

**TEXAS MENTAL
HEALTH AND
INTELLECTUAL AND
DEVELOPMENTAL
DISABILITIES LAW:

SELECTED STATUTES
AND RULES**

2019-2020

With statutory amendments through
the 86th Legislative Regular Session, 2019



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Matthew Bender & Company, Inc.
Editorial Offices
701 E. Water Street
Charlottesville, VA 22902
800-446-3410
www.lexisnexis.com

FOREWORD

LexisNexis Publications is pleased to offer **Texas Mental Health and Intellectual and Developmental Disabilities Law: Selected Statutes and Rules**. This compilation of selected laws is fully up-to-date through the 2019 Regular Session, 86th Legislature. We have included a “Table of Amendments,” covering 2019 legislation.

We are indebted to the Texas Judicial Commission on Mental Health, which provided us with direction and guidance in developing the contents of this volume.

We are committed to providing the most comprehensive, current, and useful publications available. We publish a number of titles covering various topics of Texas law as well as publications in neighboring jurisdictions. Please visit our website <https://store.lexisnexis.com/categories/texas> for a complete list of available titles.

We actively solicit your comments and suggestions. If you believe that there are statutes which should be included (or excluded), or if you have suggestions regarding index improvements, please write to us or call us toll-free at 1-800-833-9844; E-mail us at llp.clp@lexisnexis.com or visit our website at www.lexisnexis.com. By providing us with your informed comments, you will be assured of having available a working tool which increases in value with each edition.

December 2019





Justice Jane N. Bland, Supreme Court of Texas, Co-Chair

Judge Barbara Hervey, Texas Court of Criminal Appeals, Co-Chair

Kristi Taylor, Executive Director

Dear Judges and Stakeholders,

As gatekeepers for families and individuals in crisis, courts must make life-altering decisions that require knowledge of multiple complex issues. However, too often, courts lack the training and resources needed to make well-informed decisions. Recognizing that improving the lives of Texans who are affected by mental health issues and are involved in the justice system requires judicial leadership at the highest level, the Supreme Court of Texas and the Texas Court of Criminal Appeals sat as one court for a historic hearing on January 11, 2018. Together, they heard from people with lived experience with the mental health and criminal justice systems, judges, psychiatrists, psychologists, attorneys, and law enforcement. Following the historic joint hearing, the two highest courts in Texas established the Judicial Commission on Mental Health (JCMH) and appointed 33 commissioners from across the state in April 2018.

The mission of the JCMH is to engage and empower court systems through collaboration, education, and leadership, thereby improving the lives of individuals with mental health needs, substance use disorders, or intellectual and developmental disabilities (IDD). This book is intended to fulfill that mission in part by providing to judges and stakeholders a compendium of selected statutes and rules related to mental health and IDD from all relevant Texas codes in one publication.

The JCMH would like to recognize the leadership and support of Supreme Court of Texas Chief Justice Nathan Hecht; Texas Court of Criminal Appeals Presiding Judge Sharon Keller; Supreme Court Justice Jane Bland and Court of Criminal Appeals Judge Barbara Hervey, Co-Chairs of the JCMH; Supreme Court Justice Eva Guzman; Supreme Court Justice Jeff Brown; Justice Bill Boyce, Vice-Chair of the JCMH; Judge John Specia, JCMH Jurist in Residence; Tina Amberboy, Executive Director of the Supreme Court Children's Commission; the Supreme Court of Texas; and the Texas Court of Criminal Appeals.

The JCMH is indebted to Chris Lopez with the Texas Health and Human Services Commission, who faithfully compiled his publication, *Texas Laws Relating to Mental Health*, and continually updates it with legislative changes. Mental health practitioners and professionals across the state rely on his publication, which is currently in its 22nd edition. The laws reflected in *Texas Laws Relating to Mental Health* formed the starting point for developing this publication. Gratitude is also due to Hon. Nelda Cacciotti from Tarrant County and Hon. Dave Jahn from Denton County for their assistance with this project. Finally, special thanks to JCMH Staff Attorney Regan Metteauer for her meticulous review and compilation of the many codes to create this publication.

Thank you for your dedication to the fair administration of justice for all, especially individuals with mental illness and IDD.

Sincerely,

Kristi Taylor, Executive Director
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Dr. William Schnapp

Mental Health Policy Advisor
Harris County

Prof. Brian Shannon

Paul Whitfield Horn Professor
Texas Tech University School of Law

Reginald Smith

Policy Analyst
Texas Criminal Justice Coalition

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Judge (Ret.)
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Judge
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**Texas Judicial Commission on Mental Health
Staff:**

Kristi Taylor, Executive Director
Regan Metteauer, Staff Attorney
Emily Miller, Staff Attorney
Belinda Swan, Executive Assistant

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2.12	Amended	SB 319	46C.251	Amended	SB 562
14.035	Added	HB 3540	46C.260	Amended	HB 601
16.22	Amended	HB 4170	46C.260	Amended	SB 562
16.22	Amended	SB 362	55.01	Amended	SB 562
16.22	Amended	HB 601	55.02	Amended	SB 562
16.22	Amended	HB 601	59.06	Amended	HB 2894
17.032	Amended	HB 601	59.06	Amended	HB 4173
26.04	Amended	SB 583	59.06	Amended	HB 2613
26.05	Amended	SB 346	102.006	Amended	SB 562
26.13	Amended	HB 1996	102.006	Amended	SB 562
26.13	Amended	HB 4173	Education Code		
42.03	Amended	SB 1268	5.001	Amended	HB 18
42.03	Amended	HB 4173	5.001	Amended	SB 668
42.09	Amended	HB 4173	8.051	Amended	HB 3
42.09	Amended	HB 601	8.056	Amended	HB 3
42.09	Amended	SB 562	8.103	Amended	HB 674
43.09	Amended	HB 4170	8.151	Added	HB 19
43.091	Amended	SB 346	8.152	Added	HB 19
43.13	Amended	SB 1700	8.153	Added	HB 19
45.049	Amended	HB 4170	8.154	Added	HB 19
45.0491	Amended	SB 346	8.155	Added	HB 19
45.0492	Amended	HB 4170	8.156	Added	HB 19
45.051	Amended	SB 346	8.157	Added	HB 19
45.051	Amended	SB 346	8.158	Added	HB 19
46B.001	Amended	HB 601	11.252	Amended	HB 18
46B.001	Amended	SB 562	11.252	Amended	SB 11
46B.0021	Added	HB 601	21.044	Amended	HB 18
46B.0021	Added	SB 562	21.054	Amended	HB 403
46B.073	Amended	HB 601	21.054	Amended	HB 18
46B.073	Amended	SB 562	21.054	Amended	HB 2424
46B.0831	Added	HB 601	21.054	Amended	SB 11
46B.0831	Added	SB 562	21.451	Amended	HB 18
46B.104	Amended	HB 601	21.462	Amended	HB 18
46B.104	Amended	SB 562	25.041	Amended	HB 965
46B.105	Amended	HB 601	25.086	Amended	SB 668
46B.105	Amended	SB 562	28.002	Amended	HB 18
46B.106	Amended	HB 601	28.002	Amended	HB 18
46B.106	Amended	SB 562	28.002	Amended	HB 2984
46B.107	Amended	HB 601	28.002	Amended	SB 11
46B.107	Amended	SB 562	28.004	Amended	SB 435
46B.151	Amended	HB 601	28.004	Amended	HB 18
46B.151	Amended	SB 562	28.004	Amended	SB 11
46C.001	Amended	HB 601	28.025	Amended	SB 213
46C.001	Amended	SB 562	28.025	Amended	HB 165
46C.0011	Added	HB 601	28.025	Amended	HB 678
46C.0011	Added	SB 562	28.025	Amended	SB 1374
46C.003	Amended	HB 4173	28.025	Amended	HB 3
46C.104	Amended	HB 601	28.025	Amended	SB 668
46C.104	Amended	SB 562	28.0259	Amended	SB 213
46C.106	Amended	HB 601	28.02591	Amended	SB 213
46C.106	Amended	SB 562	29.001	Amended	HB 3
46C.160	Amended	HB 601	29.002	Amended	HB 3

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29.003	Amended	HB 965	55.13	Amended	SB 362
29.006	Amended	SB 1376	55.38	Amended	SB 362
29.007	Repealed	SB 1376	55.57	Amended	SB 362
29.008	Amended	HB 3	58.0052	Amended	HB 1760
29.012	Amended	HB 965	264.121	Amended	HB 53
29.014	Amended	HB 3	264.121	Amended	HB 123
29.0151	Amended	HB 1709	264.4031	Added	SB 821
29.018	Amended	HB 3	264.405	Amended	SB 821
29.022	Amended	HB 3			
29.023	Added	SB 139	Finance Code		
30.0015	Amended	HB 965	11.108	Amended	SB 614
37.0023	Added	HB 3630	11.110	Amended	SB 614
37.0023	Added	SB 712	11.113	Added	SB 614
37.108	Amended	HB 2195	11.202	Amended	SB 614
37.108	Amended	SB 11	11.305	Amended	HB 1442
37.115	Added	SB 11	12.108	Amended	SB 614
37.220	Added	SB 11	12.109	Amended	SB 614
38.003	Amended	SB 2075	12.113	Added	SB 614
38.0041	Amended	HB 111	12.114	Added	SB 614
38.0101	Added	HB 18	13.011	Amended	SB 614
38.013	Amended	HB 18	13.011	Amended	SB 614
38.016	Amended	HB 18	13.012	Amended	SB 614
38.036	Added	SB 11	13.017	Added	SB 614
38.051	Amended	HB 18	13.018	Added	SB 614
38.054	Amended	HB 18	14.059	Amended	HB 1442
38.057	Amended	HB 18	14.062	Amended	HB 1442
38.058	Amended	HB 18	14.066	Amended	HB 1442
38.0591	Added	HB 18	14.107	Amended	HB 1442
38.060	Amended	HB 18	14.110	Added	HB 1442
38.251	Added	SB 11	14.111	Added	HB 1442
38.252	Added	SB 11	14.112	Added	HB 1442
38.253	Added	SB 11	14.201	Amended	HB 1442
38.254	Added	SB 11	14.2015	Amended	HB 1442
38.255	Added	SB 11	14.202	Amended	HB 1442
38.256	Added	SB 11	14.208	Amended	HB 1442
38.301	Added	HB 906	14.208	Amended	HB 1442
38.302	Added	HB 906	14.251	Amended	HB 1442
38.303	Added	HB 906	14.256	Amended	HB 1442
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38.305	Added	HB 906	119.007	Amended	HB 4171
38.306	Added	HB 906	149.002	Amended	HB 4171
38.307	Added	HB 906	151.002	Amended	HB 2458
38.308	Added	HB 906	151.002	Amended	HB 2458
38.309	Added	HB 906	151.002	Amended	HB 2458
38.310	Added	HB 906	151.003	Amended	HB 2458
38.311	Added	HB 906	151.201	Amended	HB 2458
38.312	Added	HB 906	151.207	Amended	HB 2458
38.351	Amended	HB 18	151.302	Amended	HB 2458
38.352	Amended	HB 18	151.502	Amended	HB 2458
42.168	Added	SB 11	151.602	Amended	HB 2458
61.06641	Added	SB 1017	151.603	Amended	HB 2458
73.401	Amended	HB 965	151.851	Repealed	HB 2458
73.403	Amended	HB 965	151.852	Repealed	HB 2458
73.404	Amended	HB 965	151.853	Repealed	HB 2458
73.405	Amended	HB 965	151.854	Repealed	HB 2458
73.406	Amended	HB 965	151.855	Repealed	HB 2458
			151.856	Repealed	HB 2458
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752.113	Amended	HB 4170	151.858	Repealed	HB 2458
			151.859	Repealed	HB 2458
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35A.001	Added	SB 1238	154.104	Amended	SB 614
35A.002	Added	SB 1238	154.302	Amended	SB 1822
35A.003	Added	SB 1238	154.304	Amended	SB 1822
35A.004	Added	SB 1238	154.400	Amended	SB 1822
35A.005	Added	SB 1238			

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157.012	Amended	SB 614	54.2413	Added	SB 891
157.012	Amended	SB 2330	54.2414	Added	SB 891
157.015	Amended	SB 37	54.2415	Added	SB 891
180.051	Amended	SB 2330	54.2416	Added	SB 891
180.0511	Added	SB 2330	54.313	Repealed	SB 346
180.055	Amended	SB 37	54.653	Amended	HB 2384
181.002	Amended	SB 1823	54.658	Amended	HB 4170
			54.663	Repealed	SB 346
			54.745	Amended	SB 346
			54.883	Repealed	SB 346
			54.906	Amended	HB 4170
			54.908	Amended	HB 4170
			54.913	Repealed	SB 346
			54.978	Amended	HB 4170
			54.983	Repealed	SB 346
			121.002	Amended	HB 2955
			121.002	Amended	SB 891
			124.001	Amended	HB 4170
			124.004	Amended	SB 346
			124.005	Amended	SB 346
			124.007	Added	SB 1180
			125.001	Amended	SB 562
			125.0025	Added	SB 562
			125.005	Added	SB 562
			129.005	Amended	SB 346
			392.002	Amended	SB 281
			411.1471	Amended	HB 979
			411.461	Added	HB 1769
			411.461	Added	HB 833
			411.462	Added	HB 1769
			411.462	Added	HB 833
			411.463	Added	HB 1769
			411.463	Added	HB 833
			411.464	Added	HB 1769
			411.464	Added	HB 833
			411.465	Added	HB 1769
			411.465	Added	HB 833
			411.466	Added	HB 1769
			411.466	Added	HB 833
			411.467	Added	HB 1769
			411.467	Added	HB 833
			411.468	Added	HB 1769
			411.468	Added	HB 833
			411.469	Added	HB 1769
			411.469	Added	HB 833
			411.470	Added	HB 1769
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			418.054	Added	HB 7
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			418.054	Added	HB 1307
			418.054	Added	HB 2340
			418.054	Added	SB 289
			418.054	Added	HB 5
			418.054	Added	HB 6
			418.054	Added	HB 2325
			418.054	Added	SB 982
			418.054	Added	SB 6
			418.054	Added	SB 799
			418.132	Added	SB 289
			418.132	Added	SB 982
			434.352	Amended	HB 4429
			434.352	Amended	SB 601
			434.3525	Added	SB 601
			493.032	Added	HB 650
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22.1106	Added	SB 362			
25.0003	Amended	SB 2342			
25.1132	Amended	SB 2342			
25.1802	Amended	SB 2342			
25.1972	Amended	SB 891			
25.2012	Amended	SB 891			
25.2142	Amended	SB 2342			
54.101	Added	HB 452			
54.101	Added	SB 891			
54.102	Added	HB 452			
54.102	Added	SB 891			
54.103	Added	HB 452			
54.103	Added	SB 891			
54.104	Added	HB 452			
54.104	Added	SB 891			
54.105	Added	HB 452			
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54.106	Added	HB 452			
54.106	Added	SB 891			
54.107	Added	HB 452			
54.107	Added	SB 891			
54.2201	Added	SB 891			
54.2202	Added	SB 891			
54.2203	Added	SB 891			
54.2204	Added	SB 891			
54.2205	Added	SB 891			
54.2206	Added	SB 891			
54.2207	Added	SB 891			
54.2208	Added	SB 891			
54.2209	Added	SB 891			
54.2210	Added	SB 891			
54.2211	Added	SB 891			
54.2212	Added	SB 891			
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54.2214	Added	SB 891			
54.2215	Added	SB 891			
54.2216	Added	SB 891			
54.2301	Added	SB 891			
54.2302	Added	SB 891			
54.2303	Added	SB 891			
54.2304	Added	SB 891			
54.2305	Added	SB 891			
54.2306	Added	SB 891			
54.2307	Added	SB 891			
54.2401	Added	SB 891			
54.2402	Added	SB 891			
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54.2408	Added	SB 891			
54.2409	Added	SB 891			
54.2410	Added	SB 891			
54.2411	Added	SB 891			

