation for the person's labor for the economic benefit of another, regardless of any direct or incidental therapeutic value to the person.

SUBCHAPTER C. RIGHTS OF CLIENTS

RIGHTS IN GENERAL

Sec. 592.031. (a) Each client has the same rights as other citizens of the United States and this state unless the client's rights have been lawfully restricted.

(b) Each client has the rights listed in this subchapter in addition to the rights guaranteed by Subchapter B.

LEAST RESTRICTIVE ALTERNATIVE

Sec. 592.032. Each client has the right to live in the least restrictive habilitation setting and to be treated and served in the least intrusive manner appropriate to the client's individual needs.

INDIVIDUALIZED PLAN

Sec. 592.033. (a) Each client has the right to a written, individualized habilitation plan developed by appropriate specialists.

(b) The client, and the parent of a client who is a minor or the guardian of the person, shall participate in the development of the plan.

(c) The plan shall be implemented as soon as possible but not later than the 30th day after the date on which the client is admitted or committed to mental retardation services.

(d) The content of an individualized habilitation plan is as required by the department.

REVIEW AND REEVALUATION

Sec. 592.034. (a) Each client has the right to have the individualized habilitation plan reviewed at least:

(1) once a year if the client is in a residential care facility; or
(2) quarterly if the client has been admitted for other services.

(b) The purpose of the review is to:
   (1) measure progress;
   (2) modify objectives and programs if necessary; and
   (3) provide guidance and remediation techniques.

(c) Each client has the right to a periodic reassessment.

PARTICIPATION IN PLANNING

Sec. 592.035. (a) Each client, and parent of a client who is a minor or the guardian of the person, have the right to:
   (1) participate in planning the client's treatment and habilitation; and
   (2) be informed in writing at reasonable intervals of the client's progress.

(b) If possible, the client, parent, or guardian of the person shall be given the opportunity to choose from several appropriate alternative services available to the client from a service provider.

WITHDRAWAL FROM VOLUNTARY SERVICES

Sec. 592.036. (a) Except as provided by Section 593.030, a client, the parent if the client is a minor, or a guardian of the person may withdraw the client from mental retardation services.

(b) This section does not apply to a person who was committed to a residential care facility as provided by Subchapter C, Chapter 593.

FREEDOM FROM MISTREATMENT

Sec. 592.037. Each client has the right not to be mistreated, neglected, or abused by a service provider.

FREEDOM FROM UNNECESSARY MEDICATION

Sec. 592.038. (a) Each client has the right to not receive unnecessary or excessive medication.

(b) Medication may not be used:
   (1) as punishment;
   (2) for the convenience of the staff;
   (3) as a substitute for a habilitation program; or
   (4) in quantities that interfere with the client's habilitation program.

(c) Medication for each client may be authorized only by prescription of a physician and a physician shall closely supervise its use.

GRIEVANCES

Sec. 592.039. A client, or a person acting on behalf of a person with mental retardation or a group of persons with mental retardation, has the right to submit complaints or grievances regarding the infringement of the rights of a person with mental retardation or the delivery of mental retardation services against a person, group of persons, organization, or business to the appropriate public responsibility committee for investigation and appropriate action.

INFORMATION ABOUT RIGHTS

Sec. 592.040. (a) On admission for mental retardation services, each client, and the parent if the client is a minor or the guardian of the person of the client, shall be given written notice of the rights guaranteed by this subtitle. The notice shall be in plain and simple language.

(b) Each client shall be orally informed of these rights in plain and simple language.

(c) Notice given solely to the parent or guardian of the person is sufficient if the client is manifestly unable to comprehend the rights.

SUBCHAPTER D. RIGHTS OF RESIDENTS

GENERAL RIGHTS OF RESIDENTS

Sec. 592.051. Each resident has the right to:
   (1) a normal residential environment;
   (2) a humane physical environment;
   (3) communication and visits; and
(4) possess personal property.

MEDICAL AND DENTAL CARE AND TREATMENT
Sec. 592.052. Each resident has the right to prompt, adequate, and necessary medical and dental care and treatment for physical and mental ailments and to prevent an illness or disability.

STANDARDS OF CARE
Sec. 592.053. Medical and dental care and treatment shall be performed under the appropriate supervision of a licensed physician or dentist and shall be consistent with accepted standards of medical and dental practice in the community.

DUTIES OF SUPERINTENDENT OR DIRECTOR
Sec. 592.054. (a) Except as limited by this subtitle, the superintendent or director shall provide without further consent necessary care and treatment to each court-committed resident and make available necessary care and treatment to each voluntary resident.
(b) Notwithstanding Subsection (a), consent is required for all surgical procedures.

UNUSUAL OR HAZARDOUS TREATMENT
Sec. 592.055. This subtitle does not permit the department to perform unusual or hazardous treatment procedures, experimental research, organ transplantation, or nontherapeutic surgery for experimental research.
CHAPTER 593. ADMISSION AND COMMITMENT TO MENTAL RETARDATION SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

ADMISSION

Sec. 593.001. A person may be admitted for mental retardation services offered by the department or a community center, admitted voluntarily to a residential care program, or committed to a residential care facility, only as provided by this chapter.

CONSENT REQUIRED

Sec. 593.002. (a) Except as provided by Subsection (b), the department or a community center may not provide mental retardation services to a client without the client's legally adequate consent.

(b) The department or community center may provide nonresidential mental retardation services, including a determination of mental retardation, to a client without the client's legally adequate consent if the department or community center has made all reasonable efforts to obtain consent.

(c) The board by rule shall prescribe the efforts to obtain consent that are reasonable and the documentation for those efforts.

REQUIREMENT OF DETERMINATION OF MENTAL RETARDATION

Sec. 593.003. (a) Except as provided by Sections 593.027, 593.0275, and 593.028, a person is not eligible to receive mental retardation services unless the person first is determined to have mental retardation.

(b) This section does not apply to an eligible child with a developmental disability receiving services under Subchapter A, Chapter 535.

APPLICATION FOR DETERMINATION OF MENTAL RETARDATION

Sec. 593.004. A person believed to be a person with mental retardation, the parent if the person is a minor, or the guardian of the person may make written application to the department, a community center, a physician, or a psychologist licensed to practice in this state or certified by the department for a determination of mental retardation using forms provided by the department.

DETERMINATION OF MENTAL RETARDATION

Sec. 593.005. (a) A physician or psychologist licensed to practice in this state or certified by the department shall perform the determination of mental retardation. The department may charge a reasonable fee for certifying a psychologist.

(b) The physician or psychologist shall base the determination on an interview with the person and on a professional assessment that, at a minimum, includes:

(1) a measure of the person's intellectual functioning;

(2) a determination of the person's adaptive behavior level; and

(3) evidence of origination during the person's developmental period.

(c) The physician or psychologist may use a previous assessment, social history, or relevant record from a school district, public or private agency, or another physician or psychologist if the physician or psychologist determines that the assessment, social history, or record is valid.

(d) If the person is indigent, the determination of mental retardation shall be performed at the department's expense by a physician or psychologist licensed in this state or certified by the department.

REPORT

Sec. 593.006. A person who files an application for a determination of mental retardation under Section 593.004 shall be promptly notified in writing of the findings.

NOTIFICATION OF CERTAIN RIGHTS

Sec. 593.007. The department shall inform the person who filed an application for a determination of mental retardation of the person's right to:

(1) an independent determination of mental retardation under Section 592.020; and

(2) an administrative hearing under Section 593.008 by the agency that conducted the determination of mental retardation to contest the findings.
ADMINISTRATIVE HEARING

Sec. 593.008. (a) The proposed client and contestant by right may:
   (1) have a public hearing unless the proposed client or contestant requests a closed hearing;
   (2) be present at the hearing; and
   (3) be represented at the hearing by a person of their choosing, including legal counsel.

(b) The proposed client, contestant, and their respective representative by right may:
   (1) have reasonable access at a reasonable time before the hearing to any records concerning the proposed client relevant to the proposed action;
   (2) present oral or written testimony and evidence, including the results of an independent determination of mental retardation; and
   (3) examine witnesses.

(c) The hearing shall be held:
   (1) as soon as possible, but not later than the 30th day after the date of the request;
   (2) in a convenient location; and
   (3) after reasonable notice.

(d) Any interested person may appear and give oral or written testimony.

(e) The board by rule shall implement the hearing procedures.

HEARING REPORT; FINAL DECISION

Sec. 593.009. (a) After each hearing, the hearing officer shall promptly report to the parties in writing the officer's decision, findings of fact, and the reasons for those findings.

(b) The hearing officer's decision is final on the 31st day after the date on which the decision is reported unless a party files an appeal within that period.

(c) The filing of an appeal suspends the hearing officer's decision, and a party may not take action on the decision.

APPEAL

Sec. 593.010. (a) A party to a hearing may appeal the hearing officer's decision without filing a motion for rehearing with the hearing officer.

(b) Venue for the appeal is in the county court of Travis County or the county in which the proposed client resides.

(c) The appeal is by trial de novo.

FEES FOR SERVICES

Sec. 593.011. (a) The department shall charge reasonable fees to cover the costs of services provided to nonindigent persons.

(b) The department shall provide services free of charge to indigent persons.

ABSENT WITHOUT AUTHORITY

Sec. 593.012. (a) The superintendent of a residential care facility to which a client has been admitted for court-ordered care and treatment may have a client who is absent without authority taken into custody, detained, and returned to the facility by issuing a certificate to a law enforcement agency of the municipality or county in which the facility is located or by obtaining a court order issued by a magistrate in the manner prescribed by Section 574.083.

(b) The client shall be returned to the residential care facility in accordance with the procedures prescribed by Section 574.083.

REQUIREMENT OF INTERDISCIPLINARY TEAM RECOMMENDATION

Sec. 593.013. (a) A person may not be admitted or committed to a residential care facility unless an interdisciplinary team recommends that placement.

(b) An interdisciplinary team shall:
   (1) interview the person with mental retardation, the person's parent if the person is a minor, and the person's guardian;
   (2) review the person's:
      (A) social and medical history;
(B) medical assessment, which shall include an audiological, neurological, and vision screening;

(C) psychological and social assessment; and

(D) determination of adaptive behavior level;

(3) determine the person's need for additional assessments, including educational and vocational assessments;

(4) obtain any additional assessment necessary to plan services;

(5) identify the person's habilitation and service preferences and needs; and

(6) recommend services to address the person's needs that consider the person's preferences.

(c) The interdisciplinary team shall give the person, the person's parent if the person is a minor, and the person's guardian an opportunity to participate in team meetings.

(d) The interdisciplinary team may use a previous assessment, social history, or other relevant record from a school district, public or private agency, or appropriate professional if the interdisciplinary team determines that the assessment, social history, or record is valid.

(e) The interdisciplinary team shall prepare a written report of its findings and recommendations that is signed by each team member and shall promptly send a copy of the report and recommendations to the person, the person's parent if the person is a minor, and the person's guardian.

(f) If the court has ordered the interdisciplinary team report and recommendations under Section 593.041, the team shall promptly send a copy of the report and recommendations to the court, the person with mental retardation or the person's legal representative, the person's parent if the person is a minor, and the person's guardian.

SUBCHAPTER B. APPLICATION AND ADMISSION TO VOLUNTARY MENTAL RETARDATION SERVICES

APPLICATION FOR VOLUNTARY SERVICES

Sec. 593.021. (a) The proposed client or the parent if the proposed client is a minor may apply for voluntary mental retardation services under Section 593.022, 593.026, 593.027, 593.0275, or 593.028.

(b) The guardian of the proposed client may apply for services under this subchapter under Section 593.022, 593.027, 593.0275, or 593.028.

ADMISSION TO VOLUNTARY MENTAL RETARDATION SERVICES

Sec. 593.022. (a) An eligible person who applies for mental retardation services may be admitted as soon as appropriate services are available.

(b) The department facility or community center shall develop a plan for appropriate programs or placement in programs or facilities approved or operated by the department.

(c) The programs or placement must be suited to the needs of the proposed client and consistent with the rights guaranteed by Chapter 592.

(d) The proposed client, the parent if the client is a minor, and the client's guardian shall be encouraged and permitted to participate in the development of the planned programs or placement.

RULES RELATING TO PLANNING OF SERVICES OR TREATMENT

Sec. 593.023. (a) The board by rule shall develop and adopt procedures permitting a client, a parent if the client is a minor, or a guardian of the person to participate in planning the client's treatment and habilitation, including a decision to recommend or place a client in an alternative setting.

(b) The procedures must inform clients, parents, and guardians of the due process provisions of Sections 594.015-594.017, including the right to an administrative hearing and judicial review in county court of a proposed transfer or discharge.

APPLICATION FOR VOLUNTARY RESIDENTIAL CARE SERVICES

Sec. 593.024. (a) An application for voluntary admission to a residential care facility must be made according to department rules and contain a statement of the reasons for which placement is requested.

(b) Voluntary admission includes regular voluntary admission, emergency admission, and respite care.
PLACEMENT PREFERENCE

Sec. 593.025. Preference for requested, voluntary placement in a residential care facility shall be given to the facility located nearest the residence of the proposed resident, unless there is a compelling reason for placement elsewhere.

REGULAR VOLUNTARY ADMISSION

Sec. 593.026. A regular voluntary admission is permitted if:

(1) space is available at the facility for which placement is requested; and
(2) the facility superintendent determines that the facility provides services that meet the needs of the proposed resident.

EMERGENCY ADMISSION

Sec. 593.027. (a) An emergency admission to a residential care facility is permitted without a determination of mental retardation and an interdisciplinary team recommendation if:

(1) there is persuasive evidence that the proposed resident is a person with mental retardation;
(2) space is available at the facility for which placement is requested;
(3) the proposed resident has an urgent need for services that the facility superintendent determines the facility provides; and
(4) the facility can provide relief for the urgent need within a year after admission.

(b) A determination of mental retardation and an interdisciplinary team recommendation for the person admitted under this section shall be performed within 30 days after the date of admission.

EMERGENCY SERVICES

Sec. 593.0275. (a) A person may receive emergency services without a determination of mental retardation if:

(1) there is persuasive evidence that the person is a person with mental retardation;
(2) emergency services are available; and
(3) the person has an urgent need for emergency services.

(b) A determination of mental retardation for the person served under this section shall be performed within 30 days after the date the services begin.

RESPITE CARE

Sec. 593.028. (a) A person may be admitted to a residential care facility for respite care without a determination of mental retardation and interdisciplinary team recommendation if:

(1) there is persuasive evidence that the proposed resident is a person with mental retardation;
(2) space is available at the facility for which respite care is requested;
(3) the facility superintendent determines that the facility provides services that meet the needs of the proposed resident; and
(4) the proposed resident or the proposed resident's family urgently requires assistance or relief that can be provided within a period not to exceed 30 consecutive days after the date of admission.

(b) If the relief sought by the proposed resident or the proposed resident's family has not been provided within 30 days, one 30-day extension may be allowed if:

(1) the facility superintendent determines that the relief may be provided in the additional period; and
(2) the parties agreeing to the original placement consent to the extension.

(c) If an extension is not granted the resident shall be released immediately and may apply for other services.

TREATMENT OF MINOR WHO REACHES MAJORITY

Sec. 593.029. When a facility resident who is voluntarily admitted as a minor approaches 18 years of age and continues to be in need of residential services, the superintendent shall ensure that when the resident becomes an adult:

(1) the resident's legally adequate consent for admission to the facility is obtained from the resident or the guardian of the person; or
(2) an application is filed for court commitment under Subchapter C.

- 304 -
WITHDRAWAL FROM SERVICES

Sec. 593.030. A resident voluntarily admitted to a residential care facility may not be detained more than 96 hours after the time the resident, the resident's parents if the resident is a minor, or the guardian of the resident's person requests discharge of the resident as provided by department rules, unless:
(1) the facility superintendent determines that the resident's condition or other circumstances are such that the resident cannot be discharged without endangering the safety of the resident or the general public;
(2) the superintendent files an application for judicial commitment under Section 593.041; and
(3) a court issues a protective custody order under Section 593.044 pending a final determination on the application.

SUBCHAPTER C. COMMITMENT TO RESIDENTIAL CARE FACILITY

APPLICATION FOR PLACEMENT; JURISDICTION

Sec. 593.041. (a) A proposed resident, if an adult, a parent if the proposed resident is a minor, the guardian of the person, the court, or any other interested person, including a community center or agency that conducted a determination of mental retardation of the proposed resident, may file an application for an interdisciplinary team report and recommendation that the proposed client is in need of long-term placement in a residential care facility.
(b) Except as provided by Subsection (e), the application must be filed with the county clerk in the county in which the proposed resident resides. If the superintendent of a residential care facility files an application for judicial commitment of a voluntary resident, the county in which the facility is located is considered the resident's county of residence.
(c) The county court has original jurisdiction of all judicial proceedings for commitment of a person with mental retardation to residential care facilities.
(d) A person may not be committed to the department for placement in a residential care facility under this subchapter unless a report by an interdisciplinary team recommending the placement has been completed during the six months preceding the date of the court hearing on the application. If the report and recommendations have not been completed or revised during that period, the court shall order the report and recommendations on receiving the application.
(e) An application in which the proposed patient is a child in the custody of the Texas Youth Commission may be filed in the county in which the child's commitment to the commission was ordered.

FORM OF APPLICATION

Sec. 593.042. (a) An application for commitment of a person to a residential care facility must:
(1) be executed under oath; and
(2) include:
(A) the name, birth date, sex, and address of the proposed resident;
(B) the name and address of the proposed resident's parent or guardian, if applicable;
(C) a short, plain statement of the facts demonstrating that commitment to a facility is necessary and appropriate; and
(D) a short, plain statement explaining the inappropriateness of admission to less restrictive services.
(b) If the report required under Section 593.013 is completed, a copy must be included in the application.

REPRESENTATION BY COUNSEL; APPOINTMENT OF ATTORNEY

Sec. 593.043. (a) The proposed resident shall be represented by an attorney who shall represent the rights and legal interests of the proposed resident without regard to who initiates the proceedings or pays the attorney's fee.
(b) If the proposed resident cannot afford counsel, the court shall appoint an attorney not later than the 11th day before the date set for the hearing.
(c) An attorney appointed under this section is entitled to a reasonable fee. The county in which the proceeding is brought shall pay the attorney's fee from the county's general fund.
(d) The parent, if the proposed resident is a minor, or the guardian of the person may be represented by legal counsel during the proceedings.
ORDER FOR PROTECTIVE CUSTODY

Sec. 593.044. (a) The court in which an application for a hearing is filed may order the proposed resident taken into protective custody if the court determines from certificates filed with the court that the proposed resident is:

(1) believed to be a person with mental retardation; and
(2) likely to cause injury to himself or others if not immediately restrained.

(b) The judge of the court may order a health or peace officer to take the proposed resident into custody and transport the person to:

(1) a designated residential care facility in which space is available; or
(2) a place deemed suitable by the county health authority.

(c) If the proposed resident is a voluntary resident, the court for good cause may order the resident's detention in:

(1) the facility to which the resident was voluntarily admitted; or
(2) another suitable location to which the resident may be transported under Subsection (b).

DETENTION IN PROTECTIVE CUSTODY

Sec. 593.045. (a) A person under a protective custody order may be detained for not more than 20 days after the date on which custody begins pending an order of the court.

(b) A person under a protective custody order may not be detained in a nonmedical facility used to detain persons charged with or convicted of a crime, unless an extreme emergency exists and in no case for longer than 24 hours.

(c) The county health authority shall ensure that the detained person receives proper care and medical attention pending removal to a residential care facility.

RELEASE FROM PROTECTIVE CUSTODY

Sec. 593.046. (a) The administrator of a facility in which a person is held in protective custody shall discharge the person not later than the 20th day after the date on which custody begins if the court that issued the protective custody order has not issued further detention orders.

(b) A facility administrator who believes that the person is a danger to himself or others shall immediately notify the court that issued the protective custody order of this belief.

SETTING ON APPLICATION

Sec. 593.047. On the filing of an application the court shall immediately set the earliest practicable date for a hearing to determine the appropriateness of the proposed commitment.

HEARING NOTICE

Sec. 593.048. (a) Not later than the 11th day before the date set for the hearing, a copy of the application, notice of the time and place of the hearing and, if appropriate, the order for the determination of mental retardation and interdisciplinary team report and recommendations shall be served on:

(1) the proposed resident or the proposed resident's representative;
(2) the parent if the proposed resident is a minor;
(3) the guardian of the person; and
(4) the department.

(b) The notice must specify in plain and simple language:

(1) the right to an independent determination of mental retardation under Section 593.007; and
(2) the provisions of Sections 593.043, 593.047, 593.049, 593.050, and 593.053.

HEARING BEFORE JURY; PROCEDURE

Sec. 593.049. (a) On request of a party to the proceedings, or on the court's own motion, the hearing shall be before a jury.

(b) The Texas Rules of Civil Procedure apply to the selection of the jury, the court's charge to the jury, and all other aspects of the proceedings and trial unless the rules are inconsistent with this subchapter.
CONDUCT OF HEARING
Sec. 593.050. (a) The hearing must be open to the public unless the proposed resident or the resident's representative requests that the hearing be closed and the judge determines that there is good cause to close the hearing.

(b) The proposed resident is entitled to be present throughout the hearing. If the court determines that the presence of the proposed resident would result in harm to the proposed resident, the court may waive the requirement in writing clearly stating the reason for the decision.

(c) The proposed resident is entitled to and must be provided the opportunity to confront and cross-examine each witness.

(d) The Texas Rules of Evidence apply. The results of the determination of mental retardation and the current interdisciplinary team report and recommendations shall be presented in evidence.

(e) The party who filed the application has the burden to prove beyond a reasonable doubt that long-term placement of the proposed resident in a residential care facility is appropriate.

DISMISSAL AFTER HEARING
Sec. 593.051. If long-term placement in a residential care facility is not found to be appropriate, the court shall enter a finding to that effect, dismiss the application, and if appropriate, recommend application for admission to voluntary services under Subchapter B.

ORDER FOR COMMITMENT
Sec. 593.052. (a) A proposed resident may not be committed to a residential care facility unless:

1. the proposed resident is a person with mental retardation;
2. evidence is presented showing that because of retardation, the proposed resident:
   A. represents a substantial risk of physical impairment or injury to himself or others; or
   B. is unable to provide for and is not providing for the proposed resident's most basic personal physical needs;
3. the proposed resident cannot be adequately and appropriately habilitated in an available, less restrictive setting; and
4. the residential care facility provides habilitative services, care, training, and treatment appropriate to the proposed resident's needs.

(b) If it is determined that the requirements of Subsection (a) have been met and that long-term placement in a residential care facility is appropriate, the court shall commit the proposed resident for care, treatment, and training to a community center or the department when space is available in a residential care facility.

(c) The court shall immediately send a copy of the commitment order to the department or community center.

DECISION
Sec. 593.053. The court in each case shall promptly report in writing the decision and findings of fact.

NOT A JUDGMENT OF INCOMPETENCE
Sec. 593.054. An order for commitment is not an adjudication of mental incompetency.

DESIGNATION OF FACILITY
Sec. 593.055. If placement in a residential facility is necessary, preference shall be given to the facility nearest to the residence of the proposed resident unless:

1. space in the facility is unavailable;
2. the proposed resident, parent if the resident is a minor, or guardian of the person requests otherwise; or
3. there are other compelling reasons.

APPEAL
Sec. 593.056. (a) A party to a commitment proceeding has the right to appeal the judgment to the appropriate court of appeals.

(b) The Texas Rules of Civil Procedure apply to an appeal under this section.

(c) An appeal under this section shall be given a preference setting.