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493.032	Added	HB 3227	113.0051	Added	SB 11
501.023	Amended	HB 1191	113.0052	Added	SB 11
501.057	Amended	SB 362	113.0053	Added	SB 11
501.066	Amended	HB 650	113.0101	Added	SB 11
501.0667	Added	HB 650	113.0102	Added	SB 11
501.070	Added	HB 650	113.0103	Added	SB 11
501.114	Added	HB 650	113.0104	Added	SB 11
509.011	Amended	HB 1374	113.0105	Added	SB 11
511.009	Amended	SB 1700	113.0151	Added	SB 11
511.009	Amended	HB 1651	113.0152	Added	SB 11
511.009	Amended	HB 2169	113.0153	Added	SB 11
511.009	Amended	HB 4468	113.0201	Added	SB 11
511.0098	Added	HB 4559	113.0202	Added	SB 11
511.011	Amended	HB 4468	113.0251	Added	SB 11
531.001	Amended	SB 670	113.0252	Added	SB 11
531.001	Amended	HB 1576	161.325	Amended	SB 11
531.001	Amended	SB 1207	181.059	Amended	HB 4173
531.001	Amended	HB 4533	182.003	Repealed	HB 3304
531.02164	Amended	HB 1063	182.004	Added	HB 3304
531.0221	Added	SB 633	182.052	Repealed	HB 3304
531.02253	Added	HB 3285	182.101	Amended	HB 3304
531.0992	Amended	SB 822	182.102	Amended	HB 3304
531.0992	Amended	SB 822	182.103	Amended	HB 3304
531.421	Amended	SB 241	182.104	Amended	HB 3304
531.422	Amended	SB 241	182.105	Amended	HB 3304
531.423	Amended	SB 241	182.106	Amended	HB 3304
531.471	Added	HB 2813	182.107	Amended	HB 3304
531.472	Added	HB 2813	182.108	Amended	HB 3304
531.473	Added	HB 2813	182.108	Amended	HB 3304
531.474	Added	HB 2813	252.065	Amended	HB 3803
531.475	Added	HB 2813	313.004	Amended	HB 2780
531.476	Added	HB 2813	532.013	Amended	HB 601
534.001	Amended	HB 4533	532.013	Amended	SB 562
534.051	Amended	HB 4533	533.006	Repealed	SB 241
534.052	Amended	HB 4533	533A.006	Amended	SB 241
534.053	Amended	HB 4533	533.0351	Added	SB 632
534.053	Amended	HB 4533	533.0352	Amended	SB 632
534.054	Amended	HB 4533	533A.062	Amended	HB 3117
534.101	Amended	HB 4533	533A.062	Amended	SB 241
534.1015	Added	HB 4533	534.002	Amended	SB 632
534.102	Amended	HB 4533	534.003	Amended	SB 632
534.103	Amended	HB 4533	1001.205	Amended	HB 18
534.1035	Added	HB 4533	1001.205	Amended	HB 1070
534.104	Amended	HB 4533	1001.205	Amended	HB 4429
534.1045	Added	HB 4533	1001.207	Added	HB 18
534.105	Amended	HB 4533	1001.222	Amended	HB 4429
534.106	Amended	HB 4533	1001.261	Added	HB 3285
534.1065	Amended	HB 4533	1001.261	Added	SB 748
534.107	Amended	HB 4533	1001.262	Added	SB 748
534.108	Amended	HB 4533	1001.263	Added	SB 748
534.109	Amended	HB 4533	1001.264	Added	SB 748
534.110	Amended	HB 4533	1001.265	Added	SB 748
534.111	Amended	HB 4533			
534.112	Added	HB 4533	Human Resources Code		
534.201	Repealed	HB 4533	40.079	Added	SB 355
534.202	Amended	HB 4533	40.080	Added	SB 781
534.202	Amended	HB 4533	152.00164	Amended	SB 362
534.203	Amended	HB 4533	244.012	Amended	SB 362
534.251	Added	HB 4533	Labor Code		
534.252	Added	HB 4533	302.00335	Added	HB 696
539.002	Amended	HB 4468	352.060	Added	SB 2038
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32.046	Added	HB 253	101.151	Amended	SB 1636
113.0001	Added	SB 11	113.001	Added	HB 4455

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113.002	Added	HB 4455	1701.310	Amended	HB 4468
1701.253	Amended	SB 971	1701.352	Amended	SB 971
1701.253	Amended	SB 586	1701.352	Amended	SB 586
1701.253	Amended	HB 4170	1701.402	Amended	HB 971
1701.253	Amended	HB 4173			
1701.253	Amended	HB 292	Penal Code		
1701.253	Amended	HB 1590	1.07	Amended	SB 1258
1701.310	Amended	HB 4468			

CONSTITUTION OF THE STATE OF TEXAS 1876

- Article
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ARTICLE I Bill of Rights

- Section
- 15. Right of Trial by Jury.
- 15-a. Commitment of Persons of Unsound Mind.

Preamble

That the general, great and essential principles of liberty and free government may be recognized and established, we declare:

Sec. 15. Right of Trial by Jury.

The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency. Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the County Court without the necessity of a trial by jury.

Sec. 15-a. Commitment of Persons of Unsound Mind.

No person shall be committed as a person of unsound mind except on competent medical or psychiatric testimony. The Legislature may enact all laws necessary to provide for the trial, adjudication of insanity and commitment of persons of unsound mind and to provide for a method of appeal from judgments rendered in such cases. Such laws may provide for a waiver of trial by jury, in cases where the person under inquiry has not been charged with the commission of a criminal offense, by the concurrence of the person under inquiry, or his next of kin, and an attorney ad litem appointed by a judge of either the County or Probate Court of the county where the trial is being held, and shall provide for a method of service of notice of such trial upon the person under inquiry and of his right to demand a trial by jury.

ARTICLE III

Legislative Department

- Section
- 49-h. Bond Issuance for Correctional and Statewide Law Enforcement Facilities and for Institutions for Persons with Intellectual and Developmental Disabilities .
- 50-f. General Obligation Bonds for Construction and Repair Projects and for Purchase of Equipment.
- 51-a. Assistance Grants, Medical Care and Certain Other Services for Needy Persons, Federal Matching Funds.

Sec. 49-h. Bond Issuance for Correctional and Statewide Law Enforcement Facilities and for Institutions for Persons with Intellectual and Developmental Disabilities .

(a) In amounts authorized by constitutional amendment or by a debt proposition under Section 49 of this article, the legislature may provide for the issuance of general obligation bonds and the use of the bond proceeds for acquiring, constructing, or equipping new facilities or for major repair or renovation of existing facilities of corrections institutions, including youth corrections institutions, and mental health and mental retardation institutions. The legislature may require the review and approval of the issuance of the bonds and the projects to be financed by the bond proceeds. Notwithstanding any other provision of this constitution, the issuer of the bonds or any entity created or directed to review and approve projects may include members or appointees of members of the executive, legislative, and judicial departments of state government.

(b) Bonds issued under this section constitute a general obligation of the state. While any of the bonds or interest on the bonds is outstanding and unpaid, there is appropriated out of the first money coming into the treasury in each fiscal year, not otherwise appropriated by this constitution, the amount sufficient to pay the principal of and interest on the bonds that mature or become due during the fiscal year, less any amount in any sinking fund at the end of the preceding fiscal year that is pledged to payment of the bonds or interest.

(c) In addition to the purposes authorized under Subsection (a), the legislature may authorize the issuance of the general obligation bonds for acquiring, constructing, or equipping:

- (1) new statewide law enforcement facilities and for major repair or renovation of existing facilities; and
- (2) new prisons and substance abuse felony punishment facilities to confine criminals and major repair or renovation of existing facilities of those institutions, and for the acquisition of, major repair to, or renovation of other facilities for use as state prisons or substance abuse felony punishment facilities.

Amendment proposed by 1999 76th Leg., H.J.R. No. 62, approved by electorate (Prop. 3) at the November 2, 1999 election.

Sec. 50-f. General Obligation Bonds for Construction and Repair Projects and for Purchase of Equipment.

(a) The legislature by general law may authorize the Texas Public Finance Authority to provide for, issue, and sell general obligation bonds of the State of Texas in an amount not to exceed \$850 million and to enter into related credit agreements. The bonds shall be executed in the form, on the terms, and in the denominations, bear interest, and be issued in installments as prescribed by the Texas Public Finance Authority.

(b) Proceeds from the sale of the bonds shall be deposited in a separate fund or account within the state treasury created by the comptroller for this purpose. Money in the separate fund or account may be used only to pay for:

(1) construction and repair projects authorized by the legislature by general law or the General Appropriations Act and administered by or on behalf of the General Services Commission, the Texas Youth Commission, the Texas Department of Criminal Justice, the Texas Department of Mental Health and Mental Retardation, the Parks and Wildlife Department, the adjutant general's department, the Texas School for the Deaf, the Department of Agriculture, the Department of Public Safety of the State of Texas, the State Preservation Board, the Texas Department of Health, the Texas Historical Commission, or the Texas School for the Blind and Visually Impaired; or

(2) the purchase, as authorized by the legislature by general law or the General Appropriations Act, of needed equipment by or on behalf of a state agency listed in Subdivision (1) of this subsection.

(c) The maximum net effective interest rate to be borne by bonds issued under this section may be set by general law.

(d) While any of the bonds or interest on the bonds authorized by this section is outstanding and unpaid, from the first money coming into the state treasury in each fiscal year not otherwise appropriated by this constitution, an amount sufficient to pay the principal and interest on bonds that mature or become due during the fiscal year and to make payments that become due under a related credit agreement during the fiscal year is appropriated, less the amount in the sinking fund at the close of the previous fiscal year.

(e) Bonds issued under this section, after approval by the attorney general, registration by the comptroller of public accounts, and delivery to the purchasers, are incontestable and are general obligations of the State of Texas under this constitution.

Amendment proposed by 2001, 77th Leg., H.J.R. No. 97, approved by the electorate at the November 6, 2001 election.

Sec. 51-a. Assistance Grants, Medical Care and Certain Other Services for Needy Persons, Federal Matching Funds.

(a) The Legislature shall have the power, by General Laws, to provide, subject to limitations herein contained, and such other limitations, restrictions and regulations as may by the Legislature be deemed expedient, for assistance grants to needy dependent children and the caretakers of such children, needy persons who are totally and permanently disabled because of a mental or physical handicap, needy aged persons and needy blind persons.

(b) The Legislature may provide by General Law for medical care, rehabilitation and other similar services for needy persons. The Legislature may prescribe such other eligibility requirements for participation in these programs as it deems appropriate and may make appropriations out of state funds for such purposes. The maximum amount paid out of state funds for assistance grants to or

on behalf of needy dependent children and their caretakers shall not exceed one percent of the state budget. The Legislature by general statute shall provide for the means for determining the state budget amounts, including state and other funds appropriated by the Legislature, to be used in establishing the biennial limit.

(c) Provided further, that if the limitations and restrictions herein contained are found to be in conflict with the provisions of appropriate federal statutes, as they now are or as they may be amended to the extent that federal matching money is not available to the state for these purposes, then and in that event the Legislature is specifically authorized and empowered to prescribe such limitations and restrictions and enact such laws as may be necessary in order that such federal matching money will be available for assistance and/or medical care for or on behalf of needy persons.

(d) Nothing in this Section shall be construed to amend, modify or repeal Section 31 of Article XVI of this Constitution; provided further, however, that such medical care, services or assistance shall also include the employment of objective or subjective means, without the use of drugs, for the purpose of ascertaining and measuring the powers of vision of the human eye, and fitting lenses or prisms to correct or remedy any defect or abnormal condition of vision. Nothing herein shall be construed to permit optometrists to treat the eyes for any defect whatsoever in any manner nor to administer nor to prescribe any drug or physical treatment whatsoever, unless such optometrist is a regularly licensed physician or surgeon under the laws of this state.

Amendment proposed by 1999 76th Leg., H.J.R. No. 62, approved by electorate (Prop. 3) at the November 2, 1999 election.

ARTICLE XI

Municipal Corporations

Section

- 9. County or Municipal Property Held for Public Purpose Exempt from Forced Sale and Taxation.
- 13. Classification of Municipal Functions.

Sec. 9. County or Municipal Property Held for Public Purpose Exempt from Forced Sale and Taxation.

The property of counties, cities and towns, owned and held only for public purposes, such as public buildings and the sites therefor, fire engines and the furniture thereof, and all property used, or intended for extinguishing fires, public grounds and all other property devoted exclusively to the use and benefit of the public shall be exempt from forced sale and from taxation, provided, nothing herein shall prevent the enforcement of the vendors lien, the mechanics or builders lien, or other liens now existing.

Sec. 13. Classification of Municipal Functions.

(a) Notwithstanding any other provision of this constitution, the legislature may by law define for all purposes those functions of a municipality that are to be considered governmental and those that are proprietary, including reclassifying a function's classification assigned under prior statute or common law.

(b) This section applies to laws enacted by the 70th Legislature, Regular Session, 1987, and to all subsequent regular or special sessions of the legislature.

ARTICLE XVI

General Provisions

Section

6. Appropriations for Private Purposes; Annual Accounting of Public Money; Acceptance and Expenditure of Certain Money for Persons with Disabilities.

Sec. 6. Appropriations for Private Purposes; Annual Accounting of Public Money; Acceptance and Expenditure of Certain Money for Persons with Disabilities.

(a) No appropriation for private or individual purposes shall be made, unless authorized by this Constitution. A regular statement, under oath, and an account of the receipts and expenditures of all public money shall be published annually, in such manner as shall be prescribed by law.

(b) State agencies charged with the responsibility of providing services to those who are blind, crippled, or otherwise physically or mentally handicapped may accept money from private or federal sources, designated by the private or federal source as money to be used in and establishing and equipping facilities for assisting those who are blind, crippled, or otherwise physically or mentally handicapped in becoming gainfully employed, in rehabilitating and restoring the handicapped, and in providing other services determined by the state agency to be essential for the better care and treatment of the

handicapped. Money accepted under this subsection is state money. State agencies may spend money accepted under this subsection, and no other money, for specific programs and projects to be conducted by local level or other private, nonsectarian associations, groups, and non-profit organizations, in establishing and equipping facilities for assisting those who are blind, crippled, or otherwise physically or mentally handicapped in becoming gainfully employed, in rehabilitating and restoring the handicapped, and in providing other services determined by the state agency to be essential for the better care or treatment of the handicapped.

The state agencies may deposit money accepted under this subsection either in the state treasury or in other secure depositories. The money may not be expended for any purpose other than the purpose for which it was given. Notwithstanding any other provision of this Constitution, the state agencies may expend money accepted under this subsection without the necessity of an appropriation, unless the Legislature, by law, requires that the money be expended only on appropriation. The Legislature may prohibit state agencies from accepting money under this subsection or may regulate the amount of money accepted, the way the acceptance and expenditure of the money is administered, and the purposes for which the state agencies may expend the money. Money accepted under this subsection for a purpose prohibited by the Legislature shall be returned to the entity that gave the money.

This subsection does not prohibit state agencies authorized to render services to the handicapped from contracting with privately-owned or local facilities for necessary and essential services, subject to such conditions, standards, and procedures as may be prescribed by law.

HEALTH AND SAFETY CODE

TITLE 2

HEALTH

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SUBTITLE B

HEALTH PROGRAMS

CHAPTER 32

Maternal and Infant Health Improvement

Subchapter B

Perinatal Health Care System

Section	
32.046.	Postpartum Depression Strategic Plan.

Sec. 32.046. Postpartum Depression Strategic Plan.

(a) The commission shall develop and implement a five-year strategic plan to improve access to postpartum depression screening, referral, treatment, and support services. Not later than September 1 of the last fiscal year in each five-year period, the commission shall develop a new strategic plan for the next five fiscal years beginning with the following fiscal year.

(b) The strategic plan must provide strategies to:

(1) increase awareness among state-administered program providers who may serve women who are at risk of or are experiencing postpartum depression about the prevalence and effects of postpartum depression on outcomes for women and children;

(2) establish a referral network of community-based mental health providers and support services addressing postpartum depression;

(3) increase women's access to formal and informal peer support services, including access to certified peer specialists who have received additional training related to postpartum depression;

(4) raise public awareness of and reduce the stigma related to postpartum depression; and

(5) leverage sources of funding to support existing community-based postpartum depression screening, referral, treatment, and support services.

(c) The commission shall coordinate with the department, the statewide health coordinating council, the office of mental health coordination, and the statewide behavioral health coordinating council in developing the strategic plan.

(d) The commission, in consultation with the department, the statewide health coordinating council, the office of mental health coordination, and the statewide behav-

ioral health coordinating council, shall annually review and update, as necessary, the strategic plan.

(e) For purposes of this section, "postpartum depression" means a disorder in which a woman experiences moderate to severe depression following a pregnancy, regardless of whether the pregnancy resulted in birth, or an act defined by Section 245.002(1).

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1028 (H.B. 253), § 1, effective September 1, 2019.

SUBTITLE E

HEALTH CARE COUNCILS AND RESOURCE CENTERS

CHAPTER 113

Texas Child Mental Health Care Consortium

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Subchapter A

General Provisions

Sec. 113.0001. Definitions.

In this chapter:

(1) "Community mental health provider" means an entity that provides mental health care services at a local level, including a local mental health authority.

(2) "Consortium" means the Texas Child Mental Health Care Consortium.

(3) "Executive committee" means the executive committee of the consortium.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Subchapter B

Consortium

Sec. 113.0051. Establishment; Purpose.

The Texas Child Mental Health Care Consortium is established to:

(1) leverage the expertise and capacity of the health-related institutions of higher education listed in Section 113.0052(1) to address urgent mental health challenges and improve the mental health care system in this state in relation to children and adolescents; and

(2) enhance the state's ability to address mental health care needs of children and adolescents through collaboration of the health-related institutions of higher education listed in Section 113.0052(1).

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Sec. 113.0052. Composition.

The consortium is composed of:

(1) the following health-related institutions of higher education:

- (A) Baylor College of Medicine;
- (B) Texas A&M University System Health Science Center;
- (C) Texas Tech University Health Sciences Center;
- (D) Texas Tech University Health Sciences Center at El Paso;
- (E) University of North Texas Health Science Center at Fort Worth;
- (F) The Dell Medical School at The University of Texas at Austin;
- (G) The University of Texas M.D. Anderson Cancer Center;
- (H) The University of Texas Medical Branch at Galveston;
- (I) The University of Texas Health Science Center at Houston;
- (J) The University of Texas Health Science Center at San Antonio;
- (K) The University of Texas Rio Grande Valley School of Medicine;
- (L) The University of Texas Health Science Center at Tyler; and
- (M) The University of Texas Southwestern Medical Center;

(2) the commission;

(3) the Texas Higher Education Coordinating Board;

(4) three nonprofit organizations that focus on mental health care, designated by a majority of the members described by Subdivision (1); and

(5) any other entity that the executive committee considers necessary.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Sec. 113.0053. Administrative Attachment.

The consortium is administratively attached to the Texas Higher Education Coordinating Board for the purpose of receiving and administering appropriations and other funds under this chapter. The board is not responsible for providing to the consortium staff, human resources, contract monitoring, purchasing, or any other administrative support services.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Subchapter C

Executive Committee

Sec. 113.0101. Executive Committee Composition.

(a) The consortium is governed by an executive committee composed of the following members:

(1) the chair of the academic department of psychiatry of each of the health-related institutions of higher education listed in Section 113.0052(1) or a licensed psychiatrist, including a child-adolescent psychiatrist, designated by the chair to serve in the chair's place;

(2) a representative of the commission with expertise in the delivery of mental health care services, appointed by the executive commissioner;

(3) a representative of the commission with expertise in mental health facilities, appointed by the executive commissioner;

(4) a representative of the Texas Higher Education Coordinating Board, appointed by the commissioner of the coordinating board;

(5) a representative of each nonprofit organization described by Section 113.0052(4) that is part of the consortium, designated by a majority of the members described by Subdivision (1);

(6) a representative of a hospital system in this state, designated by a majority of the members described by Subdivision (1); and

(7) any other representative designated:

(A) under Subsection (b); or

(B) by a majority of the members described by Subdivision (1) at the request of the executive committee.