(d) The county court may grant a stay of commitment pending appeal.
**SUBCHAPTER D. FEES**

**APPLICATION OF SUBCHAPTER**

Sec. 593.071. This subchapter applies only to a resident admitted to a residential care facility operated by the department.

**INABILITY TO PAY**

Sec. 593.072. A resident may not be denied residential care because of an inability to pay for the care.

**DETERMINATION OF RESIDENTIAL COSTS**

Sec. 593.073. The board by rule may determine the cost of support, maintenance, and treatment of a resident.

**MAXIMUM FEES**

Sec. 593.074. (a) Except as provided by this section, the department may not charge for a resident total fees from all sources that exceed the cost to the state to support, maintain, and treat the resident.

(b) The department may use the projected cost of providing residential services to establish the maximum fee that may be charged to a payer.

(c) The department may establish maximum fees on one or a combination of the following:

- (1) a statewide per capita;
- (2) an individual facility per capita; or
- (3) the type of service provided.

(d) Notwithstanding Subsection (b), the department may establish a fee in excess of the department's projected cost of providing residential services that may be charged to a payer:

- (1) who is not an individual; and
- (2) whose method of determining the rate of reimbursement to a provider results in the excess.

**SLIDING FEE SCHEDULE**

Sec. 593.075. (a) The board by rule shall establish a sliding fee schedule for the payment by the resident's parents of the state's total costs for the support, maintenance, and treatment of a resident younger than 18 years of age.

(b) The board shall set the fee according to the parents' net taxable income and ability to pay.

(c) The parents may elect to have their net taxable income determined by their most current financial statement or federal income tax return.

(d) In determining the portion of the costs of the resident's support, maintenance, and treatment that the parents are required to pay, the department shall adjust, when appropriate, the payment required under the fee schedule to allow for consideration of other factors affecting the ability of the parents to pay.

(e) The department shall evaluate and, if necessary, revise the fee schedule at least once every five years.

**FEE SCHEDULE FOR DIVORCED PARENTS**

Sec. 593.076. (a) If the parents of a resident younger than 18 years of age are divorced, the fee charged each parent for the cost of the resident's support, maintenance, and treatment is determined by that parent's own income.

(b) If the divorced parents' combined fees exceed the maximum fee authorized under the fee schedule, the department shall equitably allocate the maximum fee between the parents in accordance with department rules, but a parent's fee may not exceed the individual fee determined for that parent under Subsection (a).

**CHILD SUPPORT PAYMENTS FOR BENEFIT OF RESIDENT**

Sec. 593.077. (a) Child support payments for the benefit of a resident paid or owed by a parent under court order are considered the property and estate of the resident and the department may:

- (1) be reimbursed for the costs of a resident's support, maintenance, and treatment from those amounts; and
- (2) establish a fee based on the child support obligation in addition to other fees authorized by this subchapter.
(b) The department shall credit the amount of child support a parent actually pays for a resident against monthly charges for which the parent is liable, based on ability to pay.

(c) A parent who receives child support payments for a resident is liable for the monthly charges based on the amount of child support payments actually received in addition to the liability of that parent based on ability to pay.

(d) The department may file a motion to modify a court order that establishes a child support obligation for a resident to require payment of the child support directly to the residential care facility in which the resident resides for the resident's support, maintenance, and treatment if:
   (1) the resident's parent fails to pay child support as required by the order; or
   (2) the resident's parent who receives child support fails to pay charges based on the amount of child support payments received.

(e) In addition to modification of an order under Subsection (d), the court may order all past due child support for the benefit of a resident paid directly to the resident's residential care facility to the extent that the department is entitled to reimbursement of the resident's charges from the child support obligation.

PAYMENT FOR ADULT RESIDENTS

Sec. 593.078. (a) A parent of a resident who is 18 years of age or older is not required to pay for the resident's support, maintenance, and treatment.

(b) Except as provided by Section 593.081, a resident and the resident's estate are liable for the costs of the resident's support, maintenance, and treatment regardless of the resident's age.

PREVIOUS FEE AGREEMENTS

Sec. 593.079. The unpaid portion of charges for support, maintenance, and treatment due from a parent before January 1, 1978, under agreements made before that date, remain as an obligation under previous law, but only to the extent of parental responsibility prescribed by the department fee schedule.

STATE CLAIMS FOR UNPAID FEES

Sec. 593.080. (a) Unpaid charges accruing after January 1, 1978, and owed by a parent for the support, maintenance, and treatment of a resident are a claim in favor of the state for the cost of support, maintenance, and treatment of the resident and constitute a lien against the parent's property and estate as provided by Section 533.004, but do not constitute a lien against any other estate or property of the resident.

(b) Except as provided by Section 593.081, costs determined under Section 593.073 constitute a claim by the state against the entire estate or property of the resident, including any share the resident may have by gift, descent, or devise in the estate of the resident's parent or any other person.

TRUST EXEMPTION

Sec. 593.081. (a) If the resident is the beneficiary of a trust that has an aggregate principal of $250,000 or less, the corpus or income of the trust for the purposes of this subchapter is not considered to be the property of the resident or the resident's estate, and is not liable for the resident's support, maintenance, and treatment regardless of the resident's age.

(b) To qualify for the exemption provided by Subsection (a), the trust must be created by a written instrument, and a copy of the trust instrument must be provided to the department.

(c) A trustee of the trust shall, on the department's request, provide to the department a current financial statement that shows the value of the trust estate.

(d) The department may petition a district court to order the trustee to provide a current financial statement if the trustee does not provide the statement before the 31st day after the date on which the department makes the request. The court shall hold a hearing on the department's petition not later than the 45th day after the date on which the petition is filed. The court shall order the trustee to provide to the department a current financial statement if the court finds that the trustee has failed to provide the statement.

(e) Failure of the trustee to comply with the court's order is punishable by contempt.

(f) For the purposes of this section, the following are not considered to be trusts and are not entitled to the exemption provided by this section:
   (1) a guardianship established under the Texas Probate Code;
   (2) a trust established under Chapter 142, Property Code;
   (3) a facility custodial account established under Section 551.003;
   (4) the provisions of a divorce decree or other court order relating to child support obligations;
(5) an administration of a decedent's estate; or
(6) an arrangement in which funds are held in the registry or by the clerk of a court.

**SUBCHAPTER E. ADMISSION AND COMMITMENT UNDER PRIOR LAW**

**ADMISSION AND COMMITMENT**

Sec. 593.091. A resident admitted or committed to a department residential care facility under law in force before January 1, 1978, may remain in the facility until:

(1) necessary and appropriate alternate placement is found; or
(2) the resident can be admitted or committed to a facility as provided by this chapter, if the admission or commitment is necessary to meet the due process requirements of this subtitle.

**DISCHARGE OF PERSON VOLUNTARILY ADMITTED TO RESIDENTIAL CARE FACILITY**

Sec. 593.092. (a) Except as otherwise provided, a resident voluntarily admitted to a residential care facility under a law in force before January 1, 1978, shall be discharged not later than the 96th hour after the time the superintendent receives written request from the person on whose application the resident was admitted, or on the resident's own request.

(b) The superintendent may detain the resident for more than 96 hours in accordance with Section 593.030.

**REIMBURSEMENT TO COUNTY**

Sec. 593.093. (a) The state shall reimburse a county an amount not to exceed $50 for the cost of a hearing held by the county court to commit a resident of a department facility who was committed under a law in force before January 1, 1978, and for whom the due process requirements of this subtitle require another commitment proceeding.

(b) The commissioners court of a county entitled to reimbursement under this section may file a claim for reimbursement with the comptroller.
CHAPTER 594. TRANSFER AND DISCHARGE

SUBCHAPTER A. GENERAL PROVISIONS

APPLICABILITY OF CHAPTER
Sec. 594.001. (a) A client may not be transferred or discharged except as provided by this chapter and department rules.
(b) This chapter does not apply to the:
(1) transfer of a client for emergency medical, dental, or psychiatric care for not more than 30 consecutive days;
(2) voluntary withdrawal of a client from mental retardation services; or
(3) discharge of a client by a superintendent or director because the person is not a person with mental retardation according to the results of the determination of mental retardation.
(c) A discharge under Subsection (b)(3) is without further hearings, unless an administrative hearing under Subchapter A, Chapter 593, to contest the determination of mental retardation is requested.

LEAVE; FURLough
Sec. 594.002. The superintendent may grant or deny a resident a leave of absence or furlough.

HABEAS CORPUS
Sec. 594.003. This chapter does not alter or limit a resident's right to obtain a writ of habeas corpus.

SUBCHAPTER B. TRANSFER OR DISCHARGE

SERVICE PROVIDER
Sec. 594.011. A service provider shall transfer a client, furlough a client to an alternative placement, or discharge a client if the service provider determines:
(1) that the client's placement is no longer appropriate to the person's individual needs; or
(2) that the client can be better treated and habilitated in another setting; and
(3) placement in another setting that can better treat and habilitate the client has been secured.

REQUEST BY CLIENT, PARENT, OR GUARDIAN
Sec. 594.012. (a) A client, the parent of a client who is a minor, or the guardian of the person may request a transfer or discharge.
(b) The service provider shall determine the appropriateness of the requested transfer or discharge.
(c) If a request is denied, the client, parent, or guardian of the person is entitled to a hearing under Section 594.015 to contest the decision.

NOTICE OF TRANSFER OR DISCHARGE; APPROVAL
Sec. 594.013. (a) A client and the parent or the guardian of the person must be notified not later than the 31st day before the date of the proposed transfer or discharge of the client.
(b) A client may not be transferred to another facility without the prior approval and knowledge of the parents or guardian of the client.

RIGHT TO ADMINISTRATIVE HEARING
Sec. 594.014. (a) A client and the parent or the guardian shall be informed of the right to an administrative hearing to contest a proposed transfer or discharge.
(b) A client may not be transferred to another facility or discharged from mental retardation services unless the client is given the opportunity to request and receive an administrative hearing to contest the proposed transfer or discharge.

ADMINISTRATIVE HEARING
Sec. 594.015. (a) An administrative hearing to contest a transfer or discharge decision must be held:
(1) as soon as possible, but not later than the 30th day after the date of the request;
(2) in a convenient location; and
(3) after reasonable notice.

(b) The client, the parent of a client who is a minor, the guardian of the person, and the superintendent
have the right to:

(1) be present and represented at the hearing; and
(2) have reasonable access at a reasonable time before the hearing to any records concerning the
client relevant to the proposed action.

(c) Evidence, including oral and written testimony, shall be presented.

**DECISION**

Sec. 594.016. (a) After each case, the hearing officer shall promptly report to the parties in writing the
officer's decision, findings of fact, and the reasons for those findings.

(b) The hearing officer's decision is final on the 31st day after the date on which the decision is reported,
unless an appeal is filed within that period.

(c) The filing of an appeal suspends the decision of the hearing officer, and a party may not take action on
the decision.

(d) If an appeal is not filed from a final order granting a request for a transfer or discharge, the
superintendent shall proceed with the transfer or discharge.

(e) If an appeal is not filed from a final order denying a request for a transfer or discharge, the client shall
remain in the same program or facility at which the client is receiving services.

**APPEAL**

Sec. 594.017. (a) A party to a hearing may appeal the hearing officer's decision without filing a motion for
rehearing with the hearing officer.

(b) Venue for an appeal is the county court of Travis County or the county in which the client resides.

(c) The appeal is by trial de novo.

**NOTICE TO COMMITTING COURT**

Sec. 594.018. When a resident is discharged, the department shall notify the court that committed the
resident to a residential care facility under Subchapter C, Chapter 593.

**ALTERNATIVE SERVICES**

Sec. 594.019. (a) The department shall provide appropriate alternative or follow-up supportive services
consistent with available resources by agreement among the department, the mental retardation authority in the area
in which the client will reside, and the client, parent of a client who is a minor, or guardian of the person. The
services shall be consistent with the rights guaranteed in Chapter 592.

(b) Placement in a residential care facility, other than by transfer from another residential care facility, may
be made only as provided by Subchapters B and C, Chapter 593.

**SUBCHAPTER C. TRANSFER TO STATE MENTAL HOSPITAL**

**TRANSFER OF VOLUNTARY RESIDENT**

Sec. 594.031. A voluntary resident may not be transferred to a state mental hospital without legally
adequate consent to the transfer.

**TRANSFER OF COURT-COMMITTED RESIDENT**

Sec. 594.032. (a) The superintendent may transfer a resident committed to a residential care facility under
Subchapter C, Chapter 593, to a state mental hospital for mental health care if an examination of the resident by a
licensed physician indicates symptoms of mental illness to the extent that care, treatment, control, and rehabilitation
in a state mental hospital is in the best interest of the resident.

(b) A resident transferred from a residential care facility to a state mental hospital may not remain in the
hospital for longer than 30 consecutive days unless the transfer is authorized by a court order under this subchapter.
EVALUATION; COURT ORDER

Sec. 594.033. The hospital administrator of the state mental hospital to which a court-committed resident is transferred shall immediately have an evaluation of the resident's condition performed.

REQUEST FOR TRANSFER ORDER

Sec. 594.034. (a) If the evaluation performed under Section 594.033 reveals that continued hospitalization is necessary for longer than 30 consecutive days, the hospital administrator of the state mental hospital to which a court-committed resident is transferred shall promptly request from the court that originally committed the resident to the residential care facility an order transferring the resident to the hospital.

(b) In support of the request, the hospital administrator shall send two certificates of medical examination for mental illness as described in Section 574.011, stating that the resident is:
   (1) a person with mental illness; and
   (2) requires observation or treatment in a mental hospital.

HEARING DATE

Sec. 594.035. When the committing court receives the hospital administrator's request and the certificates of medical examination, the court shall set a date for the hearing on the proposed transfer.

NOTICE

Sec. 594.036. (a) A copy of the transfer request and notice of the transfer hearing shall be personally served on the resident not later than the eighth day before the date set for the hearing.

(b) Notice shall also be served on the parents if the resident is a minor and on the guardian for the resident's person if the resident has been declared to be incapacitated as provided by the Texas Probate Code and a guardian has been appointed.

HEARING LOCATION

Sec. 594.037. (a) The judge may hold a transfer hearing on the petition at any suitable place in the county.

(b) The hearing should be held in a physical setting that is not likely to have a harmful effect on the resident.

HEARING BEFORE JURY

Sec. 594.038. (a) The transfer hearing must be held before a jury unless a waiver of trial by jury is made in writing under oath by the resident, the parent if the resident is a minor, or the resident's guardian of the person.

(b) Notwithstanding the executed waiver, a jury shall determine the issue of the case if the resident, the parent, the guardian of the person, or the resident's legal representative demands a jury trial at any time before the hearing's determination is made.

RESIDENT PRESENT AT HEARING

Sec. 594.039. The resident is entitled to be present at the transfer hearing unless the court determines it is in the resident's best interest to not be present.

OPENING HEARING

Sec. 594.040. The transfer hearing must be open to the public unless the court:
   (1) finds that it is in the best interest of the resident to close the hearing; and
   (2) obtains the consent of the resident, a parent of a resident who is a minor, the resident's guardian of the person, and the resident's legal representative to close the hearing.

MEDICAL EVIDENCE

Sec. 594.041. (a) At least two physicians, at least one of whom must be a psychiatrist, must testify at the transfer hearing. The physicians must have examined the resident not earlier than the 15th day before the date set for the hearing.

(b) A person may not be transferred to a mental hospital except on competent medical or psychiatric testimony.
HEARING DETERMINATION

Sec. 594.042. The court by order shall approve the transfer of the resident to a state mental hospital if the court or jury determines that the resident:
   (1) is a person with mental illness; and
   (2) requires a transfer to a state mental hospital for treatment for the resident's own welfare and protection or for the protection of others.

DISCHARGE OF RESIDENT

Sec. 594.043. A resident who is transferred to a state mental hospital and no longer requires treatment in a state mental hospital or a residential care facility shall be discharged.

TRANSFER OF RESIDENTIAL CARE FACILITY

Sec. 594.044. (a) Except as provided by Section 594.045, a resident who is transferred to a state mental hospital and no longer requires treatment in a state mental hospital but requires treatment in a residential care facility shall be returned to the residential care facility from which the resident was transferred.
   (b) The hospital administrator of the state mental hospital shall notify the superintendent of the facility from which the resident was transferred that hospitalization in a state mental hospital is not necessary or appropriate for the resident. The superintendent shall immediately provide for the return of the resident to the facility.

RETURN OF COURT-ORDERED TRANSFER RESIDENT

Sec. 594.045. (a) If a resident has been transferred to a state mental hospital under a court order under this subchapter, the hospital administrator of the state mental hospital shall:
   (1) send a certificate to the committing court stating that the resident does not require hospitalization in a state mental hospital but requires care in a residential care facility because of mental retardation; and
   (2) request that the resident be transferred to a residential care facility.
   (b) The transfer may be made only if the judge of the committing court approves the transfer as provided by Section 575.013.
CHAPTER 595. RECORDS

CONFIDENTIALITY OF RECORDS

Sec. 595.001. Records of the identity, diagnosis, evaluation, or treatment of a person that are maintained in connection with the performance of a program or activity relating to mental retardation are confidential and may be disclosed only for the purposes and under the circumstances authorized under Sections 595.003 and 595.004.

RULES

Sec. 595.002. The board shall adopt rules to carry out this chapter that the department considers necessary or proper to:

(1) prevent circumvention or evasion of the chapter; or
(2) facilitate compliance with the chapter.

CONSENT TO DISCLOSURE

Sec. 595.003. (a) The content of a confidential record may be disclosed in accordance with the prior written consent of:

(1) the person about whom the record is maintained;
(2) the person's parent if the person is a minor;
(3) the guardian if the person has been adjudicated incompetent to manage the person's personal affairs; or
(4) if the person is dead:
   (A) the executor or administrator of the deceased's estate; or
   (B) if an executor or administrator has not been appointed, the deceased's spouse or, if the deceased was not married, an adult related to the deceased within the first degree of consanguinity.

(b) Disclosure is permitted only to the extent, under the circumstances, and for the purposes allowed under department rules.

RIGHT TO PERSONAL RECORD

Sec. 595.004. (a) The content of a confidential record shall be made available on the request of the person about whom the record was made unless:

(1) the person is a client; and
(2) the qualified professional responsible for supervising the client's habilitation states in a signed written statement that having access to the record is not in the client's best interest.

(b) The parent of a minor or the guardian of the person shall be given access to the contents of any record about the minor or person.

EXCEPTIONS

Sec. 595.005. (a) The content of a confidential record may be disclosed without the consent required under Section 595.003 to:

(1) medical personnel to the extent necessary to meet a medical emergency;
(2) qualified personnel for management audits, financial audits, program evaluations, or research approved by the department; or
(3) personnel legally authorized to conduct investigations concerning complaints of abuse or denial of rights of persons with mental retardation.

(b) A person who receives confidential information under Subsection (a)(2) may not directly or indirectly identify a person receiving services in a report of the audit, evaluation, or research, or otherwise disclose any identities.

(c) The department may disclose without the consent required under Section 595.003 a person's educational records to a school district that provides or will provide educational services to the person.

(d) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause, the content of a record may be disclosed without the consent required under Section 595.003. In determining whether there is good cause, a court shall weigh the public interest and need for disclosure against the injury to the person receiving services. On granting the order, the court, in determining the extent to which any disclosure of all or any part of a record is necessary, shall impose appropriate safeguards against unauthorized disclosure.
DISCLOSURE OF NAME AND BIRTH AND DEATH DATES FOR CERTAIN PURPOSES
Sec. 595.0055.  (a) In this section, "cemetery organization" and "funeral establishment" have the meanings assigned by Section 711.001.
(b) Notwithstanding any other law, on request by a representative of a cemetery organization or funeral establishment, the superintendent of a residential care facility shall release to the representative the name, date of birth, or date of death of a person who was a resident at the facility when the person died, unless the person or the person's guardian provided written instructions to the facility not to release the person's name or dates of birth and death. A representative of a cemetery organization or a funeral establishment may use a name or date released under this subsection only for the purpose of inscribing the name or date on a grave marker.

USE OF RECORD IN CRIMINAL PROCEEDINGS
Sec. 595.006. Except as authorized by a court order under Section 595.005, a confidential record may not be used to:
(1) initiate or substantiate a criminal charge against a person receiving services; or
(2) conduct an investigation of a person receiving services.

CONFIDENTIALITY OF PAST SERVICES
Sec. 595.007. The prohibition against disclosing information in a confidential record applies regardless of when the person received services.

EXCHANGE OF RECORDS
Sec. 595.008. The prohibitions against disclosure apply to an exchange of records between government agencies or persons, except for exchanges of information necessary for:
(1) delivery of services to clients; or
(2) payment for mental retardation services as defined in this subtitle.

RECEIPT OF INFORMATION BY PERSONS OTHER THAN CLIENT OR PATIENT
Sec. 595.009. (a) A person who receives information that is confidential under this chapter may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.
(b) This section does not apply to the person about whom the record is made, or the parent, if the person is a minor, or the guardian of the person.

DISCLOSURE OF PHYSICAL OR MENTAL CONDITION
Sec. 595.010. This chapter does not prohibit a qualified professional from disclosing the current physical and mental condition of a person with mental retardation to the person's parent, guardian, relative, or friend.
CHAPTER 597. CAPACITY OF CLIENTS TO CONSENT TO TREATMENT

SUBCHAPTER A. GENERAL PROVISIONS

DEFINITIONS

Sec. 597.001. In this chapter:
(1) "Highly restrictive procedure" means the application of aversive stimuli, exclusionary time-out, physical restraint, or a requirement to engage in an effortful task.
(2) "Client" means a person receiving services in a community-based ICF-MR facility.
(3) "Committee" means a surrogate consent committee established under Section 597.042.
(4) "ICF-MR" has the meaning assigned by Section 531.002.
(5) "Interdisciplinary team" means those interdisciplinary teams defined in the Code of Federal Regulations for participation in the intermediate care facilities for the mentally retarded.
(6) "Major medical and dental treatment" means a medical, surgical, dental, or diagnostic procedure or intervention that:
   (A) has a significant recovery period;
   (B) presents a significant risk;
   (C) employs a general anesthetic; or
   (D) in the opinion of the primary physician, involves a significant invasion of bodily integrity that requires the extraction of bodily fluids or an incision or that produces substantial pain, discomfort, or debilitation.
(7) "Psychoactive medication" means any medication prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect upon the central nervous system for the purposes of influencing and modifying behavior, cognition, or affective state.
(8) "Surrogate decision-maker" means an individual authorized under Section 597.041 to consent on behalf of a client residing in an ICF-MR facility.

RULES

Sec. 597.002. The board may adopt rules necessary to implement this chapter not later than 180 days after its effective date.

EXCEPTIONS

Sec. 597.003. (a) This chapter does not apply to decisions for the following:
   (1) experimental research;
   (2) abortion;
   (3) sterilization;
   (4) management of client funds; and
   (5) electroconvulsive treatment.
(b) This chapter does not apply to campus-based facilities operated by the department.