(b) The president of each of the health-related institutions of higher education listed in Section 113.0052(1) may designate a representative to serve on the executive committee.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Sec. 113.0102. Vacancy.

A vacancy on the executive committee shall be filled in the same manner as the original appointment.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Sec. 113.0103. Presiding Officer.

The executive committee shall elect a presiding officer from among the membership of the executive committee.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Sec. 113.0104. Statewide Behavioral Health Coordinating Council.

The consortium shall designate a member of the executive committee to represent the consortium on the statewide behavioral health coordinating council.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Sec. 113.0105. General Duties.

The executive committee shall:

- (1) coordinate the provision of funding to the health-related institutions of higher education listed in Section 113.0052(1) to carry out the purposes of this chapter;
- (2) establish procedures and policies for the administration of funds under this chapter;
- (3) monitor funding and agreements entered into under this chapter to ensure recipients of funding comply with the terms and conditions of the funding and agreements; and
- (4) establish procedures to document compliance by executive committee members and staff with applicable laws governing conflicts of interest.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Subchapter D

Access to Care

Sec. 113.0151. Child Psychiatry Access Network and Telemedicine and Telehealth Programs.

(a) The consortium shall establish a network of comprehensive child psychiatry access centers. A center established under this section shall:

- (1) be located at a health-related institution of higher education listed in Section 113.0052(1); and
- (2) provide consultation services and training opportunities for pediatricians and primary care providers operating in the center's geographic region to better care for children and youth with behavioral health needs.

(b) The consortium shall establish or expand telemedicine or telehealth programs for identifying and assessing behavioral health needs and providing access to mental health care services. The consortium shall implement this subsection with a focus on the behavioral health needs of at-risk children and adolescents.

(c) A health-related institution of higher education listed in Section 113.0052(1) may enter into a memorandum of understanding with a community mental health provider to:

- (1) establish a center under Subsection (a); or
- (2) establish or expand a program under Subsection (b).

(d) The consortium shall leverage the resources of a hospital system under Subsection (a) or (b) if the hospital system:

- (1) provides consultation services and training opportunities for pediatricians and primary care providers

that are consistent with those described by Subsection (a); and

(2) has an existing telemedicine or telehealth program for identifying and assessing the behavioral health needs of and providing access to mental health care services for children and adolescents.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Sec. 113.0152. Consent Required for Services to Minor.

(a) A person may provide mental health care services to a child younger than 18 years of age through a program established under this subchapter only if the person obtains the written consent of the parent or legal guardian of the child.

(b) The consortium shall develop and post on its Internet website a model form for a parent or legal guardian to provide consent under this section.

(c) This section does not apply to services provided by a school counselor in accordance with Section 33.005, 33.006, or 33.007, Education Code.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Sec. 113.0153. Reimbursement for Services.

A child psychiatry access center established under Section 113.0151(a) may not submit an insurance claim or charge a pediatrician or primary care provider a fee for providing consultation services or training opportunities under this section.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Subchapter E

Child Mental Health Workforce

Sec. 113.0201. Child Psychiatry Workforce Expansion.

(a) The executive committee may provide funding to a health-related institution of higher education listed in Section 113.0052(1) for the purpose of funding:

- (1) two full-time psychiatrists who treat children and adolescents to serve as academic medical director at a facility operated by a community mental health provider; and
- (2) two new resident rotation positions.

(b) An academic medical director described by Subsection (a) shall collaborate and coordinate with a community mental health provider to expand the amount and availability of mental health care resources by developing training opportunities for residents and supervising residents at a facility operated by the community mental health provider.

(c) An institution of higher education that receives funding under Subsection (a) shall require that psychiatric residents participate in rotations through the facility operated by the community mental health provider in accordance with Subsection (b).

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Sec. 113.0202. Child and Adolescent Psychiatry Fellowship.

(a) The executive committee may provide funding to a health-related institution of higher education listed in Section 113.0052(1) for the purpose of funding a physician fellowship position that will lead to a medical specialty in the diagnosis and treatment of psychiatric and associated behavioral health issues affecting children and adolescents.

(b) The funding provided to a health-related institution of higher education under this section must be used to increase the number of fellowship positions at the institution and may not be used to replace existing funding for the institution.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Subchapter F

Miscellaneous Provisions

Sec. 113.0251. Biennial Report.

Not later than December 1 of each even-numbered year, the consortium shall prepare and submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committee of each house of the legislature with primary jurisdiction over behavioral health issues and post on its Internet website a written report that outlines:

- (1) the activities and objectives of the consortium;
- (2) the health-related institutions of higher education listed in Section 113.0052(1) that receive funding by the executive committee; and
- (3) any legislative recommendations based on the activities and objectives described by Subdivision (1).

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Sec. 113.0252. Appropriation Contingency.

The consortium is required to implement a provision of this chapter only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the consortium may, but is not required to, implement a provision of this chapter.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Subchapter O-1

Mental Health, Substance Abuse, and Youth Suicide [Effective until December 1, 2019]

Section 161.325.	Mental Health Promotion and Intervention, Substance Abuse Prevention and Intervention, and Suicide Prevention. [Effective until December 1, 2019]
161.325.	Mental Health Promotion and Intervention, Substance Abuse Prevention and

Section Intervention, and Suicide Prevention. [Renumbered to Tex. Educ. Code § 38.351, effective December 1, 2019]

Sec. 161.325. Mental Health Promotion and Intervention, Substance Abuse Prevention and Intervention, and Suicide Prevention. [Effective until December 1, 2019]

(a) The department, in coordination with the Texas Education Agency and regional education service centers, shall provide and annually update a list of recommended best practice-based programs and research-based practices in the areas specified under Subsection (a-1) for implementation in public elementary, junior high, middle, and high schools within the general education setting. Each school district may select from the list a program or programs appropriate for implementation in the district.

(a-1) [2 Versions: As amended by Acts 2017, 85th Leg., ch. 714] The list must include programs and practices in the following areas:

- (1) early mental health intervention;
- (2) building skills related to managing emotions, establishing and maintaining positive relationships, and responsible decision-making;
- (3) substance abuse prevention;
- (4) substance abuse intervention;
- (5) suicide prevention;
- (6) trauma-informed practices;
- (7) positive school climates; and
- (8) positive behavior supports.

(a-1) [2 Versions: As amended by Acts 2017, 85th Leg., ch. 522] The list must include programs in the following areas:

- (1) early mental health intervention;
- (2) mental health promotion;
- (3) substance abuse prevention;
- (4) substance abuse intervention;
- (5) suicide prevention;
- (6) grief-informed and trauma-informed practices;
- (7) building skills related to managing emotions, establishing and maintaining positive relationships, and responsible decision-making;
- (8) positive behavior interventions and supports and positive youth development; and
- (9) safe and supportive school climate.

(a-2) The department, the Texas Education Agency, and each regional education service center shall make the list easily accessible on their websites.

(a-3) For purposes of Subsection (a-1), “school climate” means the quality and character of school life, including interpersonal relationships, teaching and learning practices, and organizational structures, as experienced by students enrolled in the school district, parents of those students, and personnel employed by the district.

(b) The suicide prevention programs on the list must include components that provide for training counselors, teachers, nurses, administrators, and other staff, as well as law enforcement officers and social workers who regularly interact with students, to:

- (1) recognize students at risk of committing suicide, including students who are or may be the victims of or who engage in bullying;

(2) recognize students displaying early warning signs and a possible need for early mental health or substance abuse intervention, which warning signs may include declining academic performance, depression, anxiety, isolation, unexplained changes in sleep or eating habits, and destructive behavior toward self and others; and

(3) intervene effectively with students described by Subdivision (1) or (2) by providing notice and referral to a parent or guardian so appropriate action, such as seeking mental health or substance abuse services, may be taken by a parent or guardian.

(c) In developing the list of best practice-based programs and research-based practices, the department and the Texas Education Agency shall consider:

(1) any existing suicide prevention method developed by a school district; and

(2) any Internet or online course or program developed in this state or another state that is based on best practices recognized by the Substance Abuse and Mental Health Services Administration or the Suicide Prevention Resource Center.

(c-1) Except as otherwise provided by this subsection, each school district shall provide training described in the components set forth under Subsection (b) for teachers, counselors, principals, and all other appropriate personnel. A school district is required to provide the training at an elementary school campus only to the extent that sufficient funding and programs are available. A school district may implement a program on the list to satisfy the requirements of this subsection.

(c-2) If a school district provides the training under Subsection (c-1):

(1) a school district employee described under that subsection must participate in the training at least one time; and

(2) the school district shall maintain records that include the name of each district employee who participated in the training.

(d) A school district may develop practices and procedures concerning each area listed in Subsection (a-1), including mental health promotion and intervention, substance abuse prevention and intervention, and suicide prevention, that:

(1) include a procedure for providing educational material to all parents and families in the district that contains information on identifying risk factors, accessing resources for treatment or support provided on and off campus, and accessing available student accommodations provided on campus;

(2) include a procedure for providing notice of a recommendation for early mental health or substance abuse intervention regarding a student to a parent or guardian of the student within a reasonable amount of time after the identification of early warning signs as described by Subsection (b)(2);

(3) include a procedure for providing notice of a student identified as at risk of committing suicide to a parent or guardian of the student within a reasonable amount of time after the identification of early warning signs as described by Subsection (b)(2);

(4) establish that the district may develop a reporting mechanism and may designate at least one person to act

as a liaison officer in the district for the purposes of identifying students in need of early mental health or substance abuse intervention or suicide prevention; and

(5) set out available counseling alternatives for a parent or guardian to consider when their child is identified as possibly being in need of early mental health or substance abuse intervention or suicide prevention.

(e) The practices and procedures developed under Subsection (d) must prohibit the use without the prior consent of a student's parent or guardian of a medical screening of the student as part of the process of identifying whether the student is possibly in need of early mental health or substance abuse intervention or suicide prevention.

(f) The practices and procedures developed under Subsection (d) must be included in:

(1) the annual student handbook; and

(2) the district improvement plan under Section 11.252, Education Code.

(g) The department may accept donations for purposes of this section from sources without a conflict of interest. The department may not accept donations for purposes of this section from an anonymous source.

(h) [Expired pursuant to Acts 2011, 82nd Leg., ch. 1134 (H.B. 1386), § 3, effective September 1, 2013.]

(i) Nothing in this section is intended to interfere with the rights of parents or guardians and the decision-making regarding the best interest of the child. Practices and procedures developed in accordance with this section are intended to notify a parent or guardian of a need for mental health or substance abuse intervention so that a parent or guardian may take appropriate action. Nothing in this section shall be construed as giving school districts the authority to prescribe medications. Any and all medical decisions are to be made by a parent or guardian of a student.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1134 (H.B. 1386), § 3, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 578 (S.B. 831), §§ 2, 3, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1321 (S.B. 460), § 4, effective September 1, 2013; am. Acts 2017, 85th Leg., ch. 522 (S.B. 179), § 12, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 714 (H.B. 4056), § 1, effective June 12, 2017; by Acts 2019, 86th Leg., ch. 352 (H.B. 18), § 1.21, effective December 1, 2019; am. Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 23, effective June 6, 2019.

Sec. 161.325. Mental Health Promotion and Intervention, Substance Abuse Prevention and Intervention, and Suicide Prevention. [Renumbered to Tex. Educ. Code § 38.351, effective December 1, 2019]

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1134 (H.B. 1386), § 3, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 578 (S.B. 831), §§ 2, 3, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1321 (S.B. 460), § 4, effective September 1, 2013; am. Acts 2017, 85th Leg., ch. 522 (S.B. 179), § 12, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 714 (H.B. 4056), § 1, effective June 12, 2017; Renumbered to Tex. Educ. Code § 38.351 by Acts 2019, 86th Leg., ch. 352 (H.B. 18), § 1.21, effective December 1, 2019; am. Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 23, effective June 6, 2019.

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CHAPTER 181

Medical Records Privacy

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Sec. 181.001. Definitions.

(a) Unless otherwise defined in this chapter, each term that is used in this chapter has the meaning assigned by the Health Insurance Portability and Accountability Act and Privacy Standards.

(b) In this chapter:

(1) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(55), effective April 2, 2015.]

(2) "Covered entity" means any person who:

(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site;

(B) comes into possession of protected health information;

(C) obtains or stores protected health information under this chapter; or

(D) is an employee, agent, or contractor of a person described by Paragraph (A), (B), or (C) insofar as the employee, agent, or contractor creates, receives, obtains, maintains, uses, or transmits protected health information.

(2-a) "Disclose" means to release, transfer, provide access to, or otherwise divulge information outside the entity holding the information.

(2-b) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(55), effective April 2, 2015.]

(3) "Health Insurance Portability and Accountability Act and Privacy Standards" means the privacy requirements in existence on September 1, 2011, of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

(4) "Marketing" means:

(A) making a communication about a product or service that encourages a recipient of the communication to purchase or use the product or service, unless the communication is made:

(i) to describe a health-related product or service or the payment for a health-related product or service that is provided by, or included in a plan of benefits of, the covered entity making the communication, including communications about:

(a) the entities participating in a health care provider network or health plan network;

(b) replacement of, or enhancement to, a health plan; or

(c) health-related products or services available only to a health plan enrollee that add value to, but are not part of, a plan of benefits;

(ii) for treatment of the individual;
 (iii) for case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual; or

(iv) by a covered entity to an individual that encourages a change to a prescription drug included in the covered entity's drug formulary or preferred drug list;

(B) an arrangement between a covered entity and any other entity under which the covered entity discloses protected health information to the other entity, in exchange for direct or indirect remuneration, for the other entity or its affiliate to make a communication about its own product or service that encourages recipients of the communication to purchase or use that product or service; and

(C) notwithstanding Paragraphs (A)(ii) and (iii), a product-specific written communication to a consumer that encourages a change in products.

(5) "Product" means a prescription drug or prescription medical device.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 924 (S.B. 1136), § 2, effective September 1, 2003; am. Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 1, effective September 1, 2012; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(55), effective April 2, 2015.

Sec. 181.002. Applicability.

(a) Except as provided by Section 181.205, this chapter does not affect the validity of another statute of this state that provides greater confidentiality for information made confidential by this chapter.

(b) To the extent that this chapter conflicts with another law, other than Section 58.0052, Family Code, with respect to protected health information collected by a governmental body or unit, this chapter controls.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 924 (S.B. 1136), § 3, effective September 1, 2003; am. Acts 2011, 82nd Leg., ch. 653 (S.B. 1106), § 5, effective June 17, 2011.

Sec. 181.003. Sovereign Immunity.

This chapter does not waive sovereign immunity to suit or liability.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001.

Sec. 181.004. Applicability of State and Federal Law.

(a) A covered entity, as that term is defined by 45 C.F.R. Section 160.103, shall comply with the Health Insurance Portability and Accountability Act and Privacy Standards.

(b) Subject to Section 181.051, a covered entity, as that term is defined by Section 181.001, shall comply with this chapter.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 2, effective September 1, 2012.

Sec. 181.005. Duties of the Executive Commissioner.

(a) The executive commissioner shall administer this chapter and may adopt rules consistent with the Health

Insurance Portability and Accountability Act and Privacy Standards to administer this chapter.

(b) The executive commissioner shall review amendments to the definitions in 45 C.F.R. Parts 160 and 164 that occur after September 1, 2011, and determine whether it is in the best interest of the state to adopt the amended federal regulations. If the executive commissioner determines that it is in the best interest of the state to adopt the amended federal regulations, the amended regulations shall apply as required by this chapter.

(c) In making a determination under this section, the executive commissioner must consider, in addition to other factors affecting the public interest, the beneficial and adverse effects the amendments would have on:

(1) the lives of individuals in this state and their expectations of privacy; and

(2) governmental entities, institutions of higher education, state-owned teaching hospitals, private businesses, and commerce in this state.

(d) The executive commissioner shall prepare a report of the executive commissioner's determination made under this section and shall file the report with the presiding officer of each house of the legislature before the 30th day after the date the determination is made. The report must include an explanation of the reasons for the determination.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 924 (S.B. 1136), § 4, effective September 1, 2003; am. Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 3, effective September 1, 2012.

Sec. 181.006. Protected Health Information Not Public.

Notwithstanding Sections 181.004 and 181.051, for a covered entity that is a governmental unit, an individual's protected health information:

(1) includes any information that reflects that an individual received health care from the covered entity; and

(2) is not public information and is not subject to disclosure under Chapter 552, Government Code.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 419 (H.B. 2004), § 5, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 4, effective September 1, 2012.

Secs. 181.007 to 181.050. [Reserved for expansion].

Subchapter B

Exemptions

Sec. 181.051. Partial Exemption.

Except for Subchapter D, this chapter does not apply to:

(1) a covered entity as defined by Section 602.001, Insurance Code;

(2) an entity established under Article 5.76-3, Insurance Code; or

(3) an employer.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 1274 (H.B. 2922), § 20, effective April 1, 2005.

Sec. 181.052. Processing Payment Transactions by Financial Institutions.

(a) In this section, "financial institution" has the meaning assigned by Section 1101, Right to Financial Privacy

Act of 1978 (12 U.S.C. Section 3401), and its subsequent amendments.