SUBCHAPTER B. ASSESSMENT OF CLIENT'S CAPACITY; INCAPACITATED CLIENTS WITHOUT GUARDIANS

ICF-MR ASSESSMENT OF CLIENT'S CAPACITY TO CONSENT TO TREATMENT

Sec. 597.021. (a) The board by rule shall require an ICF-MR facility certified in this state to assess the capacity of each adult client without a legal guardian to make treatment decisions when there is evidence to suggest the individual is not capable of making a decision covered under this chapter.
(b) The rules must require the use of a uniform assessment process prescribed by board rule to determine a client's capacity to make treatment decisions.
SUBCHAPTER C. SURROGATE CONSENT FOR ICF-MR CLIENTS

SURROGATE DECISION-MAKERS

Sec. 597.041. (a) If the results of an assessment conducted in accordance with Section 597.021 indicate that an adult client who does not have a legal guardian or a client under 18 years of age who has no parent, legal guardian, or managing or possessory conservator lacks the capacity to make a major medical or dental treatment decision, an adult surrogate from the following list, in order of descending preference, who has decision-making capacity and who is willing to consent on behalf of the client may consent to major medical or dental treatment on behalf of the client:

(1) an actively involved spouse;
(2) an actively involved adult child who has the waiver and consent of all other actively involved adult children of the client to act as the sole decision-maker;
(3) an actively involved parent or stepparent;
(4) an actively involved adult sibling who has the waiver and consent of all other actively involved adult siblings of the client to act as the sole decision-maker; and
(5) any other actively involved adult relative who has the waiver and consent of all other actively involved adult relatives of the client to act as the sole decision-maker.

(b) Any person who consents on behalf of a client and who acts in good faith, reasonably, and without malice is not criminally or civilly liable for that action.

(c) Consent given by the surrogate decision-maker is valid and competent to the same extent as if the client had the capacity to consent and had consented.

(d) Any dispute as to the right of a party to act as a surrogate decision-maker may be resolved only by a court of record under Chapter V, Texas Probate Code.

SURROGATE CONSENT COMMITTEE ESTABLISHED; DEPARTMENTAL SUPPORT

Sec. 597.042. (a) For cases in which there is no guardian or surrogate decision-maker available, the department shall establish and maintain a list of individuals qualified to serve on a surrogate consent committee.

(b) The department shall provide the staff and assistance necessary to perform the duties prescribed by this subchapter.

COMMITTEE MEMBERSHIP

Sec. 597.043. (a) A surrogate consent committee considering an application for a treatment decision shall be composed of at least three but not more than five members, and consent on behalf of clients shall be based on consensus of the members.

(b) A committee considering an application for a treatment decision must consist of individuals who:

(1) are not employees of the facility;
(2) do not provide contractual services to the facility;
(3) do not manage or exercise supervisory control over:
   (A) the facility or the employees of the facility; or
   (B) any company, corporation, or other legal entity that manages or exercises control over the facility or the employees of the facility;
(4) do not have a financial interest in the facility or in any company, corporation, or other legal entity that has a financial interest in the facility; and
(5) are not related to the client.

(c) The list of qualified individuals from which committee members are drawn shall include:

(1) health care professionals licensed or registered in this state who have specialized training in medicine, psychopharmacology, nursing, or psychology;
(2) persons with mental retardation or parents, siblings, spouses, or children of a person with mental retardation;
(3) attorneys licensed in this state who have knowledge of legal issues of concern to persons with mental retardation or to the families of persons with mental retardation;
(4) members of private organizations that advocate on behalf of persons with mental retardation; and
(5) persons with demonstrated expertise or interest in the care and treatment of persons with mental disabilities.

(d) At least one member of the committee must be an individual listed in Subsection (c)(1) or (5).
(e) A member of a committee shall participate in education and training as required by department rule.
(f) The department shall designate a committee chair.

APPLICATION FOR TREATMENT DECISION

Sec. 597.044. (a) If the results of the assessment conducted in accordance with Section 597.021 indicate that a client who does not have a legal guardian or surrogate decision-maker lacks the capacity to make a treatment decision about major medical or dental treatment, psychoactive medication, or a highly restrictive procedure, the ICF-MR facility must file an application for a treatment decision with the department.

(b) An application must be in the form prescribed by the department, must be signed by the applicant, and must:

1. state that the applicant has reason to believe and does believe that the client has a need for major medical or dental treatment, psychoactive medication, or a highly restrictive procedure;
2. specify the condition proposed to be treated;
3. provide a description of the proposed treatment, including the risks and benefits to the client of the proposed treatment;
4. provide a description of generally accepted alternatives to the proposed treatment, including the risks and potential benefits to the client of the alternatives, and the reasons the alternatives were rejected;
5. state the applicant's opinion on whether the proposed treatment promotes the client's best interest and the grounds for the opinion;
6. state the client's opinion about the proposed treatment, if known;
7. provide any other information necessary to determine the client's best interest regarding the treatment; and
8. state that the client does not have a guardian of the person and does not have a parent, spouse, child, or other person with demonstrated interest in the care and welfare of the client who is able and willing to become the client's guardian or surrogate decision-maker.

NOTICE OF REVIEW OF APPLICATION FOR TREATMENT DECISION

Sec. 597.045. (a) Following receipt of an application for a treatment decision that meets the requirements of Section 597.044(b), the department shall appoint a surrogate consent committee.

(b) The ICF-MR facility with assistance from the department shall schedule a review of the application.

(c) The ICF-MR facility with assistance from the department shall send notice of the date, place, and time of the review to the surrogate consent committee, the client who is the subject of the application, the client's actively involved parent, spouse, adult child, or other person known to have a demonstrated interest in the care and welfare of the client, and any other person as prescribed by board rule. The ICF-MR facility shall include a copy of the application and a statement of the committee's procedure for consideration of the application, including the opportunity to be heard or to present evidence and to appeal.

PREREVIEW OF APPLICATION

Sec. 597.046. (a) Before the date of the review of an application for a treatment decision the committee chair shall review the application to determine whether additional information may be necessary to assist the committee in determining the client's best interest under the circumstances.

(b) A committee member may consult with a person who might assist in the determination of the best interest of the client or in learning the personal opinions, beliefs, and values of the client.

(c) If a committee that does not include in its membership an individual listed in Section 597.043(c)(1) is to review an application for a treatment decision about psychoactive medication, the department shall provide consultation with a health care professional licensed or registered in this state to assist the committee in the determination of the best interest of the client.

CONFIDENTIAL INFORMATION

Sec. 597.047. Notwithstanding any other state law, a person licensed by this state to provide services related to health care or to the treatment or care of a person with mental retardation, a developmental disability, or a mental illness shall provide to the committee members any information the committee requests that is relevant to the client's need for a proposed treatment.
REVIEW OF APPLICATION

Sec. 597.048.  (a) The committee shall review the application at the time, place, and date provided in the notice under Section 597.045.
   (b) A person notified under Section 597.045 is entitled to be present and to present evidence personally or through a representative.
   (c) The committee may take testimony or review evidence from any person who might assist the committee in determining a client's best interest.
   (d) Formal rules of evidence do not apply to committee proceedings.
   (e) If practicable, the committee shall interview and observe the client before making a determination of the client's best interest, and in those cases when a client is not interviewed, the reason must be documented in the committee's record.
   (f) At any time before the committee makes its determination of a client's best interest under Section 597.049, the committee chair may suspend the review of the application for not more than five days if any person applies for appointment as the client's guardian of the person in accordance with the Texas Probate Code.

DETERMINATION OF BEST INTEREST

Sec. 597.049.  (a) The committee shall make a determination, based on clear and convincing evidence, of whether the proposed treatment promotes the client's best interest and a determination that:
   (1) a person has not been appointed as the guardian of the client's person before the sixth day after proceedings are suspended under Section 597.048(f); or
   (2) there is a medical necessity, based on clear and convincing evidence, that the determination about the proposed treatment occur before guardianship proceedings are completed.
   (b) In making its determination of the best interest of the client, the committee shall consider fully the preference of the client as articulated at any time.
   (c) According to its determination of the client's best interest, the committee shall consent or refuse the treatment on the client's behalf.
   (d) The committee shall determine a date on which the consent becomes effective and a date on which the consent expires.
   (e) A person serving on a committee who consents or refuses to consent on behalf of a client and who acts in good faith, reasonably, and without malice is not criminally or civilly liable for that action.

NOTICE OF DETERMINATION

Sec. 597.050.  (a) The committee shall issue a written opinion containing each of its determinations and a separate statement of the committee's findings of fact.
   (b) The ICF-MR facility shall send a copy of the committee's opinion to:
      (1) each person notified under Section 597.045; and
      (2) the department.

EFFECT OF COMMITTEE'S DETERMINATION

Sec. 597.051.  This chapter does not limit the availability of other lawful means of obtaining a client's consent for medical treatment.

SCOPE OF CONSENT

Sec. 597.052.  (a) The committee or the surrogate decision-maker may consent to the release of records related to the client's condition or treatment to facilitate treatment to which the committee or surrogate decision-maker has consented.
   (b) The interdisciplinary team may consent to psychoactive medication subsequent to the initial consent for administration of psychoactive medication made by a surrogate consent committee in accordance with rules of the department until the expiration date of the consent.
   (c) Unless another decision-making mechanism is provided for by law, a client, a client's authorized surrogate decision-maker if available, or the client's interdisciplinary team may consent to decisions which involve risk to client protection and rights not specifically reserved to surrogate decision-makers or surrogate consent committees.
APPEALS

Sec. 597.053. (a) A person notified under Section 597.045 may appeal the committee's decision by filing a petition in the probate court or court having probate jurisdiction for the county in which the client resides or in Travis County. The person must file the appeal not later than the 15th day after the effective date of the committee's determination.

(b) If the hearing is to be held in a probate court in which the judge is not a licensed attorney, the person filing the appeal may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The probate court judge shall transfer the case after receiving the request, and the receiving court shall hear the case as if it had been originally filed in that court.

(c) A copy of the petition must be served on all parties of record in the proceedings before the committee.

(d) After considering the nature of the condition of the client, the proposed treatment, and the need for timely medical attention, the court may issue a temporary restraining order to facilitate the appeal. If the order is granted, the court shall expedite the trial.

PROCEDURES

Sec. 597.054. (a) Each ICF-MR shall develop procedures for the surrogate consent committees in accordance with the rules adopted under Section 597.002.

(b) A committee is not subject to Chapter 2001, Government Code, Chapter 551, Government Code, or Chapter 552, Government Code.
SUBTITLE E. SPECIAL PROVISIONS RELATING TO
MENTAL ILLNESS AND MENTAL RETARDATION

CHAPTER 611. MENTAL HEALTH RECORDS

DEFINITIONS

Sec. 611.001. In this chapter:
(1) "Patient" means a person who consults or is interviewed by a professional for diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism or drug addiction.
(2) "Professional" means:
   (A) a person authorized to practice medicine in any state or nation;
   (B) a person licensed or certified by this state to diagnose, evaluate, or treat any mental or emotional condition or disorder; or
   (C) a person the patient reasonably believes is authorized, licensed, or certified as provided by this subsection.

CONFIDENTIALITY OF INFORMATION AND PROHIBITION AGAINST DISCLOSURE

Sec. 611.002. (a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.
(b) Confidential communications or records may not be disclosed except as provided by Section 611.004, or 611.0045.
(c) This section applies regardless of when the patient received services from a professional.

PERSONS WHO MAY CLAIM PRIVILEGE OF CONFIDENTIALITY

Sec. 611.003. (a) The privilege of confidentiality may be claimed by:
(1) the patient;
(2) a person listed in Section 611.004(a)(4) or (a)(5) who is acting on the patient's behalf; or
(3) the professional, but only on behalf of the patient.
(b) The authority of a professional to claim the privilege of confidentiality on behalf of the patient is presumed in the absence of evidence to the contrary.

AUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION OTHER THAN IN A JUDICIAL OR ADMINISTRATIVE PROCEEDING

Sec. 611.004. (a) A professional may disclose confidential information only:
(1) to a governmental agency if the disclosure is required or authorized by law;
(2) to medical or law enforcement personnel if the professional determines that there is a probability of imminent physical injury by the patient to the patient or others or there is a probability of immediate mental or emotional injury to the patient;
(3) to qualified personnel for management audits, financial audits, program evaluations, or research, in accordance with Subsection (b);
(4) to a person who has the written consent of the patient, or a parent if the patient is a minor, or a guardian if the patient has been adjudicated as incompetent to manage the patient's personal affairs;
(5) to the patient's personal representative if the patient is deceased;
(6) to individuals, corporations, or governmental agencies involved in paying or collecting fees for mental or emotional health services provided by a professional;
(7) to other professionals and personnel under the professionals' direction who participate in the diagnosis, evaluation, or treatment of the patient;
(8) in an official legislative inquiry relating to a state hospital or state school as provided by Subsection (c);
(9) to designated persons or personnel of a correctional facility in which a person is detained if the disclosure is for the sole purpose of providing treatment and health care to the person in custody;
(10) to an employee or agent of the professional who requires mental health care information to provide mental health care services or in complying with statutory, licensing, or accreditation requirements, if the professional has taken appropriate action to ensure that the employee or agent:
(A) will not use or disclose the information for any other purposes; and
(B) will take appropriate steps to protect the information; or
(11) to satisfy a request for medical records of a deceased or incompetent person pursuant to
Section 74.051(e), Civil Practice and Remedies Code.
(b) Personnel who receive confidential information under Subsection (a)(3) may not directly or indirectly
identify or otherwise disclose the identity of a patient in a report or in any other manner.
(c) The exception in Subsection (a)(8) applies only to records created by the state hospital or state school or
by the employees of the hospital or school. Information or records that identify a patient may be released only with
the patient's proper consent.
(d) A person who receives information from confidential communications or records may not disclose the
information except to the extent that disclosure is consistent with the authorized purposes for which the person first
obtained the information. This subsection does not apply to a person listed in Subsection (a)(4) or (a)(5) who is
acting on the patient's behalf.

RIGHT TO MENTAL HEALTH RECORD
Sec.611.0045. (a) Except as otherwise provided by this section, a patient is entitled to have access to the
content of a confidential record made about the patient.
(b) The professional may deny access to any portion of a record if the professional determines that release
of that portion would be harmful to the patient's physical, mental, or emotional health.
(c) If the professional denies access to any portion of a record, the professional shall give the patient a
signed and dated written statement that having access to the record would be harmful to the patient's physical,
mental, or emotional health and shall include a copy of the written statement in the patient's records. The statement
must specify the portion of the record to which access is denied, the reason for denial, and the duration of the denial.
(d) The professional who denies access to a portion of a record under this section shall redetermine the
necessity for the denial at each time a request for the denied portion is made. If the professional again denies access,
the professional shall notify the patient of the denial and document the denial as prescribed by Subsection (c).
(e) If a professional denies access to a portion of a confidential record, the professional shall allow
examination and copying of the record by another professional if the patient selects the professional to treat the
patient for the same or a related condition as the professional denying access.
(f) The content of a confidential record shall be made available to a person listed by Section 611.004(a)(4)
or (5) who is acting on the patient's behalf.
(g) A professional shall delete confidential information about another person who has not consented to the
release, but may not delete information relating to the patient that another person has provided, the identity of the
person responsible for that information, or the identity of any person who provided information that resulted in the
patient's commitment.
(h) If a summary or narrative of a confidential record is requested by the patient or other person requesting
release under this section, the professional shall prepare the summary or narrative.
(i) The professional or other entity that has possession or control of the record shall grant access to any
portion of the record to which access is not specifically denied under this section within a reasonable time and may
charge a reasonable fee.
(j) Notwithstanding 159.002 Occupations Code, this section applies to the release of a confidential record
created or maintained by a professional, including a physician, that relates to the diagnosis, evaluation, or treatment
of a mental or emotional condition or disorder, including alcoholism or drug addiction.
(k) The denial of a patient's access to any portion of a record by the professional or other entity that has
possession or control of the record suspends, until the release of that portion of the record, the running of an
applicable statute of limitations on a cause of action in which evidence relevant to the cause of action is in that
portion of the record.

LEGAL REMEDIES FOR IMPROPER DISCLOSURE OR FAILURE TO DISCLOSE
Sec.611.005. (a) A person aggrieved by the improper disclosure of or failure to disclose confidential
communications or records in violation of this chapter may petition the district court of the county in which the
person resides for appropriate relief, including injunctive relief. The person may petition a district court of Travis
County if the person is not a resident of this state.
(b) In a suit contesting the denial of access under Section 611.0045, the burden of proving that the denial
was proper is on the professional who denied the access.
(c) The aggrieved person also has a civil cause of action for damages.

- 323 -
AUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION IN JUDICIAL OR ADMINISTRATIVE PROCEEDING

Sec.611.006. (a) A professional may disclose confidential information in:
(1) a judicial or administrative proceeding brought by the patient or the patient's legally authorized representative against a professional, including malpractice proceedings;
(2) a license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claim or defense of a professional;
(3) a judicial or administrative proceeding in which the patient waives the patient's right in writing to the privilege of confidentiality of information or when a representative of the patient acting on the patient's behalf submits a written waiver to the confidentiality privilege;
(4) a judicial or administrative proceeding to substantiate and collect on a claim for mental or emotional health services rendered to the patient;
(5) a judicial proceeding if the judge finds that the patient, after having been informed that communications would not be privileged, has made communications to a professional in the course of a court-ordered examination relating to the patient's mental or emotional condition or disorder, except that those communications may be disclosed only with respect to issues involving the patient's mental or emotional health;
(6) a judicial proceeding affecting the parent-child relationship;
(7) any criminal proceeding, as otherwise provided by law;
(8) a judicial or administrative proceeding regarding the abuse or neglect, or the cause of abuse or neglect, or a resident of an institution, as that term is defined by Chapter 242;
(9) a judicial proceeding relating to a will if the patient's physical or mental condition is relevant to the execution of the will;
(10) an involuntary commitment proceeding for court-ordered treatment or for a probable cause hearing under:
   (A) Chapter 462;
   (B) Chapter 574; or
   (C) Chapter 593; or
(11) a judicial or administrative proceeding where the court or agency has issued an order or subpoena.

(b) On granting an order under Subsection (a)(5), the court, in determining the extent to which disclosure of all or any part of a communication is necessary, shall impose appropriate safeguards against unauthorized disclosure.

REVOCATION OF CONSENT

Sec.611.007. (a) Except as provided by Subsection (b), a patient or a patient's legally authorized representative may revoke a disclosure consent to a professional at any time. A revocation is valid only if it is written, dated, and signed by the patient or legally authorized representative.

(b) A patient may not revoke a disclosure that is required for purposes of making payment to the professional for mental health care services provided to the patient.

(c) A patient may not maintain an action against a professional for a disclosure made by the professional in good faith reliance on an authorization if the professional did not have notice of the revocation of the consent.

REQUEST BY PATIENT

Sec.611.008. (a) On receipt of a written request from a patient to examine or copy all or part of the patient's recorded mental health care information, a professional, as promptly as required under the circumstances but not later than the 15th day after the date of receiving the request, shall:
(1) make the information available for examination during regular business hours and provide a copy to the patient, if requested; or
(2) inform the patient if the information does not exist or cannot be found.

(b) Unless provided for by other state law, the professional may charge a reasonable fee for retrieving or copying mental health care information and is not required to permit examination or copying until the fee is paid unless there is a medical emergency.

(c) A professional may not charge a fee for copying mental health care information under Subsection (b) to the extent the fee is prohibited under Subchapter M, Chapter 161.
CHAPTER 612. INTERSTATE COMPACT ON MENTAL HEALTH

EXECUTION OF INTERSTATE COMPACT

Sec.612.001. This state enters into a compact with all other states legally joining in the compact in substantially the following form:

"INTERSTATE COMPACT ON MENTAL HEALTH

"The contracting states solemnly agree that:

"ARTICLE I

"The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

"ARTICLE II

"As used in this compact:

"(a)'Sending state' shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

"(b)'Receiving state' shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

"(c)'Institution' shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

"(d)'Patient' shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

"(e)'After-care' shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

"(f)'Mental illness' shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

"(g)'Mental deficiency' shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

"(h)'State' shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

"ARTICLE III

"(a)Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

"(b)The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

"(c)No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.
"(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

"(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

"ARTICLE IV

"(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

"(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

"(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

"ARTICLE V

"Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

"ARTICLE VI

"The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

"ARTICLE VII

"(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

"(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

"(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

"(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

"(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a non-party state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

"ARTICLE VIII
"(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

"(b) The term guardian as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

"ARTICLE IX

"(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to the incarceration in a penal or correctional institution.

"(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

"ARTICLE X

"(a) Each party state shall appoint a compact administrator who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

"(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

"ARTICLE XI

"The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

"ARTICLE XII

"This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

"ARTICLE XIII

"(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

"(b) Withdrawal from any agreement permitted by Article VII(b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.
"ARTICLE XIV

"This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

COMPACT ADMINISTRATOR

Sec.612.002. (a) Under the compact, the governor shall appoint the commissioner of mental health and mental retardation as the compact administrator.

(b) The compact administrator may appoint a designee to perform the administrator's duties.

REPEALED

Sec.612.003.

GENERAL POWERS AND DUTIES OF ADMINISTRATOR

Sec.612.004. (a) The compact administrator, acting jointly with like officers of other states that are parties to the compact, may adopt rules to carry out the compact more effectively.

(b) The compact administrator shall cooperate with all departments, agencies, and officers of this state and its subdivisions in facilitating the proper administration of the compact or of a supplementary agreement entered into by this state under the compact.

(c) For informational purposes, the compact administrator shall file with the secretary of state notice of compact meetings for publication in the Texas Register.

SUPPLEMENTARY AGREEMENTS

Sec.612.005. (a) The compact administrator may enter into supplementary agreements with appropriate officials of other states under Articles VII and XI of the compact.

(b) If a supplementary agreement requires or contemplates the use of an institution or facility of this state or requires or contemplates the provision of a service by this state, the supplementary agreement does not take effect until approved by the head of the department or agency:

(1) under whose jurisdiction the institution or facility is operated; or
(2) that will perform the service.

FINANCIAL ARRANGEMENTS

Sec.612.006. The compact administrator may make or arrange for the payments necessary to discharge the financial obligations imposed on this state by the compact or by a supplementary agreement entered into under the compact, subject to the approval of the comptroller.

REQUIREMENTS AFFECTING TRANSFERS OF CERTAIN PATIENTS

Sec.612.007. (a) The compact administrator shall consult with the immediate family of any person proposed to be transferred.

(b) If a person is proposed to be transferred from an institution in this state to an institution in another state that is a party to the compact, the compact administrator may not take final action without the approval of the district court of the district in which the person resides.
CHAPTER 613. KIDNEY DONATION BY WARD WITH MENTAL RETARDATION

DEFINITION

Sec. 613.001. In this chapter, "ward with mental retardation" means a ward who is a person with mental retardation, as defined by Subtitle D.

COURT ORDER AUTHORIZING KIDNEY DONATION

Sec. 613.002. A district court may authorize the donation of a kidney of a ward with mental retardation to a father, mother, son, daughter, brother, or sister of the ward if:

(1) the guardian of the ward with mental retardation consents to the donation;
(2) the ward is 12 years of age or older;
(3) the ward assents to the kidney transplant;
(4) the ward has two kidneys;
(5) without the transplant the donee will soon die or suffer severe and progressive deterioration, and with the transplant the donee will probably benefit substantially;
(6) there are no medically preferable alternatives to a kidney transplant for the donee;
(7) the risks of the operation and the long-term risks to the ward are minimal;
(8) the ward will not likely suffer psychological harm; and
(9) the transplant will promote the ward's best interests.

PETITION FOR COURT ORDER

Sec. 613.003. The guardian of the person of a ward with mental retardation may petition a district court having jurisdiction of the guardian for an order authorizing the ward to donate a kidney under Section 613.002.

COURT HEARING

Sec. 613.004. (a) The court shall hold a hearing on the petition filed under Section 613.003.
(b) A party to the proceeding is entitled on request to a preferential setting for the hearing.
(c) The court shall appoint an attorney ad litem and a guardian ad litem to represent the interest of the ward with mental retardation. Neither person appointed may be related to the ward within the second degree by consanguinity.
(d) The hearing must be adversary in order to secure a complete record, and the attorney ad litem shall advocate the ward's interest, if any, in not being a donor.
(e) The petitioner has the burden of establishing good cause for the kidney donation by establishing the prerequisites prescribed by Section 613.002.