(b) To the extent that a covered entity engages in activities of a financial institution, or authorizes, processes, clears, settles, bills, transfers, reconciles, or collects payments for a financial institution, this chapter and any rule adopted under this chapter does not apply to the covered entity with respect to those activities, including the following:

(1) using or disclosing information to authorize, process, clear, settle, bill, transfer, reconcile, or collect a payment for, or related to, health plan premiums or health care, if the payment is made by any means, including a credit, debit, or other payment card, an account, a check, or an electronic funds transfer; and

(2) requesting, using, or disclosing information with respect to a payment described by Subdivision (1):

(A) for transferring receivables;

(B) for auditing;

(C) in connection with a customer dispute or an inquiry from or to a customer;

(D) in a communication to a customer of the entity regarding the customer's transactions, payment card, account, check, or electronic funds transfer;

(E) for reporting to consumer reporting agencies; or

(F) for complying with a civil or criminal subpoena or a federal or state law regulating the covered entity.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001.

Sec. 181.053. Nonprofit Agencies.

The executive commissioner shall by rule exempt from this chapter a nonprofit agency that pays for health care services or prescription drugs for an indigent person only if the agency's primary business is not the provision of health care or reimbursement for health care services.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0521, effective April 2, 2015.

Sec. 181.054. Workers' Compensation.

This chapter does not apply to:

(1) workers' compensation insurance or a function authorized by Title 5, Labor Code; or

(2) any person or entity in connection with providing, administering, supporting, or coordinating any of the benefits under a self-insured program for workers' compensation.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001.

Sec. 181.055. Employee Benefit Plan.

This chapter does not apply to:

(1) an employee benefit plan; or

(2) any covered entity or other person, insofar as the entity or person is acting in connection with an employee benefit plan.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001.

Sec. 181.056. American Red Cross.

This chapter does not prohibit the American Red Cross from accessing any information necessary to perform its

duties to provide biomedical services, disaster relief, disaster communication, or emergency leave verification services for military personnel.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 924 (S.B. 1136), § 5, effective September 1, 2003.

Sec. 181.057. Information Relating to Offenders with Mental Impairments.

This chapter does not apply to an agency described by Section 614.017 with respect to the disclosure, receipt, transfer, or exchange of medical and health information and records relating to individuals in the custody of an agency or in community supervision.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001.

Sec. 181.058. Educational Records.

In this chapter, protected health information does not include:

(1) education records covered by the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) and its subsequent amendments; or

(2) records described by 20 U.S.C. Section 1232g(a)(4)(B)(iv) and its subsequent amendments.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001.

Sec. 181.059. Crime Victim Compensation. [Effective until January 1, 2021]

This chapter does not apply to any person or entity in connection with providing, administering, supporting, or coordinating any of the benefits regarding compensation to victims of crime as provided by Subchapter B, Chapter 56, Code of Criminal Procedure.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 5, effective September 1, 2012.

Sec. 181.059. Crime Victim Compensation. [Effective January 1, 2021]

This chapter does not apply to any person or entity in connection with providing, administering, supporting, or coordinating any of the benefits regarding compensation to victims of crime as provided by Chapter 56B, Code of Criminal Procedure.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 5, effective September 1, 2012; am. Acts 2019, 86th Leg., ch. 469 (H.B. 4173), § 2.53, effective January 1, 2021.

Secs. 181.060 to 181.100. [Reserved for expansion].

Subchapter C

Access to and Use of Protected Health Information

Sec. 181.101. Training Required.

(a) Each covered entity shall provide training to employees of the covered entity regarding the state and federal law concerning protected health information as necessary and appropriate for the employees to carry out the employees' duties for the covered entity.

(b) An employee of a covered entity must complete training described by Subsection (a) not later than the 90th day after the date the employee is hired by the covered entity.

(c) If the duties of an employee of a covered entity are affected by a material change in state or federal law concerning protected health information, the employee shall receive training described by Subsection (a) within a reasonable period, but not later than the first anniversary of the date the material change in law takes effect.

(d) A covered entity shall require an employee of the entity who receives training described by Subsection (a) to sign, electronically or in writing, a statement verifying the employee's completion of training. The covered entity shall maintain the signed statement until the sixth anniversary of the date the statement is signed.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 6, effective September 1, 2012; am. Acts 2013, 83rd Leg., ch. 1367 (S.B. 1609), § 1, effective June 14, 2013.

Sec. 181.102. Consumer Access to Electronic Health Records.

(a) Except as provided by Subsection (b), if a health care provider is using an electronic health records system that is capable of fulfilling the request, the health care provider, not later than the 15th business day after the date the health care provider receives a written request from a person for the person's electronic health record, shall provide the requested record to the person in electronic form unless the person agrees to accept the record in another form.

(b) A health care provider is not required to provide access to a person's protected health information that is excepted from access, or to which access may be denied, under 45 C.F.R. Section 164.524.

(c) For purposes of Subsection (a), the executive commissioner, in consultation with the department, the Texas Medical Board, and the Texas Department of Insurance, by rule may recommend a standard electronic format for the release of requested health records. The standard electronic format recommended under this section must be consistent, if feasible, with federal law regarding the release of electronic health records.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 6, effective September 1, 2012; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0522, effective April 2, 2015.

Sec. 181.103. Consumer Information Website.

The attorney general shall maintain an Internet website that provides:

- (1) information concerning a consumer's privacy rights regarding protected health information under federal and state law;
- (2) a list of the state agencies, including the department, the Texas Medical Board, and the Texas Department of Insurance, that regulate covered entities in this state and the types of entities each agency regulates;
- (3) detailed information regarding each agency's complaint enforcement process; and
- (4) contact information, including the address of the agency's Internet website, for each agency listed under Subdivision (2) for reporting a violation of this chapter.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 6, effective September 1, 2012; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0523, effective April 2, 2015.

Sec. 181.104. Consumer Complaint Report by Attorney General.

(a) The attorney general annually shall submit to the legislature a report describing:

- (1) the number and types of complaints received by the attorney general and by the state agencies receiving consumer complaints under Section 181.103; and
- (2) the enforcement action taken in response to each complaint reported under Subdivision (1).

(b) Each state agency that receives consumer complaints under Section 181.103 shall submit to the attorney general, in the form required by the attorney general, the information the attorney general requires to compile the report required by Subsection (a).

(c) The attorney general shall de-identify protected health information from the individual to whom the information pertains before including the information in the report required by Subsection (a).

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 6, effective September 1, 2012.

Secs. 181.105 to 181.150. [Reserved for expansion].

Subchapter D

Prohibited Acts

Sec. 181.151. Reidentified Information.

A person may not reidentify or attempt to reidentify an individual who is the subject of any protected health information without obtaining the individual's consent or authorization if required under this chapter or other state or federal law.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001.

Sec. 181.152. Marketing Uses of Information.

(a) A covered entity must obtain clear and unambiguous permission in written or electronic form to use or disclose protected health information for any marketing communication, except if the communication is:

- (1) in the form of a face-to-face communication made by a covered entity to an individual;
- (2) in the form of a promotional gift of nominal value provided by the covered entity;
- (3) necessary for administration of a patient assistance program or other prescription drug savings or discount program; or
- (4) made at the oral request of the individual.

(b) If a covered entity uses or discloses protected health information to send a written marketing communication through the mail, the communication must be sent in an envelope showing only the names and addresses of sender and recipient and must:

- (1) state the name and toll-free number of the entity sending the marketing communication; and
- (2) explain the recipient's right to have the recipient's name removed from the sender's mailing list.

(c) A person who receives a request under Subsection (b)(2) to remove a person's name from a mailing list shall remove the person's name not later than the 45th day after the date the person receives the request.

(d) A marketing communication made at the oral request of the individual under Subsection (a)(4) may be made only if clear and unambiguous oral permission for the use or disclosure of the protected health information is obtained. The marketing communication must be limited to the scope of the oral permission and any further marketing communication must comply with the requirements of this section.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 924 (S.B. 1136), § 6, effective January 1, 2004.

Sec. 181.153. Sale of Protected Health Information Prohibited; Exceptions.

(a) A covered entity may not disclose an individual's protected health information to any other person in exchange for direct or indirect remuneration, except that a covered entity may disclose an individual's protected health information:

(1) to another covered entity, as that term is defined by Section 181.001, or to a covered entity, as that term is defined by Section 602.001, Insurance Code, for the purpose of:

- (A) treatment;
- (B) payment;
- (C) health care operations; or
- (D) performing an insurance or health maintenance organization function described by Section 602.053, Insurance Code; or

(2) as otherwise authorized or required by state or federal law.

(b) The direct or indirect remuneration a covered entity receives for making a disclosure of protected health information authorized by Subsection (a)(1)(D) may not exceed the covered entity's reasonable costs of preparing or transmitting the protected health information.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 7, effective September 1, 2012.

Sec. 181.154. Notice and Authorization Required for Electronic Disclosure of Protected Health Information; Exceptions.

(a) A covered entity shall provide notice to an individual for whom the covered entity creates or receives protected health information if the individual's protected health information is subject to electronic disclosure. A covered entity may provide general notice by:

- (1) posting a written notice in the covered entity's place of business;
- (2) posting a notice on the covered entity's Internet website; or
- (3) posting a notice in any other place where individuals whose protected health information is subject to electronic disclosure are likely to see the notice.

(b) Except as provided by Subsection (c), a covered entity may not electronically disclose an individual's protected health information to any person without a separate authorization from the individual or the individual's

legally authorized representative for each disclosure. An authorization for disclosure under this subsection may be made in written or electronic form or in oral form if it is documented in writing by the covered entity.

(c) The authorization for electronic disclosure of protected health information described by Subsection (b) is not required if the disclosure is made:

(1) to another covered entity, as that term is defined by Section 181.001, or to a covered entity, as that term is defined by Section 602.001, Insurance Code, for the purpose of:

- (A) treatment;
- (B) payment;
- (C) health care operations; or
- (D) performing an insurance or health maintenance organization function described by Section 602.053, Insurance Code; or

(2) as otherwise authorized or required by state or federal law.

(d) The attorney general shall adopt a standard authorization form for use in complying with this section. The form must comply with the Health Insurance Portability and Accountability Act and Privacy Standards and this chapter.

(e) This section does not apply to a covered entity, as defined by Section 602.001, Insurance Code, if that entity is not a covered entity as defined by 45 C.F.R. Section 160.103.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 7, effective September 1, 2012.

Secs. 181.155 to 181.200. [Reserved for expansion].

Subchapter E

Enforcement

Sec. 181.201. Injunctive Relief; Civil Penalty.

(a) The attorney general may institute an action for injunctive relief to restrain a violation of this chapter.

(b) In addition to the injunctive relief provided by Subsection (a), the attorney general may institute an action for civil penalties against a covered entity for a violation of this chapter. A civil penalty assessed under this section may not exceed:

- (1) \$5,000 for each violation that occurs in one year, regardless of how long the violation continues during that year, committed negligently;
- (2) \$25,000 for each violation that occurs in one year, regardless of how long the violation continues during that year, committed knowingly or intentionally; or
- (3) \$250,000 for each violation in which the covered entity knowingly or intentionally used protected health information for financial gain.

(b-1) The total amount of a penalty assessed against a covered entity under Subsection (b) in relation to a violation or violations of Section 181.154 may not exceed \$250,000 annually if the court finds that the disclosure was made only to another covered entity and only for a purpose described by Section 181.154(c) and the court finds that:

(1) the protected health information disclosed was encrypted or transmitted using encryption technology designed to protect against improper disclosure;

(2) the recipient of the protected health information did not use or release the protected health information; or

(3) at the time of the disclosure of the protected health information, the covered entity had developed, implemented, and maintained security policies, including the education and training of employees responsible for the security of protected health information.

(c) If the court in which an action under Subsection (b) is pending finds that the violations have occurred with a frequency as to constitute a pattern or practice, the court may assess a civil penalty not to exceed \$1.5 million annually.

(d) In determining the amount of a penalty imposed under Subsection (b), the court shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the disclosure;

(2) the covered entity's compliance history;

(3) whether the violation poses a significant risk of financial, reputational, or other harm to an individual whose protected health information is involved in the violation;

(4) whether the covered entity was certified at the time of the violation as described by Section 182.108;

(5) the amount necessary to deter a future violation; and

(6) the covered entity's efforts to correct the violation.

(e) The attorney general may institute an action against a covered entity that is licensed by a licensing agency of this state for a civil penalty under this section only if the licensing agency refers the violation to the attorney general under Section 181.202(2).

(f) The office of the attorney general may retain a reasonable portion of a civil penalty recovered under this section, not to exceed amounts specified in the General Appropriations Act, for the enforcement of this subchapter.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001; am. Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 8, effective September 1, 2012.

Sec. 181.202. Disciplinary Action.

In addition to the penalties prescribed by this chapter, a violation of this chapter by a covered entity that is licensed by an agency of this state is subject to investigation and disciplinary proceedings, including probation or suspension by the licensing agency. If there is evidence that the violations of this chapter are egregious and constitute a pattern or practice, the agency may:

(1) revoke the covered entity's license; or

(2) refer the covered entity's case to the attorney general for the institution of an action for civil penalties under Section 181.201(b).

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001; am. Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 9, effective September 1, 2012.

Sec. 181.203. Exclusion from State Programs.

In addition to the penalties prescribed by this chapter, a

covered entity shall be excluded from participating in any state-funded health care program if a court finds the covered entity engaged in a pattern or practice of violating this chapter.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001.

Sec. 181.204. Availability of Other Remedies [Repealed].

Repealed by Acts 2003, 78th Leg., ch. 924 (S.B. 1136), § 9, effective September 1, 2003.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001.

Sec. 181.205. Mitigation.

(a) In an action or proceeding to impose an administrative penalty or assess a civil penalty for actions related to the disclosure of individually identifiable health information, a covered entity may introduce, as mitigating evidence, evidence of the entity's good faith efforts to comply with:

(1) state law related to the privacy of individually identifiable health information; or

(2) the Health Insurance Portability and Accountability Act and Privacy Standards.

(b) In determining the amount of a penalty imposed under other law in accordance with Section 181.202, a court or state agency shall consider the following factors:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the disclosure;

(2) the covered entity's compliance history;

(3) whether the violation poses a significant risk of financial, reputational, or other harm to an individual whose protected health information is involved in the violation;

(4) whether the covered entity was certified at the time of the violation as described by Section 182.108;

(5) the amount necessary to deter a future violation; and

(6) the covered entity's efforts to correct the violation.

(c) On receipt of evidence under Subsections (a) and (b), a court or state agency shall consider the evidence and mitigate imposition of an administrative penalty or assessment of a civil penalty accordingly.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 924 (S.B. 1136), § 7, effective September 1, 2003; am. Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 10, effective September 1, 2012.

Sec. 181.206. Audits of Covered Entities.

(a) The commission, in coordination with the attorney general and the Texas Department of Insurance:

(1) may request that the United States secretary of health and human services conduct an audit of a covered entity, as that term is defined by 45 C.F.R. Section 160.103, in this state to determine compliance with the Health Insurance Portability and Accountability Act and Privacy Standards; and

(2) shall periodically monitor and review the results of audits of covered entities in this state conducted by the United States secretary of health and human services.

(a-1) [Expires September 1, 2021] Notwithstanding Subsection (a), the commission shall also coordinate with the Texas Health Services Authority when requesting an audit or monitoring and reviewing the results of an audit under Subsection (a). This subsection expires September 1, 2021.

(b) If the commission has evidence that a covered entity has committed violations of this chapter that are egregious and constitute a pattern or practice, the commission may:

(1) require the covered entity to submit to the commission the results of a risk analysis conducted by the covered entity if required by 45 C.F.R. Section 164.308(a)(1)(ii)(A); or

(2) if the covered entity is licensed by a licensing agency of this state, request that the licensing agency conduct an audit of the covered entity's system to determine compliance with the provisions of this chapter.

(c) The commission annually shall submit to the appropriate standing committees of the senate and the house of representatives a report regarding the number of federal audits of covered entities in this state and the number of audits required under Subsection (b).

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 11, effective September 1, 2012; am. Acts 2015, 84th Leg., ch. 12 (S.B. 203), § 2, effective September 1, 2015.

Sec. 181.207. Funding.

(a) The commission and the Texas Department of Insurance shall apply for and actively pursue available federal funding for enforcement of this chapter.

(b) [Expires September 1, 2021] Notwithstanding Subsection (a), the commission and the Texas Department of Insurance shall consult with the Texas Health Services Authority when applying for or pursuing federal funding under Subsection (a). This subsection expires September 1, 2021.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 11, effective September 1, 2012; am. Acts 2015, 84th Leg., ch. 12 (S.B. 203), § 3, effective September 1, 2015.

Secs. 181.208 to 181.250. [Reserved for expansion].

Subchapter F

*Preemption of State Law
[Expired]*

Sec. 181.251. State Law Preemption Analysis [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 924 (S.B. 1136), § 8, effective September 1, 2005.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 924 (S.B. 1136), § 8, effective September 1, 2003.

Sec. 181.252. Task Force [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 924 (S.B. 1136), § 8, effective September 1, 2005.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 924 (S.B. 1136), § 8, effective September 1, 2003.

Sec. 181.253. Report to Legislature [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 924 (S.B. 1136), § 8, effective September 1, 2005.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 924 (S.B. 1136), § 8, effective September 1, 2003.

Sec. 181.254. Expiration [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 924 (S.B. 1136), § 8, effective September 1, 2005.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 924 (S.B. 1136), § 8, effective September 1, 2003.

CHAPTER 182

Electronic Exchange of Health Information

Subchapter A. General Provisions [Expires September 1, 2021]

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182.003.	[Expires September 1, 2021] Expiration of Subchapter. [Repealed]
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Subchapter B. Administration [Expires September 1, 2021]

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182.059.	Chief Executive Officer; Personnel.
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182.103.	[Expires September 1, 2021] Privacy of Information.
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Subchapter D. Health Information Exchanges

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*Subchapter A**General Provisions [Expires September 1, 2021]***Sec. 182.001. [Expires September 1, 2021] Purpose.**

This chapter establishes the Texas Health Services Authority as a public-private collaborative to implement the state-level health information technology functions identified by the Texas Health Information Technology Advisory Committee by serving as a catalyst for the development of a seamless electronic health information infrastructure to support the health care system in the state and to improve patient safety and quality of care.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 845 (H.B. 1066), § 1, effective June 15, 2007.

Sec. 182.002. [Expires September 1, 2021] Definitions.

In this chapter:

(1) "Board" means the board of directors of the corporation.

(2) "Corporation" means the Texas Health Services Authority.

(2-a) "Covered entity" has the meaning assigned by Section 181.001.

(3) "De-identified protected health information" means protected health information that is not individually identifiable health information as that term is defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

(3-a) "Disclose" has the meaning assigned by Section 181.001.

(3-b) "Health Insurance Portability and Accountability Act and Privacy Standards" has the meaning assigned by Section 181.001.

(4) "Individually identifiable health information" means individually identifiable health information as that term is defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

(5) "Physician" means:

(A) an individual licensed to practice medicine in this state under the authority of Subtitle B, Title 3, Occupations Code;

(B) a professional entity organized in conformity with Title 7, Business Organizations Code, and permitted to practice medicine under Subtitle B, Title 3, Occupations Code;

(C) a partnership organized in conformity with Title 4, Business Organizations Code, composed entirely of individuals licensed to practice medicine under Subtitle B, Title 3, Occupations Code;

(D) an approved nonprofit health corporation certified under Chapter 162, Occupations Code;

(E) a medical school or medical and dental unit, as defined or described by Section 61.003, 61.501, or 74.601, Education Code, that employs or contracts

with physicians to teach or provide medical services or employs physicians and contracts with physicians in a practice plan; or

(F) an entity wholly owned by individuals licensed to practice medicine under Subtitle B, Title 3, Occupations Code.

(6) "Protected health information" means protected health information as that term is defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 845 (H.B. 1066), § 1, effective June 15, 2007; am. Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 12, effective September 1, 2012.

Sec. 182.003. [Expires September 1, 2021] Expiration of Subchapter. [Repealed]

HISTORY: Repealed by Acts 2019, 86th Leg., ch. 1169 (H.B. 3304), § 2(1), effective September 1, 2019.

Sec. 182.004. Application of Sunset Act.

The Texas Health Services Authority is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the corporation is abolished and this section, Section 182.001, and Subchapters B and C expire September 1, 2027.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1169 (H.B. 3304), § 1, effective September 1, 2019.

Secs. 182.004 to 182.050. [Reserved for expansion].*Subchapter B**Administration [Expires September 1, 2021]***Sec. 182.051. [Expires September 1, 2021] Texas Health Services Authority; Purpose.**

(a) The corporation is established to:

(1) promote, implement, and facilitate the voluntary and secure electronic exchange of health information; and

(2) create incentives to promote, implement, and facilitate the voluntary and secure electronic exchange of health information.

(b) The corporation is a public nonprofit corporation and, except as otherwise provided in this chapter, has all the powers and duties incident to a nonprofit corporation under the Business Organizations Code.

(c) The corporation is subject to state law governing nonprofit corporations, except that:

(1) the corporation may not be placed in receivership; and

(2) the corporation is not required to make reports to the secretary of state under Section 22.357, Business Organizations Code.

(d) Except as otherwise provided by law, all expenses of the corporation shall be paid from income of the corporation.

(e) The corporation is subject to Chapter 551, Government Code.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 845 (H.B. 1066), § 1, effective June 15, 2007.

Sec. 182.052. [Expires September 1, 2021] Expiration of Subchapter. [Repealed]

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 845 (H.B. 1066), § 1, effective June 15, 2007; am. Acts 2009, 81st Leg., 1st C.S., ch. 2 (S.B. 2), § 2.08, effective July 10, 2009; am. Acts 2011, 82nd Leg., ch. 1232 (S.B. 652), § 2.09, effective June 17, 2011; Repealed by Acts 2019, 86th Leg., ch. 1169 (H.B. 3304), § 2(2), effective September 1, 2019.

Sec. 182.053. Composition of Board of Directors.

(a) The corporation is governed by a board of 12 directors appointed by the governor, with the advice and consent of the senate.

(b) The governor shall also appoint at least two ex officio, nonvoting members representing the health and human services agencies as state agency data resources.

(b-1) The governor shall appoint as a voting board member one individual who represents Texas local health information exchanges.

(c) The governor shall appoint as voting board members individuals who represent consumers, clinical laboratories, health benefit plans, hospitals, regional health information exchange initiatives, pharmacies, physicians, or rural health providers, or who possess expertise in any other area the governor finds necessary for the successful operation of the corporation.

(d) An individual may not serve on the board of the corporation if the individual serves on the board of any other governmental body in this state.

(e) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(f) An individual may not serve on the board of the corporation, in any capacity, if the individual has made a gift or grant, in cash or in kind, to the corporation.

(g) An individual may not serve on the board of the corporation, in any capacity, if the individual 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 or entity that is engaged in the providing of health care, the review or analysis of health care, the payment for health care services or procedures, or the providing of information technology.

(h) In this section, "health and human services agencies" includes the:

- (1) department;
- (2) Department of Aging and Disability Services;
- (3) Department of Assistive and Rehabilitative Services;
- (4) Department of Family and Protective Services; and
- (5) commission.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 845 (H.B. 1066), § 1, effective June 15, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0524, effective April 2, 2015; am. Acts 2015, 84th Leg., ch. 12 (S.B. 203), § 7, effective September 1, 2015.

Sec. 182.054. Terms of Office.

Appointed members of the board serve two-year terms and may continue to serve until a successor has been appointed by the governor.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 845 (H.B. 1066), § 1, effective June 15, 2007.

Sec. 182.055. Expenses.

Members of the board serve without compensation but are entitled to reimbursement for actual and necessary expenses in attending meetings of the board or performing other official duties authorized by the presiding officer.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 845 (H.B. 1066), § 1, effective June 15, 2007.

Sec. 182.056. Officers; Conflict of Interest.

(a) The governor shall designate a member of the board as presiding officer to serve in that capacity at the pleasure of the governor.

(b) Any board member or a member of a committee formed by the board with direct interest in a matter, personally or through an employer, before the board shall abstain from deliberations and actions on the matter in which the conflict of interest arises and shall further abstain on any vote on the matter, and may not otherwise participate in a decision on the matter.

(c) Each board member shall file a conflict of interest statement and a statement of ownership interests with the board to ensure disclosure of all existing and potential personal interests related to board business.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 845 (H.B. 1066), § 1, effective June 15, 2007.

Sec. 182.057. Prohibition on Certain Contracts and Employment.

The board may not compensate, employ, or contract with any individual who serves as a member of the board or advisory council to any other governmental body, including any agency, council, or committee, in this state.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 845 (H.B. 1066), § 1, effective June 15, 2007.

Sec. 182.058. Meetings.

(a) The board may meet as often as necessary, but shall meet at least twice a year.

(b) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the authority of the corporation.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 845 (H.B. 1066), § 1, effective June 15, 2007.

Sec. 182.059. Chief Executive Officer; Personnel.

The board may hire a chief executive officer. Under the direction of the board, the chief executive officer shall perform the duties required by this chapter or designated by the board. The chief executive officer may hire additional staff to carry out the responsibilities of the corporation.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 845 (H.B. 1066), § 1, effective June 15, 2007.

Sec. 182.060. Technology Policy.

The board shall implement a policy requiring the corporation to use appropriate technological solutions to im-

prove the corporation's ability to perform its functions. The policy must ensure that the public is able to interact with the corporation on the Internet.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 845 (H.B. 1066), § 1, effective June 15, 2007.

Sec. 182.061. Liabilities of Authority.

Liabilities created by the corporation are not debts or obligations of the state, and the corporation may not secure any liability with funds or assets of the state except as otherwise provided by law.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 845 (H.B. 1066), § 1, effective June 15, 2007.

Sec. 182.062. Board Member Immunity.

(a) A board member may not be held civilly liable for an act performed, or omission made, in good faith in the performance of the member's powers and duties under this chapter.

(b) A cause of action does not arise against a member of the board for an act or omission described by Subsection (a).

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 845 (H.B. 1066), § 1, effective June 15, 2007.

Secs. 182.063 to 182.100. [Reserved for expansion].

*Subchapter C
Powers and Duties*

Sec. 182.101. [Expires September 1, 2021] General Powers and Duties.

(a) The corporation may:

(1) establish statewide health information exchange capabilities, including capabilities for electronic laboratory results, diagnostic studies, and medication history delivery, and, where applicable, promote definitions and standards for electronic interactions statewide;

(2) seek funding to:

(A) implement, promote, and facilitate the voluntary exchange of secure electronic health information between and among individuals and entities that are providing or paying for health care services or procedures; and

(B) create incentives to implement, promote, and facilitate the voluntary exchange of secure electronic health information between and among individuals and entities that are providing or paying for health care services or procedures;

(3) establish statewide health information exchange capabilities for streamlining health care administrative functions including:

(A) communicating point of care services, including laboratory results, diagnostic imaging, and prescription histories;

(B) communicating patient identification and emergency room required information in conformity with state and federal privacy laws;

(C) real-time communication of enrollee status in relation to health plan coverage, including enrollee cost-sharing responsibilities; and

(D) current census and status of health plan contracted providers;

(4) support regional health information exchange initiatives by:

(A) identifying data and messaging standards for health information exchange;

(B) administering programs providing financial incentives, including grants and loans for the creation and support of regional health information networks, subject to available funds;

(C) providing technical expertise where appropriate;

(D) sharing intellectual property developed under Section 182.105;

(E) waiving the corporation's fees associated with intellectual property, data, expertise, and other services or materials provided to regional health information exchanges operated on a nonprofit basis; and

(F) applying operational and technical standards developed by the corporation to existing health information exchanges only on a voluntary basis, except for standards related to ensuring effective privacy and security of individually identifiable health information;

(5) identify standards for streamlining health care administrative functions across payors and providers, including electronic patient registration, communication of enrollment in health plans, and information at the point of care regarding services covered by health plans; and

(6) support the secure, electronic exchange of health information through other strategies identified by the board.

(b) [Repealed.]

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 845 (H.B. 1066), § 1, effective June 15, 2007; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 12.003, effective September 1, 2009; am. Acts 2019, 86th Leg., ch. 1169 (H.B. 3304), § 2(3), effective September 1, 2019.

Sec. 182.102. [Expires September 1, 2021] Prohibited Acts.

(a) The corporation has no authority and shall not engage in any of the following:

(1) the collection and analysis of clinical data;

(2) the comparison of physicians to other physicians, including comparisons to peer group physicians, physician groups, and physician teams, and to national specialty society adopted quality measurements;

(3) the creation of a tool to measure physician performance compared to:

(A) peer group physicians on state and specialty levels; or

(B) objective standards;

(4) the providing of access to aggregated, de-identified protected health information to local health information exchanges and other users of quality care studies, disease management and population health assessments;

(5) providing to public health programs trended, aggregated, de-identified protected health information to help assess the health status of populations and the providing of regular reports of trends and important

incidence of events to public health avenues for intervention, education, and prevention programs; or

(6) the creation of evidence-based standards for the practice of medicine.

(b) The corporation has no authority and shall not disseminate information, in any manner, to the public that compares, rates, tiers, classifies, measures, or ranks a physician's performance, efficiency, or quality of practice.

(c) [Repealed.]

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 845 (H.B. 1066), § 1, effective June 15, 2007; am. Acts 2019, 86th Leg., ch. 1169 (H.B. 3304), § 2(4), effective September 1, 2019.

Sec. 182.103. [Expires September 1, 2021] Privacy of Information.

(a) Protected health information and individually identifiable health information collected, assembled, or maintained by the corporation is confidential and is not subject to disclosure under Chapter 552, Government Code.

(b) The corporation shall comply with all state and federal laws and rules relating to the transmission of health information, including Chapter 181, and rules adopted under that chapter, and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and rules adopted under that Act.

(c) The corporation shall develop privacy, security, operational, and technical standards to assist health information networks in the state to ensure effective statewide privacy, data security, efficiency, and interoperability across networks. The network's standards shall be guided by reference to the standards of the Certification Commission for Healthcare Information Technology or the Health Information Technology Standards Panel, or other federally approved certification standards, that exist on May 1, 2007, as to the process of implementation, acquisition, upgrade, or installation of electronic health information technology.

(d) [Repealed.]

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 845 (H.B. 1066), § 1, effective June 15, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0525, effective April 2, 2015; am. Acts 2015, 84th Leg., ch. 12 (S.B. 203), § 10, effective September 1, 2015; am. Acts 2019, 86th Leg., ch. 1169 (H.B. 3304), § 2(5), effective September 1, 2019.

Sec. 182.104. [Expires September 1, 2021] Security Compliance.

(a) The corporation shall:

(1) establish appropriate security standards to protect both the transmission and the receipt of individually identifiable health information or health care data;

(2) establish appropriate security standards to protect access to any individually identifiable health information or health care data collected, assembled, or maintained by the corporation;

(3) establish the highest levels of security and protection for access to and control of individually identifiable health information, including mental health care data and data relating to specific disease status, that is governed by more stringent state or federal privacy laws; and

(4) establish policies and procedures for the corporation for taking disciplinary actions against a board

member, employee, or other person with access to individually identifiable health care information that violates state or federal privacy laws related to health care information or data maintained by the corporation.

(b) [Repealed.]

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 845 (H.B. 1066), § 1, effective June 15, 2007; am. Acts 2019, 86th Leg., ch. 1169 (H.B. 3304), § 2(6), effective September 1, 2019.

Sec. 182.105. [Expires September 1, 2021] Intellectual Property.

(a) The corporation shall take commercially reasonable measures to protect its intellectual property, including obtaining patents, trademarks, and copyrights where appropriate.

(b) [Repealed.]

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 845 (H.B. 1066), § 1, effective June 15, 2007; am. Acts 2019, 86th Leg., ch. 1169 (H.B. 3304), § 2(7), effective September 1, 2019.

Sec. 182.106. [Expires September 1, 2021] Annual Report.

(a) The corporation shall submit an annual report to the governor, the lieutenant governor, the speaker of the house of representatives, and the appropriate oversight committee in the senate and the house of representatives. The annual report must include financial information and a progress update on the corporation's efforts to carry out its mission.

(b) [Repealed.]

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 845 (H.B. 1066), § 1, effective June 15, 2007; am. Acts 2019, 86th Leg., ch. 1169 (H.B. 3304), § 2(8), effective September 1, 2019.

Sec. 182.107. [Expires September 1, 2021] Funding.

(a) The corporation may be funded through the General Appropriations Act and may request, accept, and use gifts and grants as necessary to implement its functions.

(b) The corporation may assess transaction, convenience, or subscription fees to cover costs associated with implementing its functions. All fees must be voluntary but receipt of services provided by the corporation may be conditioned on payment of fees.

(c) The corporation may participate in other revenue-generating activities that are consistent with the corporation's purposes.

(d) [Repealed.]

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 845 (H.B. 1066), § 1, effective June 15, 2007; am. Acts 2019, 86th Leg., ch. 1169 (H.B. 3304), § 2(9), effective September 1, 2019.

Sec. 182.108. Standards for Electronic Sharing of Protected Health Information; Covered Entity Certification.

(a) The corporation shall develop and submit to the commission for ratification privacy and security standards for the electronic sharing of protected health information.

(b) The commission shall review and the executive commissioner by rule shall adopt acceptable standards submitted for ratification under Subsection (a).

(c) Standards adopted under Subsection (b) must be designed to:

(1) comply with the Health Insurance Portability and Accountability Act and Privacy Standards and Chapter 181;

(2) comply with any other state and federal law relating to the security and confidentiality of information electronically maintained or disclosed by a covered entity;

(3) ensure the secure maintenance and disclosure of personally identifiable health information;

(4) include strategies and procedures for disclosing personally identifiable health information; and

(5) support a level of system interoperability with existing health record databases in this state that is consistent with emerging standards.

(d) The corporation shall establish a process by which a covered entity may apply for certification by the corporation of a covered entity's past compliance with standards adopted under Subsection (b).

(e) The corporation shall publish the standards adopted under Subsection (b) on the corporation's Internet website.

(f) [Repealed.]

(g) [Repealed.]

(h) [Repealed.]

(i) [Repealed.]

(j) [Repealed.]

(k) [Repealed.]

(l) [Repealed.]

(m) [Repealed.]

(n) [Repealed.]

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 13, effective September 1, 2012; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0526, effective April 2, 2015; am. Acts 2015, 84th Leg., ch. 12 (S.B. 203), § 15(a), effective September 1, 2015; am. Acts 2015, 84th Leg., ch. 12 (S.B. 203), § 15(b), effective September 1, 2021; am. Acts 2019, 86th Leg., ch. 1169 (H.B. 3304), §§ 2(10), 3, effective September 1, 2019.

Subchapter D.

Health Information Exchanges

Sec. 182.151. Definition.

In this subchapter, "health information exchange" means an organization that:

(1) assists in the transmission or receipt of health-related information among organizations transmitting or receiving the information according to nationally recognized standards and under an express written agreement with the organizations;

(2) as a primary business function, compiles or organizes health-related information designed to be securely transmitted by the organization among physicians, other health care providers, or entities within a region, state, community, or hospital system; or

(3) assists in the transmission or receipt of electronic health-related information among physicians, other health care providers, or entities within:

(A) a hospital system;

(B) a physician organization;

(C) a health care collaborative, as defined by Section 848.001, Insurance Code;

(D) an accountable care organization participating in the Pioneer Model under the initiative by the

Innovation Center of the Centers for Medicare and Medicaid Services; or

(E) an accountable care organization participating in the Medicare Shared Savings Program under 42 U.S.C. Section 1395jii.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1085 (H.B. 2641), § 11, effective September 1, 2015.

Sec. 182.152. Authority of Health Information Exchange.