INTERVIEW AND EVALUATION ORDER BY COURT

Sec. 613.005. (a) Before the eighth day after the date of the hearing, the court shall interview the ward with mental retardation to determine if the ward assents to the donation. The interview shall be conducted in chambers and out of the presence of the guardian.
(b) If the court considers it necessary, the court may order the performance of a determination of mental retardation, as provided by Section 593.005, to help the court evaluate the ward's capacity to agree to the donation.
CHAPTER 614. TEXAS CORRECTIONAL OFFICE ON OFFENDERS WITH MEDICAL OR MENTAL IMPAIRMENTS

DEFINITIONS

Sec. 614.001. In this chapter:
(1) "Board" means the Texas Board of Criminal Justice.
(2) "Case management" means a process by which a person or team responsible for establishing and continuously maintaining contact with a person with mental illness, a developmental disability, or mental retardation provides that person with access to services required by the person and ensures the coordinated delivery of those services to the person.
(3) "Committee" means the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments.
(3-a) "Continuity of care and services" refers to the process of:
(A) identifying the medical, psychiatric, or psychological care or treatment needs and educational or rehabilitative services needs of an offender with medical or mental impairments;
(B) developing a plan for meeting the treatment, care, and service needs of the offender with medical or mental impairments; and
(C) coordinating the provision of treatment, care, and services between the various agencies who provide treatment, care, or services such that they may continue to be provided to the offender at the time of arrest, while charges are pending, during post-adjudication or post-conviction custody or criminal justice supervision, and for pretrial diversion.
(4) "Developmental disability" means a severe, chronic disability that:
(A) is attributable to a mental or physical impairment or a combination of physical and mental impairments;
(B) is manifested before the person reaches 22 years of age;
(C) is likely to continue indefinitely; and
(D) results in substantial functional limitations in three or more of the following areas of major life activity:
   (i) self-care;
   (ii) self-direction;
   (iii) learning;
   (iv) receptive and expressive language;
   (v) mobility;
   (vi) capacity for independent living; or
   (vii) economic self-sufficiency; and
(5) "Mental Illness" has the meaning assigned by Section 571.003.
(6) "Mental impairment" means a mental illness, mental retardation, or a developmental disability.
(7) "Mental retardation" has the meaning assigned by Section 591.003.
(8) "Offender with a medical or mental impairment" means a juvenile or adult who is arrested or charged with a medical or mental impairment and who:
(A) has a mental impairment; or
(B) is elderly, physically disabled, terminally ill, or significantly ill.
(9) "Office" means the Texas Correctional Office on Offenders with Medical or Mental Impairments.
(10) "Person with mental retardation" means a juvenile or adult with mental retardation that is not a mental disorder who, because of the mental deficit, requires special training, education, supervision, treatment, care, or control in the person's home or community or in a private or state school for persons with mental retardation.

COMPOSITION OF COMMITTEE; DUTIES

Sec. 614.002. (a) The Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments is composed of 31 members.
(b) The governor shall appoint, with the advice and consent of the senate:
(1) four at-large members who have expertise in mental health, mental retardation, or developmental disabilities, three of whom must be forensic psychiatrists or forensic psychologists;
(2) one at-large member who is the judge of a district court with criminal jurisdiction;
(3) one at-large member who is a prosecuting attorney;
(4) one at-large member who is a criminal defense attorney;
(5) two at-large members who have expertise in the juvenile justice or criminal justice system; and
(6) one at-large member whose expertise can further the mission of the committee.

(c) (1) The following entities, by September 1 of each even-numbered year, shall submit to the governor for consideration a list of five candidates from their respective fields for at-large membership on the committee:

(A) the Texas District and County Attorneys Association;
(B) the Texas Criminal Defense Lawyers Association;
(C) the Texas Association of Counties;
(D) the Texas Medical Association;
(E) the Texas Society of Psychiatric Physicians;
(F) the Texas Psychological Association;
(G) the Sheriffs’ Association of Texas;
(H) the court of criminal appeals;
(I) the County Judges and Commissioners Association of Texas; and
(J) the Texas Conference of Urban Counties.

(2) The Texas Medical Association, the Texas Society of Psychiatric Physicians, and the Texas Psychological Association may submit a candidate for membership only if the candidate has documented expertise and educational training in, as appropriate, medical forensics, forensic psychology, or forensic psychiatry.

(d) A person may not be a member of the committee if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person’s activities for compensation on behalf of a profession related to the operation of the committee.

(e) The executive head of each of the following agencies, divisions of agencies, or associations, or that person’s designated representative, shall serve as a member of the committee:

(1) the institutional division of the Texas Department of Criminal Justice;
(2) the Department of State Health Services;
(3) the pardons and paroles division of the Texas Department of Criminal Justice;
(4) the community justice assistance division of the Texas Department of Criminal Justice;
(5) the state jail division of the Texas Department of Criminal Justice;
(6) the Texas Juvenile Probation Commission;
(7) the Texas Youth Commission;
(8) the Department of Assistive and Rehabilitative Services;
(9) the Texas Education Agency;
(10) the Correctional Managed Health Care Committee;
(11) the Mental Health Association in Texas;
(12) the Board of Pardons and Paroles;
(13) the Commission on Law Enforcement Officer Standards and Education;
(14) the Texas Council of Community Mental Health and Mental Retardation Centers;
(15) the Commission on Jail Standards;
(16) the Texas Council for Developmental Disabilities;
(17) the Texas Association for Retarded Citizens;
(18) the National Alliance for the Mentally Ill of Texas;
(19) the Parent Association for the Retarded of Texas, Inc.;
(20) the Health and Human Services Commission; and
(21) the Department of Aging and Disability Services.

(f) In making the appointments under Subsection (b), the governor shall attempt to reflect the geographic and economic diversity of the state. Appointments to the committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(g) It is a ground for removal from the committee that an at-large member:

(1) does not have at the time of taking office the qualifications required by Subsection (b);
(2) does not maintain during service on the committee the qualifications required by Subsection (b);
(3) is ineligible for membership under Subsection (d);
(4) cannot, because of illness or disability, discharge the member’s duties for a substantial part of the member’s term;
(5) is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the committee; or
(6) is absent from more than two consecutive regularly scheduled committee meetings that the member is eligible to attend.

(h) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a committee member exists.

(i) If the director of the committee has knowledge that a potential ground for removal exists, the director shall notify the presiding officer of the committee of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the director shall notify the next highest ranking officer of the committee, who shall then notify the governor and the attorney general that a potential ground for removal exists.

(j) A representative designated by the executive head of a state agency must be an officer or employee of the agency when designated and while serving on the committee, except the representative designated by the director of the Criminal Justice Policy Council must be an employee of that council.

(k) The committee shall advise the board and the director of the Texas Correctional Office on Offenders with Medical or Mental Impairments on matters related to offenders with medical or mental impairments and perform other duties imposed by the board.

TEXAS CORRECTIONAL OFFICE ON OFFENDERS WITH MEDICAL OR MENTAL IMPAIRMENTS; DIRECTOR

Sec. 614.003. The Texas Correctional Office on Offenders with Medical or Mental Impairments shall perform duties imposed on or assigned to the office by this chapter, other law, the board, and the executive director of the Texas Department of Criminal Justice. The executive director of the Texas Department of Criminal Justice shall hire a director of the office. The director serves at the pleasure of the executive director. The director shall hire the employees for the office.

TRAINING PROGRAM

Sec. 614.0031. (a) A person who is appointed to and qualifies for office as a member of the committee may not vote, deliberate, or be counted as a member in attendance at a meeting of the committee until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:
(1) the legislation that created the committee and the office;
(2) the programs operated by the committee and the office;
(3) the role and functions of the committee and the office;
(4) the rules of the committee and the office;
(5) the current budget for the committee and the office;
(6) the results of the most recent formal audit of the committee and the office;
(7) the requirements of:
   (A) the open meetings law, Chapter 551, Government Code;
   (B) the public information law, Chapter 552, Government Code;
   (C) the administrative procedure law, Chapter 2001, Government Code; and
   (D) other laws relating to public officials, including conflict of interest laws; and
(8) any applicable ethics policies adopted by the committee or the Texas Ethics Commission.

(c) A person appointed to the committee is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SPECIAL DUTIES RELATED TO MEDICALLY RECOMMENDED SUPERVISION; DETERMINATIONS REGARDING COMPETENCY OR FITNESS TO PROCEED

Sec. 614.0032. (a) The office shall:
(1) perform duties imposed on the office by Section 508.146, Government Code, and Section 15 (i), Article 42.12, Code of Criminal Procedure.
(2) periodically identify state jail felony defendants suitable for release under Section 15 (i), Article 42.12, Code of Criminal Procedure, and perform other duties imposed on the office by that section.

(b) The office shall:
(1) with the special assistance of committee members appointed under Section 614.002(b)(1):
(A) review examinations to determine the competency of defendants in criminal cases to stand trial and examinations to determine the fitness of children to proceed with respect to adjudications of delinquent conduct or conduct indicating a need for supervision; and
(B) periodically report to the legislature and the court of criminal appeals findings made as a result of the review described by Paragraph A; and
(2) approve and make generally available in electronic format a standard form for use by experts in reporting competency examination results under Chapter 46B, Code of Criminal Procedure.
(c) A district or juvenile court shall submit to the office on a monthly basis all reports based on examinations described by Subsection (b).

TERMS
Sec.614.004. The at-large members of the committee serve for staggered six-year terms.

OFFICERS; MEETINGS
Sec.614.005. (a) The governor shall designate a member of the committee as the presiding officer of the committee to serve in that capacity at the pleasure of the governor.
(b) The committee shall meet at least four times each year and may meet at other times at the call of the presiding officer or as provided by committee rule.

APPLICABILITY OF CERTAIN GOVERNMENT CODE PROVISIONS
Sec.614.006. A member of the committee is not entitled to compensation for performing duties on the committee but is entitled to receive reimbursement for travel and other necessary expenses incurred in performing official duties at the rate provided for state employees in the General Appropriations Act.

POWERS AND DUTIES
Sec.614.007. The committee shall:
(1) determine the status of offenders with medical or mental impairments in the state criminal justice system;
(2) identify needed services for offenders with medical or mental impairments;
(3) develop a plan for meeting the treatment, rehabilitative, and educational needs of offenders with medical or mental impairments that includes a case management system and the development of community-based alternatives to incarceration;
(4) cooperate in coordinating procedures of represented agencies for the orderly provision of services for offenders with medical or mental impairments;
(5) evaluate programs in this state and outside this state for offenders with medical or mental impairments and recommend to the directors of state programs methods of improving the programs;
(6) collect and disseminate information about available programs to judicial officers, law enforcement officers, probation and parole officers, providers of social services or treatment, and the public;
(7) provide technical assistance to represented agencies and organizations in the development of appropriate training programs;
(8) apply for and receive money made available by the federal or state government or by any other public or private source to be used by the committee to perform its duties;
(9) distribute to political subdivisions, private organizations, or other persons money appropriated by the legislature to be used for the development, operation, or evaluation of programs for offenders with medical or mental impairments;
(10) develop and implement pilot projects to demonstrate a cooperative program to identify, evaluate, and manage outside of incarceration offenders with medical or mental impairments; and
assess the need for demonstration projects and provide management for approved projects.

COMMUNITY-BASED DIVERSION PROGRAM FOR OFFENDERS WITH MEDICAL OR MENTAL IMPAIRMENTS

Sec. 614.008. (a) The office may maintain at least one program in a county selected by the office to employ a cooperative community-based alternative system to divert from the state criminal justice system offenders with mental impairments or offenders who are identified as being elderly, physically disabled, terminally ill, or significantly ill and to rehabilitate those offenders.

(b) The office may contract for or employ and train a case management team to carry out the purposes of the program and to coordinate the joint efforts of agencies represented on the committee.

(c) The agencies represented on the committee shall perform duties and offer services as required by the office to further the purposes of the program and the committee.