(a) Notwithstanding Sections 81.046, 82.009, 161.0073, and 161.008, a health information exchange may access and transmit health-related information under Sections 81.044(a), 82.008(a), 161.007(d), 161.00705(a), 161.00706(b), and 161.008(i) if the access or transmittal is:

(1) made for the purpose of assisting in the reporting of health-related information to the appropriate agency;

(2) requested and authorized by the appropriate health care provider, practitioner, physician, facility, clinical laboratory, or other person who is required to report health-related information;

(3) made in accordance with the applicable consent requirements for the immunization registry under Subchapter A, Chapter 161, if the information being accessed or transmitted relates to the immunization registry; and

(4) made in accordance with the requirements of this subchapter and all other state and federal law.

(b) A health information exchange may only use and disclose the information that it accesses or transmits under Subsection (a) in compliance with this subchapter and all applicable state and federal law, and may not exchange, sell, trade, or otherwise make any prohibited use or disclosure of the information.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1085 (H.B. 2641), § 11, effective September 1, 2015.

Sec. 182.153. Compliance with Law; Security.

A health information exchange that collects, transmits, disseminates, accesses, or reports health-related information under this subchapter shall comply with all applicable state and federal law, including secure electronic data submission requirements.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1085 (H.B. 2641), § 11, effective September 1, 2015.

Sec. 182.154. Criminal Penalty.

(a) A person who collects, transmits, disseminates, accesses, or reports information under this subchapter on behalf of or as a health information exchange commits an offense if the person, with the intent to violate this subchapter, allows health-related information in the possession of a health information exchange to be used or disclosed in a manner that violates this subchapter.

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

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1085 (H.B. 2641), § 11, effective September 1, 2015.

Sec. 182.155. Immunities and Defenses Continued.

Collecting, transmitting, disseminating, accessing, or reporting information through a health information ex-

change does not alone deprive a physician or health care provider of an otherwise applicable immunity or defense.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1085 (H.B. 2641), § 11, effective September 1, 2015.

TITLE 4

HEALTH FACILITIES

Subtitle	
B.	Licensing of Health Facilities
C.	Local Hospitals
F.	Powers and Duties of Hospitals
G.	Provision of Services In Certain Facilities

SUBTITLE B

LICENSING OF HEALTH FACILITIES

Chapter	
242.	Convalescent and Nursing Facilities and Related Institutions
252.	Intermediate Care Facilities for Individuals with an Intellectual Disability

CHAPTER 242

Convalescent and Nursing Facilities and Related Institutions

Subchapter F

Medical, Nursing, and Dental Services Other Than Administration of Medication

Section	
242.158.	Identification of Certain Nursing Facility Residents Requiring Mental Health or Intellectual Disability Services.

Sec. 242.158. Identification of Certain Nursing Facility Residents Requiring Mental Health or Intellectual Disability Services.

(a) Each resident of a nursing facility who is considering making a transition to a community-based care setting shall be identified to determine the presence of a mental illness or intellectual disability, regardless of whether the resident is receiving treatment or services for a mental illness or intellectual disability.

(b) In identifying residents having a mental illness or intellectual disability, the department shall use an identification process that is at least as effective as the mental health and intellectual disability 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 facility unless the nursing facility is unable to provide adequate care for the resident.

(c) The department shall compile information regarding each resident identified as having a mental illness or intellectual disability before the resident makes a transition from the nursing facility to a community-based care setting. The department shall provide to the Department of State Health Services information regarding each resident identified as having a mental illness.

(d) The department and the Department of State Health Services shall use the information compiled and provided under Subsection (c) solely for the purposes of:

(1) determining the need for and funding levels of mental health and intellectual disability services for residents making a transition from a nursing facility to a community-based care setting;

(2) providing mental health or intellectual disability services to an identified resident after the resident makes that transition; and

(3) referring an identified resident to a local mental health or local intellectual and developmental disability authority or private provider for additional mental health or intellectual disability services.

(e) This section does not authorize the department to decide for a resident of a nursing facility that the resident will make a transition from the nursing facility to a community-based care setting.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 423 (H.B. 2258), § 1, effective September 1, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0631, effective April 2, 2015.

CHAPTER 252

Intermediate Care Facilities for Individuals with an Intellectual Disability

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Subchapter A

General Provisions

Sec. 252.001. Purpose.

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 individuals with an intellectual disability 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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0771, effective April 2, 2015.

Sec. 252.002. Definitions.

In this chapter:

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

(1-a) "Commissioner" means the commissioner of aging and disability services.

(2) "Department" means the Department of Aging and Disability 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.

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

(4) "Facility" means a home or an establishment that:

(A) furnishes food, shelter, and treatment or services to four or more individuals unrelated to the owner;

(B) is primarily for the diagnosis, treatment, or rehabilitation of individuals with an intellectual disability 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 an intellectual disability or a related condition who is residing in a facility licensed under this chapter.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0772, effective April 2, 2015.

Sec. 252.003. Exemptions.

Except as otherwise provided by this chapter, this chapter does not apply to:

- (1) an establishment that:
 - (A) provides training, habilitation, rehabilitation, or education to individuals with an intellectual disability or related conditions;
 - (B) is operated under the jurisdiction of a state or federal agency, including the department, commission, Department of Assistive and Rehabilitative Services, Department of State Health Services, Texas Department of Criminal Justice, and United States Department of Veterans Affairs; and
 - (C) is certified through inspection or evaluation as meeting the standards established by the state or federal agency; or
- (2) an establishment that 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 individuals who are ill and 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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.094, effective September 1, 2009; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0773, effective April 2, 2015.

Sec. 252.004. Allocated Federal Money.

The department may accept and use any money allocated by the federal government to the department for administrative expenses.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.005. Language Requirements Prohibited.

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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.006. Rights of Residents.

Each facility shall implement and enforce Chapter 102, Human Resources Code.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.007. Paperwork Reduction Rules.

(a) The executive commissioner shall adopt rules to reduce the amount of paperwork a facility must complete and retain.

(a-1) The department shall 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 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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0774, effective April 2, 2015.

Sec. 252.008. Rules Generally.

The executive commissioner shall adopt rules related to the administration and implementation of this chapter.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 160 (S.B. 83), § 1, effective September 1, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0775, effective April 2, 2015.

Sec. 252.0085. Restraint and Seclusion.

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.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 698 (S.B. 325), § 4, effective September 1, 2005.

Sec. 252.009. Consultation and Coordination.

(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, 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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0776, effective April 2, 2015.

Sec. 252.010. Change of Administrators; Fee.

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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.011. Prohibition of Remuneration.

(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).

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Secs. 252.012 to 252.030. [Reserved for expansion].

Subchapter B

Licensing, Fees, and Inspections

Sec. 252.031. License Required.

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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.0311. Person Ineligible for License.

(a) In this section, “controlling person” means a person who, 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 facility or a person who operates a facility. The term includes:

- (1) a management company or other business entity that operates or contracts with others for the operation of a facility;
- (2) a person who is a controlling person of a management company or other business entity that operates a facility or that contracts with another person for the operation of a facility; and
- (3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, or provider of a 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.

(b) A controlling person described by Subsection (a)(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 facility.

(c) The executive commissioner may adopt rules that specify the ownership interests and other relationships that qualify a person as a controlling person.

(d) A person is not eligible for a license or to renew a license if the applicant, a controlling person with respect to the applicant, or an administrator or chief financial officer of the applicant has been convicted of an offense that would bar a person’s employment at a facility in accordance with Chapter 250.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 10, effective June 11, 2009; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0777, effective April 2, 2015.

Sec. 252.032. License Application.

(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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.033. Issuance and Renewal of License.

(a) After receiving the application, the commission 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 commission 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 third 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 executive commissioner that specify the form of the report, the date it must be submitted, and the information it must contain.

(f) The commission 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 commission in accordance with Section 533A.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 executive commissioner by rule shall:

- (1) define specific, appropriate, and objective criteria on which the commission may deny an initial license application or license renewal or revoke a license; and
- (2) adopt a system under which:

(A) licenses expire on staggered dates during each three-year period; and

(B) the commission prorates the license fee as appropriate if the expiration date of a license changes as a result of the system adopted under Paragraph (A).

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 534 (S.B. 196), § 1, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0778, effective April 2, 2015; am. Acts 2017, 85th Leg., ch. 836 (H.B. 2025), § 12, effective September 1, 2017.

Sec. 252.034. License Fees.

(a) The executive commissioner by rule may adopt a fee for a license issued under this chapter. The fee may not exceed \$225 plus \$7.50 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 executive commissioner by rule 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 commission and may be appropriated to the commission 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 commission rules.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2007, 80th Leg., ch. 809 (S.B. 1318), § 19, effective September 1, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0779, effective April 2, 2015; am. Acts 2017, 85th Leg., ch. 836 (H.B. 2025), § 13, effective September 1, 2017.

Sec. 252.035. Denial, Suspension, or Revocation of License.

(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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.036. Minimum Standards.

(a) The executive commissioner may adopt 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.

(b) The department shall enforce the adopted minimum standards.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0780, effective April 2, 2015.

Sec. 252.037. Reasonable Time to Comply.

The executive commissioner 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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0781, effective April 2, 2015.

Sec. 252.0375. Early Compliance Review.

(a) The executive commissioner 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 executive commissioner 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.

(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.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 339 (S.B. 38), § 3, effective September 1, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0782, effective April 2, 2015.

Sec. 252.038. Fire Safety Requirements.

(a) A facility shall comply with fire safety requirements established under this section.

(b) The executive commissioner 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 re-

quired 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 executive commissioner.

(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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0783, effective April 2, 2015.

Sec. 252.039. Posting.

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;
- (5) a notice providing instructions for reporting an allegation of abuse, neglect, or exploitation to the Department of Family and Protective Services; and
- (6) a 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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 192 (H.B. 482), § 3, effective September 1, 2001; am. Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 11, effective June 11, 2009.

Sec. 252.040. Inspections.

(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 department 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 executive commissioner 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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 160 (S.B. 83), § 2, effective September 1, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0784, effective April 2, 2015.

Sec. 252.041. Unannounced Inspections.

(a) Each licensing period, the commission shall conduct at least three unannounced inspections of each facility.

(b) In order to ensure continuous compliance, the commission 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 commission may require additional inspections.

(d) As considered appropriate and necessary by the commission, the commission 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 an intellectual disability or a related condition.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0785, effective April 2, 2015; am. Acts 2017, 85th Leg., ch. 836 (H.B. 2025), § 14, effective September 1, 2017.

Sec. 252.042. Disclosure of Unannounced Inspections; Criminal Penalty.

(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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.043. Licensing Surveys.

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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.044. Reporting Violations.

(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.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 534 (S.B. 196), § 2, effective September 1, 1999; am. Acts 2007, 80th Leg., ch. 974 (S.B. 344), § 6, effective September 1, 2007.

Sec. 252.045. Admissibility of Certain Documents or Testimony. [Repealed]

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1284 (S.B. 1839), § 3.03, effective June 15, 2001; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(67), effective April 2, 2015.

Secs. 252.046 to 252.060. [Reserved for expansion].

Subchapter C

General Enforcement

Sec. 252.061. Emergency Suspension or Closing Order.

(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 executive commissioner 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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0786, effective April 2, 2015.

Sec. 252.062. Injunction.

(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:

(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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 192 (S.B. 1049), § 1, effective September 1, 1999.

Sec. 252.063. License Requirements; Criminal Penalty.

(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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.064. Civil Penalty.

(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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 23 (S.B. 380), § 1, effective May 3, 1999.

Sec. 252.065. Administrative Penalty.

(a) The commission 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 commission;

(3) refuses to allow a representative of the commission 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) wilfully interferes with the work of a representative of the commission or the enforcement of this chapter;

(5) wilfully interferes with a representative of the commission 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 commission 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 commission 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. Each day a violation occurs or continues is a separate violation for purposes of imposing a penalty. The total amount of a penalty assessed under this subsection for each day a violation occurs or continues may not exceed:

(1) \$5,000 for a facility with fewer than 60 beds; and

(2) \$25,000 for a facility with 60 beds or more.

(c) The executive commissioner by rule shall specify each violation for which an administrative penalty may be assessed. In determining which violations warrant penalties, the executive commissioner 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 executive commissioner 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 executive commissioner 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 the commission may assess 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 commission determines:

(1) represents a pattern of violation that results in actual harm;

(2) is widespread in scope and results in actual harm;

(3) is widespread in scope, constitutes a potential for actual harm, and relates to:

(A) staff treatment of a resident;

(B) active treatment;

(C) client behavior and facility practices;

(D) health care services;

(E) drug administration;

(F) infection control;

(G) food and nutrition services; or

(H) emergency preparedness and response;

(4) constitutes an immediate threat to the health or safety of a resident; or

(5) substantially limits the facility's capacity to provide care.

(f) The commission 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 executive commissioner 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 commission 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 commission 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.

(l) The commission shall develop and use a system to record and track the scope and severity of each violation of this chapter or a rule, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate facility to deter future violations. The system:

(1) must be comparable to the system used by the Centers for Medicare and Medicaid Services to categorize the scope and severity of violations for nursing homes; and

(2) may be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicare and Medicaid Services.

(m) In this section:

(1) "Actual harm" means a negative outcome that compromises a resident's physical, mental, or emotional well-being.

(2) "Immediate threat to the health or safety of a resident" means a situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of a resident.

(3) "Pattern of violation" means repeated, but not pervasive, failures of a facility to comply with this chapter or a rule, standard, or order adopted under this chapter that:

(A) result in a violation; and

(B) are found throughout the services provided by the facility or that affect or involve the same residents or facility employees.

(4) "Widespread in scope" means a violation of this chapter or a rule, standard, or order adopted under this chapter that:

(A) is pervasive throughout the services provided by the facility; or

(B) that affects or has the potential to affect a large portion of or all of the residents of the facility.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 534 (S.B. 196), § 3, effective September 1, 1999; am. Acts 2007, 80th Leg., ch. 809 (S.B. 1318), § 20, effective September 1, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0787, effective April 2, 2015; am. Acts 2017, 85th Leg., ch. 836 (H.B. 2025), § 15, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 1304 (H.B. 3803), § 1, effective September 1, 2019.

Sec. 252.0651. Application of Other Law.

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.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 534 (S.B. 196), § 4, effective September 1, 1999.

Sec. 252.066. Notice; Request for Hearing.

(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 department shall issue an order approving the determination and ordering that the person pay the proposed penalty.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 534 (S.B. 196), § 5, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0788, effective April 2, 2015.

Sec. 252.067. Hearing; Order.

(a) If the person notified under Section 252.066 requests a hearing, an administrative law judge shall set a hearing and the department shall give written notice of the hearing to the person.

(b) The administrative law judge shall make findings of fact and conclusions of law and shall promptly issue to the department 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 administrative law judge, the department by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 534 (S.B. 196), § 6, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0789, effective April 2, 2015.

Sec. 252.068. Notice and Payment of Administrative Penalty; Judicial Review; Refund.

(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.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 534 (S.B. 196), § 6, effective September 1, 1999.

Sec. 252.069. Use of Administrative Penalty.

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.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 534 (S.B. 196), § 6, effective September 1, 1999; am. Acts 2005, 79th Leg., ch. 786 (S.B. 52), § 4, effective September 1, 2005.

Sec. 252.070. Expenses and Costs for Collection of Civil or Administrative Penalty.

(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.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 534 (S.B. 196), § 6, effective September 1, 1999.

Sec. 252.071. Amelioration of Violation.

(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 commission or the State Office of Administrative Hearings, as appropriate, 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.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 534 (S.B. 196), § 6, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 619 (S.B. 1376), § 2, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1284 (S.B. 1839), § 8.02, effective June 1, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0790, effective April 2, 2015.

Secs. 252.072 to 252.090. [Reserved for expansion].

Subchapter D

Trustees for Facilities

Sec. 252.091. Findings and Purpose.

(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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.092. Appointment by Agreement.

(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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.093. Involuntary Appointment.

(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 intellectual disability 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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 192 (S.B. 1049), § 2, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0791, effective April 2, 2015.

Sec. 252.094. Fee; Release of Money.

(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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.095. Emergency Assistance Fee.

(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(c) 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).

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0792, effective April 2, 2015.

Sec. 252.096. Reimbursement.

(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 304.003, Finance Code, 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 commission 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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0793, effective April 2, 2015.

Sec. 252.097. Notification of Closure.

(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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.098. Criminal Penalty for Failure to Notify.

(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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.099. Cooperation in Facility Closure. [Repealed]

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 160 (S.B. 83), § 3, effective September 1, 2001; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(67), effective April 2, 2015.

Secs. 252.100 to 252.120. [Reserved for expansion].

Subchapter E

Investigations of Abuse, Neglect, and Exploitation and Reports of Retaliation

Sec. 252.121. Authority to Receive Reports and Investigate.

(a) A person, including an owner or employee of a facility, who has cause to believe that a resident is being or

has been subjected to abuse, neglect, or exploitation shall report the suspected abuse, neglect, or exploitation to the Department of Family and Protective Services, as required by Chapter 48, Human Resources Code, or Chapter 261, Family Code, as appropriate. The Department of Family and Protective Services shall investigate the allegation of abuse, neglect, or exploitation in the manner provided by Chapter 48, Human Resources Code, or Section 261.404, Family Code, as applicable.

(b) If the department receives a report of suspected abuse, neglect, or exploitation of a resident of a facility licensed under this chapter, the department shall immediately refer the report to the Department of Family and Protective Services for investigation.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 13, effective June 11, 2009.

Sec. 252.122. Notification of Duty to Report Abuse, Neglect, and Exploitation.

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, neglect, or exploitation.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 13, effective June 11, 2009.

Sec. 252.123. Contents of Report [Repealed].

Repealed by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 39(a), effective June 11, 2009.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.124. Anonymous Reports of Abuse or Neglect [Repealed].

Repealed by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 39(a), effective June 11, 2009.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.125. Immediate Removal to Protect Resident.