BIENNIAL REPORT

Sec. 614.009. Not later than February 1 of each odd-numbered year, the office shall present to the board and file with the governor, lieutenant governor, and speaker of the house of representatives a report giving the details of the office's activities during the preceding biennium. The report must include:

1. an evaluation of any demonstration project undertaken by the office;
2. an evaluation of the progress made by the office toward developing a plan for meeting the treatment, rehabilitative, and educational needs of offenders with mental impairments;
3. recommendations of the office made in accordance with Section 614.007(5);
4. an evaluation of the development and implementation of the continuity of care and service programs established under Sections 614.013, 614.014, 614.015, and 614.016, changes in rules, policies, or procedures relating to the programs, future plans for the programs, and any recommendations for legislation; and
5. any other recommendations that the office considers appropriate.

Repealed

Sec. 614.010.

PUBLIC ACCESS

Sec. 614.0101. The committee shall develop and implement policies that provide the public with a reasonable opportunity to appear before the committee and to speak on any issue under the jurisdiction of the committee or office.

614 COMPLAINTS

Sec. 614.0102. (a) The office shall maintain a file on each written complaint filed with the office. The file must include:

1. the name of the person who filed the complaint;
2. the date the complaint is received by the office;
3. the subject matter of the complaint;
4. the name of each person contacted in relation to the complaint;
5. a summary of the results of the review or investigation of the complaint; and
6. an explanation of the reason the file was closed, if the office closed the file without taking action other than to investigate the complaint.

(b) The office shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the office’s policies and procedures relating to complaint investigation and resolution.

(c) The office, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

REPEALED

Sec. 614.011.

REPEALED

Sec. 614.012.
CONTINUITY OF CARE FOR OFFENDERS WITH MENTAL IMPAIRMENTS

Sec.614.013. (a) The Texas Department of Criminal Justice, the Department of State Health Services, the bureau of identification and records of the Department of Public Safety, representatives of local mental health or mental retardation authorities appointed by the commissioner of the Department of State Health Services, and the directors of community supervision and corrections departments shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for offenders with mental impairments in the criminal justice system. The office shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying offenders with mental impairments in the criminal justice system and collecting and reporting prevalence rate data to the office;
(2) developing interagency rules, policies, procedures, and standards for the coordination of care and the exchange of information on offenders with mental impairments by local and state criminal justice agencies, the Texas Department of Mental Health and Mental Retardation, local mental health or mental retardation authorities, the Commission on Jail Standards and local jails;
(3) identifying the services needed by offenders with mental impairments to reenter the community successfully; and
(4) establishing a process to report implementation activities to the office.

(c) The Texas Department of Criminal Justice, the Department of State Health Services, local mental health or mental retardation authorities, and community supervision and corrections departments shall:

(1) operate the continuity of care and service program for offenders with mental impairments in the criminal justice system with funds appropriated for that purpose; and
(2) actively seek federal grants or funds to operate and expand the program.

(d) Local and state criminal justice agencies shall, whenever possible, contract with local mental health or mental retardation authorities to maximize Medicaid funding and improve on the continuity of care and service program for offenders with mental impairments in the criminal justice system.

(e) The office, in coordination with each state agency identified in Subsection (b)(2), shall develop a standardized process for collecting and reporting the memorandum of understanding implementation outcomes by local and state criminal justice agencies and local and state mental health or mental retardation authorities. The findings of these reports shall be submitted to the office by September 1 of each even-numbered year and shall be included in recommendations to the board in the office’s biennial report under Section 614.009.

CONTINUITY OF CARE FOR ELDERLY OFFENDERS

Sec.614.014. (a) The Texas Department of Criminal Justice, the Texas Department of Human Services, and the Texas Department on Aging by rule shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for elderly offenders in the criminal justice system. The office shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying elderly offenders in the criminal justice system;
(2) developing interagency rules, policies and procedures for the coordination of care of and the exchange of information on elderly offenders by local and state criminal justice agencies, the Texas Department of Human Services, and the Texas Department on Aging; and
(3) identifying the services needed by elderly offenders to reenter the community successfully.

(c) The Texas Department of Criminal Justice, the Texas Department of Human Services, and the Texas Department on Aging shall:

(1) operate the continuity of care and service program for elderly offenders in the criminal justice system with funds appropriated for that purpose; and
(2) actively seek federal grants or funds to operate and expand the program.

CONTINUITY OF CARE FOR PHYSICALLY DISABLED, TERMINALLY ILL, OR SIGNIFICANTLY ILL OFFENDERS

Sec.614.015. (a) The Texas Department of Criminal Justice, the Department of Assistive and Rehabilitative Services, the Department of State Health Services, and the Department of Aging and Disability Services by rule shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for offenders in the criminal justice system who are physically...
disabled, terminally ill, or significantly ill. The council shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying offenders in the criminal justice system who are physically disabled, terminally ill, or significantly ill;
(2) developing interagency rules, policies and procedures for the coordination of care of and the exchange of information on offenders who are physically disabled, terminally ill, or significantly ill by local and state criminal justice agencies, the Texas Department of Criminal Justice, the Department of Assistive and Rehabilitative Services, the Department of State Health Services, and the Department of Aging and Disability Services; and
(3) identifying the services needed by offenders who are physically disabled, terminally ill, or significantly ill to reenter the community successfully.

(c) The Texas Department of Criminal Justice, the Department of Assistive and Rehabilitative Services, the Department of State Health Services, and the Department of Aging and Disability Services shall:

(1) operate, with funds appropriated for that purpose, the continuity of care and service program for offenders in the criminal justice system who are physically disabled, terminally ill, or significantly ill; and
(2) actively seek federal grants or funds to operate and expand the program.

CONTINUITY OF CARE FOR CERTAIN OFFENDERS BY LAW ENFORCEMENT AND JAILS
Sec.614.016. (a) The office, the Commission on Law Enforcement Officer Standards and Education, the bureau of identification and records of the Department of Public Safety, and the Commission on Jail Standards by rule shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for offenders in the criminal justice system who are mentally impaired, elderly, physically disabled, terminally ill or significantly ill.

(b) The memorandum of understanding must establish methods for:

(1) identifying offenders in the criminal justice system who are mentally impaired, elderly, physically disabled, terminally ill or significantly ill;
(2) developing procedures for the exchange of information relating to offenders who are mentally impaired, elderly, physically disabled, terminally ill, or significantly ill by the office, the Commission on Law Enforcement Officer Standards and Education, and the Commission on Jail Standards for use in the continuity of care and services program; and
(3) adopting rules and standards that assist in the development of a continuity of care and services program for offenders who are mentally impaired, elderly, physically disabled, terminally ill, or significantly ill.

EXCHANGE OF INFORMATION
Sec.614.017. (a) An agency shall:

(1) accept information relating to a special needs offender that is sent to the agency to serve the purposes of continuity of care and services regardless of whether other state law makes that information confidential; and
(2) disclose information relating to a special needs offender, including information about the offender's identity, needs, treatment, social, criminal, and vocational history, supervision status and compliance with conditions of supervision, and medical and mental health history, if the disclosure serves the purposes of continuity of care and services.

(b) Information obtained under this section may not be used as evidence in any criminal proceeding, unless obtained and introduced by other lawful evidentiary means.

(c) In this section:

(1) "Agency" includes any of the following entities and individuals, a person with an agency relationship with one of the following entities or individuals, and a person who contracts with one or more of the following entities or individuals:
   (A) the Texas Department of Criminal Justice and the Correctional Managed Health Care Committee;
   (B) the Board of Pardons and Paroles;
   (C) the Department of State Health Services;
   (D) the Texas Juvenile Probation Commission;
(E) the Texas Youth Commission;
(F) the Department of Assistive and Rehabilitative Services;
(G) the Texas Education Agency;
(H) the Commission on Jail Standards;
(I) the Department of Aging and Disability Services;
(J) the Texas School for the Blind and Visually Impaired;
(K) community supervision and corrections departments;
(L) personal bond pretrial release offices established under Article 17.42, Code of Criminal Procedure;
(M) local jails regulated by the Commission on Jail Standards;
(N) a municipal or county health department;
(O) a hospital district;
(P) a judge of this state with jurisdiction over criminal cases;
(Q) an attorney who is appointed or retained to represent a special needs offender;
(R) the Health and Human Services Commission;
(S) the Department of Information Resources; and
(T) the bureau of identification and records of the Department of Public Safety, for the sole purpose of providing real-time, contemporaneous identification of individuals in the Department of State Health Services client data base.

(2) "Special needs offender" includes an individual for whom criminal charges are pending or who after conviction or adjudication is in custody or under any form of criminal justice supervision.

(d) An agency shall manage confidential information accepted or disclosed under this section prudently so as to maintain, to the extent possible, the confidentiality of that information.

(e) A person commits an offense if the person releases or discloses confidential information obtained under this section for purposes other than continuity of care and services, except as authorized by other law or by the consent of the person to whom the information relates. An offense under this subsection is a Class B misdemeanor.

EXPIRED

Sec.614.018.

PROGRAMS FOR JUVENILES

Sec. 614.019. The office, in cooperation with the Texas Commission on Alcohol and Drug Abuse, the Texas Department of Mental Health and Mental Retardation, the Department of Protective and Regulatory Services, the Texas Juvenile Probation Commission, the Texas Youth Commission, and the Texas Education Agency, may establish and maintain programs, building on existing successful efforts in communities, to address prevention, intervention, and continuity of care for juveniles with mental health and substance abuse disorders.

YOUTH ASSERTIVE COMMUNITY TREATMENT PROGRAM

Sec. 614.020. (a) The office may establish and maintain in Tarrant County an assertive community treatment program to provide treatment, rehabilitation, and support services to individuals in that county who:

(1) are under 18 years of age;
(2) have severe and persistent mental illness;
(3) have a history of:
   (A) multiple hospitalizations;
   (B) poor performance in school;
   (C) placement in emergency shelters or residential treatment facilities; or
   (D) chemical dependency or abuse; and
(4) have been placed on probation by a juvenile court.

(b) The program must be modeled after other assertive community treatment programs established by the Texas Department of Mental Health and Mental Retardation. The program is limited to serving not more than 30 program participants at any time.

(c) If the office creates and maintains a program under this section, the office shall provide for the program a team of licensed or degreed professionals in the clinical treatment or rehabilitation field to administer the program. A team provided under this subsection must include:

(1) a registered nurse to provide full-time direct services to the program participants; and
(2) a psychiatrist available to the program for 10 or more hours each week.
(d) In administering the program, the program's professional team shall:
   (1) provide psychiatric, substance abuse, and employment services to program participants;
   (2) maintain a ratio of one or more team members for each 10 program participants to the extent practicable;
   (3) be available to program participants during evening and weekend hours;
   (4) meet the needs of special populations;
   (5) maintain at all times availability for addressing and managing a psychiatric crisis of any program participant; and
   (6) cover the geographic areas served by the program.
(e) The office and the program shall cooperate with or contract with local agencies to avoid duplication of services and to maximize federal Medicaid funding.
CHAPTER 615. MISCELLANEOUS PROVISIONS

COUNTY RESPONSIBILITY
Sec.615.001. Each commissioners court shall provide for the support of a person with mental illness or mental retardation who is:

(1) a resident of the county;
(2) unable to provide self-support; and
(3) cannot be admitted to a state mental health or mental retardation facility.

ACCESS TO MENTAL HEALTH RECORDS BY PROTECTION AND ADVOCACY SYSTEM
Sec.615.002. (a) Notwithstanding other state law, the protection and advocacy system established in this state under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. Sec. 10801 et seq.) is entitled to access to records relating to persons with mental illness to the extent authorized by federal law.

(b) If the patient consents to notification, the protection and advocacy system shall notify the Texas Department of Mental Health and Mental Retardation's Office of Client Services and Rights Protection if the system decides to investigate a complaint of abuse, neglect, or rights violation that relates to a patient in a facility or program operated by, licensed by, certified by, or in a contractual relationship with the department.