Before the completion of the investigation by the Department of Family and Protective Services, the department shall file a petition for temporary care and protection of a resident if the department determines, based on information provided to the department by the Department of Family and Protective Services, that immediate removal is necessary to protect the resident from further abuse, neglect, or exploitation.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 13, effective June 11, 2009.

Sec. 252.126. Confidentiality; Disclosure of Investigation Report.

(a) A report, record, or working paper used or developed in an investigation made under this subchapter is confidential and may be disclosed only as provided by Chapter

48, Human Resources Code, Chapter 261, Family Code, or this section.

(b) The Department of Family and Protective Services shall provide a copy of a completed investigation report to the department and may disclose information related to the investigation at any time to the department as necessary to protect a resident of a facility from abuse, neglect, or exploitation.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 13, effective June 11, 2009.

Sec. 252.127. Immunity [Repealed].

Repealed by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 39(a), effective June 11, 2009.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.128. Privileged Communications [Repealed].

Repealed by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 39(a), effective June 11, 2009.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.129. Central Registry [Repealed].

Repealed by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 39(a), effective June 11, 2009.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.130. Failure to Report; Criminal Penalty [Repealed].

Repealed by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 39(a), effective June 11, 2009.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.131. Bad Faith, Malicious, or Reckless Reporting; Criminal Penalty [Repealed].

Repealed by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 39(a), effective June 11, 2009.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.132. Suit for Retaliation.

(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. 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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 192 (H.B. 482), § 4, effective September 1, 2001; am. Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 14, effective June 11, 2009.

Sec. 252.133. Suit for Retaliation Against Volunteer, Resident, or Family Member or Guardian of Resident.

(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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 192 (H.B. 482), § 5, effective September 1, 2001.

Sec. 252.134. Reports Relating to Resident Deaths; Statistical Information [Repealed].

Repealed by Acts 2013, 83rd Leg., ch. 1027 (H.B. 2673), § 11, effective June 14, 2013.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Secs. 252.135 to 252.150. [Reserved for expansion].

Subchapter F

Medical Care

Sec. 252.151. Administration of Medication.

The executive commissioner shall adopt rules relating to the administration of medication in facilities.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0794, effective April 2, 2015.

Sec. 252.152. Required Medical Examination.

(a) The department shall require each resident to be given at least one medical examination each year.

(b) The executive commissioner shall specify the details of the examination.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0795, effective April 2, 2015.

Sec. 252.153. Emergency Medication Kit [Repealed].

Repealed by Acts 2001, 77th Leg., ch. 1254 (S.B. 768), § 13(a), effective September 1, 2001.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Secs. 252.154 to 252.180. [Reserved for expansion].*Subchapter G**Respite Care***Sec. 252.181. Definitions.**

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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.182. Respite Care.

(a) A facility licensed under this chapter may provide respite care for an individual who has a diagnosis of an intellectual disability or a related condition without regard to whether the individual is eligible to receive intermediate care services under federal law.

(b) The executive commissioner may adopt rules for the regulation of respite care provided by a facility licensed under this chapter.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0796, effective April 2, 2015.

Sec. 252.183. Plan of Care.

(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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.184. Notification.

A facility that offers respite care shall notify the department in writing that it offers respite care.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Sec. 252.185. Inspections.

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 executive commissioner may adopt to regulate respite care services.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0797, effective April 2, 2015.

Sec. 252.186. Suspension.

(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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 693 (S.B. 1248), § 1, effective September 1, 1997.

Secs. 252.187 to 252.200. [Reserved for expansion].*Subchapter H**Quality Assurance Fee***Sec. 252.201. Definition.**

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.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1284 (S.B. 1839), § 9.01, effective June 15, 2001.

Sec. 252.202. Computing Quality Assurance Fee.

(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 intellectual disability center, as described by Subchapter A, Chapter 534, and on each facility owned by the department. 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 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.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1284 (S.B. 1839), § 9.01, effective June 15, 2001; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.64, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1251 (S.B. 1862), § 1(a), effective June 20, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0798, effective April 2, 2015.

Sec. 252.203. Patient Days.

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.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1284 (S.B. 1839), § 9.01, effective June 15, 2001; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.65, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1251 (S.B. 1862), § 2, effective June 20, 2003.

Sec. 252.204. Reporting and Collection.

(a) The 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 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.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1284 (S.B. 1839), § 9.01, effective June 15, 2001; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.66, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1251 (S.B. 1862), § 3, effective June 20, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0799, effective April 2, 2015.

Sec. 252.205. Rules; Administrative Penalty.

(a) The executive commissioner shall adopt rules for the administration of this subchapter, including rules related to the imposition and collection of the quality assurance fee.

(b) The executive commissioner 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.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1284 (S.B. 1839), § 9.01, effective June 15, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0800, effective April 2, 2015.

Sec. 252.206. Quality Assurance Fund.

(a) The quality assurance fund is an account in the general revenue fund. 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 fees deposited to the credit of the fund under this subchapter.

(c) Money deposited to the quality assurance fund may be appropriated only for the purposes of this subchapter.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1284 (S.B. 1839), § 9.01, effective June 15, 2001; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.156(a)(1), effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0801, effective April 2, 2015.

Sec. 252.207. Reimbursement of Facilities.

(a) Subject to legislative appropriation and state and federal law, the 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 individuals with an intellectual disability 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 (H.B. 2292), § 2.156(a)(1), effective September 1, 2003 and by Acts 2003, 78th Leg., ch. 1251 (S.B. 1862), § 4(b), effective June 20, 2003.]

(c) If money in the quality assurance fund is used to increase a reimbursement rate in the Medicaid program, the 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.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1284 (S.B. 1839), § 9.01, effective June 15, 2001; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), §§ 2.67, 2.156(a)(1), effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1251 (S.B. 1862), § 4(a), (b), effective June 20, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 9.003, effective September 1, 2005; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0802, effective April 2, 2015.

Sec. 252.208. Invalidity; Federal Funds.

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 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.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1284 (S.B. 1839), § 9.01, effective June 15, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0803, effective April 2, 2015.

Sec. 252.209. Legislative Review; Expiration [Repealed].

Repealed by Acts 2005, 79th Leg., ch. 896 (S.B. 1830), § 2, effective June 17, 2005 and by Acts 2005, 79th Leg., ch. 899 (S.B. 1863), § 7.01, effective August 29, 2005.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1284 (S.B. 1839), § 9.01, effective June 15, 2001.

SUBTITLE C

LOCAL HOSPITALS

CHAPTER 263

County Hospitals and Other Health Facilities

Subchapter B

Establishing, Enlarging, Selling, and Closing County Hospitals

Section 263.023.	Construction of Hospital to Avoid Inadequate Care in Certain Counties.
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Sec. 263.023. Construction of Hospital to Avoid Inadequate Care in Certain Counties.

(a) The commissioners court of a county shall provide for the construction of a county hospital if:

- (1) the county has a municipality with more than 10,000 inhabitants as ascertained by the court in the manner determined by a resolution of the court; and
- (2) the county does not have a county hospital or the county hospital is inadequate.

(b) The commissioners court shall provide for the construction of the hospital within six months after the date the number of inhabitants of the municipality exceeds 10,000 except that the executive commissioner may, for good cause, extend this period.

(c) The hospital must have a room or ward for the care of confinement cases and a room or ward for the temporary care of persons suffering from mental or nervous disease.

(d) The hospital must have separate buildings for persons suffering from tuberculosis and other communicable diseases.

(e) Sufficient accommodations shall be added to the hospital as needed to take care of persons in the county who are sick or injured.

(f) If adequate funds for the issuance of county warrants and scrip for the construction of the hospital are not available from the county, the commissioners court shall submit, either at a special election called for the purpose or at a regular election, the proposition of the issuance of county bonds for the construction of the hospital. If the proposition is not approved by a majority vote at the election, the court shall, on petition of 10 percent or more

of the qualified voters of the county, resubmit the proposition.

(g) A petition may not be presented to the commissioners court if a petition has been presented to the court in the preceding 12 months.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 678 (H.B. 2136), § 1, effective September 1, 1989; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0823, effective April 2, 2015.

SUBTITLE F

POWERS AND DUTIES OF HOSPITALS

CHAPTER 313

Consent to Medical Treatment Act

Section 313.001. 313.002. 313.003. 313.004. 313.005. 313.006. 313.007. 313.008.	Short Title. Definitions. Exceptions and Application. Consent for Medical Treatment. Prerequisites for Consent. Liability for Medical Treatment Costs. Limitation on Liability. Authority to Adopt Rules; Effective Date [Renumbered].
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Sec. 313.001. Short Title.

This chapter may be cited as the Consent to Medical Treatment Act.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 407 (S.B. 332), § 1, effective September 1, 1993.

Sec. 313.002. Definitions.

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;
 - (C) is receiving services from a home and community support services agency; or
 - (D) is an inmate of a county or municipal jail.
- (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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 407 (S.B. 332), § 1, effective September 1, 1993; am. Acts 2007, 80th Leg., ch. 1271 (H.B. 3473), § 1, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 253 (H.B. 1128), § 1, effective September 1, 2011.

Sec. 313.003. Exceptions and Application.

- (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 Subtitle P, Title 2, Estates 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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 407 (S.B. 332), § 1, effective September 1, 1993; am. Acts 1999, 76th Leg., ch. 450 (S.B. 1260), § 2.01, effective September 1, 1999; am. Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 22.045, effective September 1, 2017.

Sec. 313.004. Consent for Medical Treatment.

(a) If an adult patient of a home and community support services agency or in a hospital or nursing home, or an adult inmate of a county or municipal jail, 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 of proceedings under Title 3, Estates 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.

(e) Notwithstanding any other provision of this chapter, if the patient is an adult inmate of a county or municipal jail, a surrogate decision-maker may not also consent to:

- (1) psychotropic medication;
- (2) involuntary inpatient mental health services; or
- (3) psychiatric services calculated to restore competency to stand trial.

(f) A person who is an available adult surrogate, as described by Subsection (a), may consent to medical treatment on behalf of a patient who is an adult inmate of a county or municipal jail only for a period that expires on the earlier of the 120th day after the date the person agrees to act as an adult surrogate for the patient or the date the inmate is released from jail. At the conclusion of the period, a successor surrogate may not be appointed and only the patient or the patient's appointed guardian of the person, if the patient is a ward under Title 3, Estates Code, may consent to medical treatment.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 407 (S.B. 332), § 1, effective September 1, 1993; am. Acts 2007, 80th Leg., ch. 1271 (H.B. 3473), § 2, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 253 (H.B. 1128), § 2, effective September 1, 2011; am. Acts 2019, 86th Leg., ch. 846 (H.B. 2780), § 7, effective September 1, 2019.

Sec. 313.005. Prerequisites for Consent.

(a) If an adult patient of a home and community support services agency or in a hospital or nursing home, or an adult inmate of a county or municipal jail, 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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 407 (S.B. 332), § 1, effective September 1, 1993; am. Acts 2007, 80th Leg., ch. 1271 (H.B. 3473), § 3, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 253 (H.B. 1128), § 3, effective September 1, 2011.

Sec. 313.006. Liability for Medical Treatment Costs.

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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 407 (S.B. 332), § 1, effective September 1, 1993.

Sec. 313.007. Limitation on Liability.

(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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 407 (S.B. 332), § 1, effective September 1, 1993; am. Acts 2007, 80th Leg., ch. 1271 (H.B. 3473), § 4, effective September 1, 2007.

Sec. 313.008. Authority to Adopt Rules; Effective Date [Renumbered].

Renumbered to Tex. Health & Safety Code § 314.008 by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 17.01(25), effective September 1, 1995.

SUBTITLE G

PROVISION OF SERVICES IN CERTAIN FACILITIES

Chapter	
321.	Provision of Mental Health, Chemical Dependency, and Rehabilitation Services
322.	Use of Restraint and Seclusion in Certain Health Care Facilities

CHAPTER 321

Provision of Mental Health, Chemical Dependency, and Rehabilitation Services

Section	
321.001.	Definitions.
321.002.	Bill of Rights.
321.003.	Suit for Harm Resulting from Violation.
321.004.	Penalties.

Sec. 321.001. Definitions.

In this chapter:

(1) “Comprehensive medical rehabilitation” means the provision of rehabilitation services that are designed to improve or minimize a person’s physical or cognitive disabilities, maximize a person’s functional ability, or restore a person’s lost functional capacity through close coordination of services, communication, interaction, and integration among several professions that share the responsibility to achieve team treatment goals for the person.

(1-a) “Executive commissioner” means the executive commissioner of the Health and Human Services Commission.

(2) “Hospital” has the meaning assigned by Section 241.003.

(3) “License” means a state agency permit, certificate, approval, registration, or other form of permission required by state law.

(4) “Mental health facility” has the meaning assigned by Section 571.003.

(5) “State health care regulatory agency” means a state agency that licenses a health care professional.

(6) “Treatment facility” has the meaning assigned by Section 464.001.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 1.01, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0854, effective April 2, 2015.

Sec. 321.002. Bill of Rights.

(a) The executive commissioner by rule shall adopt a “patient’s bill of rights” that includes the applicable rights included in this chapter, Subtitle C of Title 7, Chapters 241, 462, 464, and 466, and any other provisions the executive commissioner considers necessary to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services in an inpatient facility. In addition, the executive commissioner shall adopt rules that:

(1) provide standards to prevent the admission of a minor to a facility for treatment of a condition that is not generally recognized as responsive to treatment in an inpatient treatment setting; and

(2) prescribe the procedure for presenting the applicable bill of rights and obtaining each necessary signature if:

- (A) the patient cannot comprehend the information because of illness, age, or other factors; or
- (B) an emergency exists that precludes immediate presentation of the information.

(b) The executive commissioner by rule shall adopt a “children’s bill of rights” for a minor receiving treatment in a child-care facility for an emotional, mental health, or chemical dependency problem.

(c) A “bill of rights” adopted under this section must specifically address the rights of minors and provide that a minor is entitled to:

- (1) appropriate treatment in the least restrictive setting available;
- (2) not receive unnecessary or excessive medication;
- (3) an individualized treatment plan and to participate in the development of the plan; and
- (4) a humane treatment environment that provides reasonable protection from harm and appropriate privacy for personal needs.

(d) Rules adopted under this section shall provide for:

- (1) treatment of minors by persons who have specialized education and training in the emotional, mental health, and chemical dependency problems and treatment of minors;
- (2) separation of minor patients from adult patients; and
- (3) regular communication between a minor patient and the patient’s family, subject only to a restriction in accordance with Section 576.006.

(e) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(71), effective April 2, 2015.]

(f) Before a facility may admit a patient for inpatient mental health, chemical dependency, or comprehensive medical rehabilitation services, or before a child-care facility may accept a minor for treatment, the facility shall provide to the person and, if appropriate, to the person’s parent, managing conservator, or guardian, a written copy of the applicable “bill of rights” adopted under this section. The facility shall provide the written copies in the person’s primary language, if possible. In addition, the facility shall ensure that, within 24 hours after the person is admitted to the facility, the rights specified in the written copy are explained to the person and, if appropriate, to the person’s parent, managing conservator, or guardian:

- (1) orally, in simple, nontechnical terms in the person’s primary language, if possible; or
- (2) through a means reasonably calculated to communicate with a person who has an impairment of vision or hearing, if applicable.

(g) The facility shall ensure that:

- (1) each patient admitted for inpatient mental health, chemical dependency, or comprehensive rehabilitation services and each minor admitted for treatment in a child-care facility and, if appropriate, the person’s parent, managing conservator, or guardian signs a copy of the document stating that the person has read the document and understands the rights specified in the document; and
- (2) the signed copy is made a part of the person’s clinical record.

(h) A facility shall prominently and conspicuously post a copy of the “bill of rights” for display in a public area of the facility that is readily available to patients, residents, employees, and visitors. The “bill of rights” must be in English and in a second language.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205),

§ 1.01, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1639(71), 3.0855, effective April 2, 2015.

Sec. 321.003. Suit for Harm Resulting from Violation.

(a) A treatment facility or mental health facility that violates a provision of, or a rule adopted under, this chapter, Subtitle C of Title 7, or Chapter 241, 462, 464, or 466 is liable to a person receiving care or treatment in or from the facility who is harmed as a result of the violation.

(b) A person who has been harmed by a violation may sue for injunctive relief, damages, or both.

(c) A plaintiff who prevails in a suit under this section may recover actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.

(d) In addition to an award under Subsection (c), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.

(e) A suit under this section may be brought in the district court of the county in which:

- (1) the plaintiff received care or treatment; or
- (2) the defendant conducts business.

(f) A person harmed by a violation must bring suit not later than the second anniversary of the date on which the person’s injury is discovered, except that a minor whose injury is discovered before the minor’s 18th birthday may bring suit at any time before the minor’s 20th birthday.

(g) This section does not supersede or abrogate any other remedy existing in law.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 1.01, effective September 1, 1993.

Sec. 321.004. Penalties.

In addition to the penalties prescribed by this chapter, a violation of a provision of this chapter by an individual or facility that is licensed by a state health care regulatory agency is subject to the same consequence as a violation of the licensing law applicable to the individual or facility or of a rule adopted under that licensing law.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 1.01, effective September 1, 1993.

CHAPTER 322

Use of Restraint and Seclusion in Certain Health Care Facilities

Subchapter A. General Provisions

Section 322.001.	Definitions.
322.002.	Plan for Emergency Services [Renumbered].
322.003.	Rejection of Plan [Renumbered].
322.004.	Minimum Standards for Emergency Services [Renumbered].
322.005.	Information Form [Renumbered].
322.006.	Inspection [Renumbered].
322.007 to 322.050.	[Reserved].

Subchapter B. Restraints and Seclusion

322.051.	Certain Restraints Prohibited.
322.0515.	Authorization for Use of Wheelchair Self-Release Seat Belt; Exception.

Section	
322.052.	Adoption of Restraint and Seclusion Procedures.
322.053.	Notification.
322.054.	Retaliation Prohibited.
322.055.	Medicaid Waiver Program.
322.056.	Reporting Requirement.

Subchapter A
General Provisions

Sec. 322.001. Definitions.

In this chapter:

- (1) "Facility" means:
 - (A) a general residential operation, as defined by Section 42.002, Human Resources Code, including a state-operated facility, serving children with an intellectual disability;
 - (B) an ICF-IID 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.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 698 (S.B. 325), § 1, effective September 1, 2005; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0856, effective April 2, 2015.

Sec. 322.002. Plan for Emergency Services [Renumbered].

Renumbered to Tex. Health & Safety Code § 323.002 by Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(47), effective September 1, 2007.

Sec. 322.003. Rejection of Plan [Renumbered].

Renumbered to Tex. Health & Safety Code § 323.003 by Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(47), effective September 1, 2007.

Sec. 322.004. Minimum Standards for Emergency Services [Renumbered].

Renumbered to Tex. Health & Safety Code § 323.004 by Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(47), effective September 1, 2007.

Sec. 322.005. Information Form [Renumbered].

Renumbered to Tex. Health & Safety Code § 323.005 by Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(47), effective September 1, 2007.

Sec. 322.006. Inspection [Renumbered].

Renumbered to Tex. Health & Safety Code § 323.006 by Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(47), effective September 1, 2007.

Secs. 322.007 to 322.050. [Reserved for expansion].

Subchapter B
Restraints and Seclusion

Sec. 322.051. Certain Restraints Prohibited.

- (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).

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 698 (S.B. 325), § 1, effective September 1, 2005.

Sec. 322.0515. Authorization for Use of Wheelchair Self-Release Seat Belt; Exception.

- (a) Except as provided by Subsection (b) and notwithstanding Section 322.051, a facility shall allow a resident to use a wheelchair self-release seat belt while the resident is in the resident's wheelchair if:
 - (1) the resident demonstrates the ability to release and fasten the seat belt without assistance;
 - (2) the use of the wheelchair self-release seat belt complies with the resident's plan of care; and
 - (3) the facility receives written authorization signed by the resident or the resident's legal guardian for the resident to use the wheelchair self-release seat belt.
- (b) A facility that advertises as a restraint-free facility is not required to comply with Subsection (a) if the facility:
 - (1) provides to current and prospective residents a written disclosure stating the facility is restraint-free and is not required to comply with a request under Subsection (a); and
 - (2) makes all reasonable efforts to accommodate the concerns of a resident who requests a seat belt under Subsection (a).

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 1138 (H.B. 284), § 1, effective September 1, 2017.

Sec. 322.052. Adoption of Restraint and Seclusion Procedures.

(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.

(b-1) The rules must:

(1) authorize a registered nurse, other than the nurse who initiated the use of restraint or seclusion, who is trained to assess medical and psychiatric stability with demonstrated competence as required by rule to conduct a face-to-face evaluation of a patient in a hospital or facility licensed under Chapter 241 or 577 or in a state mental hospital, as defined by Section 571.003, not later than one hour after the time the use of restraint or seclusion is initiated; and

(2) require a physician to conduct a face-to-face evaluation of a patient in a hospital or facility licensed under Chapter 241 or 577 or in a state mental hospital, as defined by Section 571.003, and document clinical justification for continuing the restraint or seclusion before issuing or renewing an order that continues the use of the restraint or seclusion.

(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.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 698 (S.B. 325), § 1, effective September 1, 2005; am. Acts 2013, 83rd Leg., ch. 1240 (S.B. 1842), § 1, effective June 14, 2013.

Sec. 322.053. Notification.

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.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 698 (S.B. 325), § 1, effective September 1, 2005.

Sec. 322.054. Retaliation Prohibited.

(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 human 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.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 698 (S.B. 325), § 1, effective September 1, 2005.

Sec. 322.055. Medicaid Waiver Program.

A Medicaid waiver program provider, when providing supervised living or residential support, shall comply with this chapter and rules adopted under this chapter.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 698 (S.B. 325), § 1, effective September 1, 2005.

Sec. 322.056. Reporting Requirement.

A facility shall file with the Department of State Health Services a quarterly report regarding hospital-based inpatient psychiatric services measures related to the use of restraint and seclusion that is required by the federal Centers for Medicare and Medicaid Services.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1240 (S.B. 1842), § 2, effective June 14, 2013.

TITLE 6

**FOOD, DRUGS, ALCOHOL, AND
HAZARDOUS SUBSTANCES**

SUBTITLE B

**ALCOHOL AND SUBSTANCE ABUSE
PROGRAMS**

CHAPTER 467

Peer Assistance Programs

Section
467.001.

Definitions.

Section	
467.002.	Other Peer Assistance Programs.
467.003.	Programs.
467.0035.	Provision of Services to Students.
467.004.	Funding.
467.0041.	Funding for State Board of Dental Examiners.
467.005.	Reports.
467.006.	Assistance to Impaired Professionals.
467.007.	Confidentiality.
467.0075.	Consent to Disclosure.
467.008.	Civil Immunity.

Sec. 467.001. Definitions.

In this chapter:

(1) "Approved peer assistance program" means a program that is designed to help an impaired professional and that is:

(A) established by a licensing or disciplinary authority; or

(B) approved by a licensing or disciplinary authority as meeting the criteria established by the executive commissioner and any additional criteria established by that licensing or disciplinary authority.

(2) "Department" means the Department of State Health Services.

(2-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Impaired professional" means an individual whose ability to perform a professional service is impaired by chemical dependency on drugs or alcohol or by mental illness.

(4) "Licensing or disciplinary authority" means a state agency or board that licenses or has disciplinary authority over professionals.

(5) "Professional" means an individual who:

(A) may incorporate under The Texas Professional Corporation Law as described by Section 1.008(m), Business Organizations Code; or

(B) is licensed, registered, certified, or otherwise authorized by the state to practice as a licensed vocational nurse, social worker, chemical dependency counselor, occupational therapist, speech-language pathologist, audiologist, licensed dietitian, or dental or dental hygiene school faculty member.

(6) "Professional association" means a national or statewide association of professionals, including any committee of a professional association and any non-profit organization controlled by or operated in support of a professional association.

(7) "Student" means an individual enrolled in an educational program or course of study leading to initial licensure as a professional as such program or course of study is defined by the appropriate licensing or disciplinary authority.

(8) "Impaired student" means a student whose ability to perform the services of the profession for which the student is preparing for licensure would be, or would reasonably be expected to be, impaired by chemical dependency on drugs or alcohol or by mental illness.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 678 (H.B. 2136), § 1, effective September 1, 1989; am. Acts 1995, 74th Leg., ch. 570 (S.B. 519), § 1, effective September 1, 1995; am. Acts 2003,

78th Leg., ch. 17 (S.B. 263), § 27, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 892 (S.B. 810), § 26, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 1373 (S.B. 155), § 21, effective September 1, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1223, effective April 2, 2015.

Sec. 467.002. Other Peer Assistance Programs.

This chapter does not apply to a peer assistance program for licensed physicians or pharmacists or for any other profession that is authorized under other law to establish a peer assistance program.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 678 (H.B. 2136), § 1, effective September 1, 1989.

Sec. 467.003. Programs.

(a) A professional association or licensing or disciplinary authority may establish a peer assistance program to identify and assist impaired professionals in accordance with the minimum criteria established by the executive commissioner and any additional criteria established by the appropriate licensing or disciplinary authority.

(b) A peer assistance program established by a professional association is not governed by or entitled to the benefits of this chapter unless the association submits evidence to the appropriate licensing or disciplinary authority showing that the association's program meets the minimum criteria established by the executive commissioner and any additional criteria established by that authority.

(c) If a licensing or disciplinary authority receives evidence showing that a peer assistance program established by a professional association meets the minimum criteria established by the executive commissioner and any additional criteria established by that authority, the authority shall approve the program.

(d) A licensing or disciplinary authority may revoke its approval of a program established by a professional association under this chapter if the authority determines that:

(1) the program does not comply with the criteria established by the executive commissioner or by that authority; and

(2) the professional association does not bring the program into compliance within a reasonable time, as determined by that authority.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 678 (H.B. 2136), § 1, effective September 1, 1989; am. Acts 2007, 80th Leg., ch. 1373 (S.B. 155), § 22, effective September 1, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1224, effective April 2, 2015.

Sec. 467.0035. Provision of Services to Students.

(a) An approved peer assistance program may provide services to impaired students. A program that elects to provide services to impaired students is not required to provide the same services to those students that it provides to impaired professionals.

(b) An approved peer assistance program that provides services to students shall comply with any criteria for those services that are adopted by the appropriate licensing or disciplinary authority.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 570 (S.B. 519), § 2, effective September 1, 1995.

Sec. 467.004. Funding.

(a) Except as provided by Section 467.0041(b) of this code and Section 504.058, Occupations Code, a licensing or disciplinary authority may add a surcharge of not more than \$10 to its license or license renewal fee to fund an approved peer assistance program. The authority must adopt the surcharge in accordance with the procedure that the authority uses to initiate and adopt an increase in its license or license renewal fee.

(b) A licensing or disciplinary authority may accept, transfer, and expend funds made available by the federal or state government or by another public or private source to fund an approved peer assistance program.

(c) A licensing or disciplinary authority may contract with, provide grants to, or make other arrangements with an agency, professional association, institution, or individual to implement this chapter.

(d) Money collected under this section may be used only to implement this chapter and may not be used to pay for the actual treatment and rehabilitation costs required by an impaired professional.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 678 (H.B. 2136), § 1, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 14 (S.B. 404), § 194, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 493 (S.B. 770), § 1, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1314 (S.B. 877), § 24, effective September 1, 1997; am. Acts 2011, 82nd Leg., ch. 564 (H.B. 3145), § 1, effective June 17, 2011.

Sec. 467.0041. Funding for State Board of Dental Examiners.

(a) Except as provided by this section, the State Board of Dental Examiners is subject to Section 467.004.

(b) The board may add a surcharge of not more than \$10 to its license or license renewal fee to fund an approved peer assistance program.

(c) The board may collect a fee of not more than \$50 each month from a participant in an approved peer assistance program.

(d) Subject to the General Appropriations Act, the board may use the fees and surcharges collected under this section and fines collected in the enforcement of Subtitle D, Title 3, Occupations Code, to fund an approved program and to pay the administrative costs incurred by the board that are related to the program.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 14 (S.B. 404), § 195, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 2 (S.B. 18), § 19, effective February 6, 1995; am. Acts 1997, 75th Leg., ch. 493 (S.B. 770), § 2, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1314 (S.B. 877), § 25, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1423 (H.B. 2841), § 10.07, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1225, 3.1226, effective April 2, 2015.

Sec. 467.005. Reports.

(a) A person who knows or suspects that a professional is impaired by chemical dependency on alcohol or drugs or by mental illness may report the professional's name and any relevant information to an approved peer assistance program.

(b) A person who is required by law to report an impaired professional to a licensing or disciplinary authority satisfies that requirement if the person reports the professional to an approved peer assistance program. The

program shall notify the person making the report and the appropriate licensing or disciplinary authority if the person fails to participate in the program as required by the appropriate licensing or disciplinary authority.

(c) An approved peer assistance program may report in writing to the appropriate licensing or disciplinary authority the name of a professional who the program knows or suspects is impaired and any relevant information concerning that professional.

(d) A licensing or disciplinary authority that receives a report made under Subsection (c) shall treat the report in the same manner as it treats an initial allegation of misconduct against a professional.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 678 (H.B. 2136), § 1, effective September 1, 1989; am. Acts 1997, 75th Leg., ch. 414 (H.B. 2080), § 1, effective September 1, 1997.

Sec. 467.006. Assistance to Impaired Professionals.

(a) A licensing or disciplinary authority that receives an initial complaint concerning an impaired professional may:

- (1) refer the professional to an approved peer assistance program; or
- (2) require the professional to participate in or successfully complete a course of treatment or rehabilitation.

(b) A licensing or disciplinary authority that receives a second or subsequent complaint or a report from a peer assistance program concerning an impaired professional may take the action permitted by Subsection (a) in addition to any other action the authority is otherwise authorized to take in disposing of the complaint.

(c) An approved peer assistance program that receives a report or referral under Subsection (a) or (b) or a report under Section 467.005(a) may intervene to assist the impaired professional to obtain and successfully complete a course of treatment and rehabilitation.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 678 (H.B. 2136), § 1, effective September 1, 1989.

Sec. 467.007. Confidentiality.

(a) Any information, report, or record that an approved peer assistance program or a licensing or disciplinary authority receives, gathers, or maintains under this chapter is confidential. Except as prescribed by Subsection (b) or by Section 467.005(c), a person may not disclose that information, report, or record without written approval of the impaired professional or other interested person. An order entered by a licensing or disciplinary authority may be confidential only if the licensee subject to the order agrees to the order and there is no previous or pending action, complaint, or investigation concerning the licensee involving malpractice, injury, or harm to any member of the public. It is the intent of the legislature to encourage impaired professionals to seek treatment for their impairments.

(b) Information that is confidential under Subsection (a) may be disclosed:

- (1) at a disciplinary hearing before a licensing or disciplinary authority in which the authority considers taking disciplinary action against an impaired profes-

sional whom the authority has referred to a peer assistance program under Section 467.006(a) or (b);

(2) at an appeal from a disciplinary action or order imposed by a licensing or disciplinary authority;

(3) to qualified personnel for bona fide research or educational purposes only after information that would identify a person is removed;

(4) to health care personnel to whom an approved peer assistance program or a licensing or disciplinary authority has referred the impaired professional; or

(5) to other health care personnel to the extent necessary to meet a health care emergency.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 678 (H.B. 2136), § 1, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 245 (S.B. 1283), § 1, effective September 1, 1991.

Sec. 467.0075. Consent to Disclosure.

An impaired professional who is reported to a peer assistance program by a third party shall, as a condition of participation in the program, give consent to the program that at a minimum authorizes the program to disclose the impaired professional’s failure to successfully complete the program to the appropriate licensing or disciplinary authority.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 414 (H.B. 2080), § 2, effective September 1, 1997.

Sec. 467.008. Civil Immunity.

(a) A person who in good faith reports information or takes action in connection with a peer assistance program is immune from civil liability for reporting the information or taking the action.

(b) The civil immunity provided by this section shall be liberally construed to accomplish the purposes of this chapter.

(c) The persons entitled to immunity under this section include:

(1) an approved peer assistance program;

(2) the professional association or licensing or disciplinary authority operating the peer assistance program;

(3) a member, employee, or agent of the program, association, or authority;

(4) a person who reports or provides information concerning an impaired professional;

(5) a professional who supervises or monitors the course of treatment or rehabilitation of an impaired professional; and

(6) a person who employs an impaired professional in connection with the professional’s rehabilitation, unless the person:

(A) knows or should have known that the professional is incapable of performing the job functions involved; or

(B) fails to take reasonable precautions to monitor the professional’s job performance.

(d) A professional association, licensing or disciplinary authority, program, or person acting under this chapter is presumed to have acted in good faith. A person alleging a lack of good faith has the burden of proof on that issue.

(e) The immunity provided by this section is in addition to other immunity provided by law.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 678 (H.B. 2136), § 1, effective September 1, 1989.

TITLE 7

MENTAL HEALTH AND INTELLECTUAL DISABILITY

SUBTITLE A

SERVICES FOR PERSONS WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY

Chapter 531.	Provisions Generally Applicable To Mental Health and Intellectual Disability Services
532.	General Provisions Relating to Department of State Health Services
532A.	General Provisions Relating to Department of Aging and Disability Services
533.	Powers and Duties of Department of State Health Services
533A.	Powers and Duties of Department of Aging and Disability Services
534.	Community Services
536 to 550.	[Reserved for expansion] [Reserved.]

CHAPTER 531

Provisions Generally Applicable To Mental Health and Intellectual Disability Services

Section 531.001.	Purpose; Policy.
531.002.	Definitions.
531.0021.	Reference to State School, Superintendent, or Local Mental Retardation Authority.

Sec. 531.001. Purpose; Policy.

(a) It is the purpose of this subtitle to provide for the effective administration and coordination of mental health and intellectual disability services at the state and local levels.

(b) Recognizing that a variety of alternatives for serving persons with mental illness or an intellectual disability exists, it is the purpose of this subtitle to ensure that a continuum of services is provided. The continuum of services includes:

(1) mental health facilities operated by the Department of State Health Services and community services for persons with mental illness provided by the department and other entities through contracts with the department; or

(2) state supported living centers operated by the Department of Aging and Disability Services and community services for persons with an intellectual disability 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 an intellectual disability 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 government-

tal 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 an intellectual disability shall be afforded treatment in their own communities.

(e) It is the public policy of this state that mental health and intellectual disability services be the responsibility of local agencies and organizations to the greatest extent possible. The Department of State Health Services shall assist the local agencies and organizations by coordinating the implementation of a statewide system of mental health services. The Department of Aging and Disability Services shall assist the local agencies and organizations by coordinating the implementation of a statewide system of intellectual disability services. Each department shall ensure that mental health and intellectual disability services, as applicable, are provided. Each department shall provide technical assistance for and regulation of the programs that receive funding through contracts with that 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 intellectual disability services may be spent only to provide services to the priority populations identified in the applicable 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 of State Health Services 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 Department of State Health Services serves as the state's mental health authority and the Department of Aging and Disability Services serves as the state's intellectual disability authority. The executive commissioner is responsible for the planning, policy development, and resource development and allocation for and oversight of mental health and intellectual disability services in this state. It is the policy of this state that, when appropriate and feasible, the executive commissioner may delegate the executive commissioner's authority to a single entity in each region of the state that may function as the local mental health or intellectual and developmental disability authority for one or more service areas in the region.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B. 771), § 19, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 1, effective September 1, 1995; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 14.800, effective September 1, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1333, effective April 2, 2015.

Sec. 531.002. Definitions.

In this subtitle:

(1) "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

(2) "Chemical dependency" means:

- (A) abuse of alcohol or a controlled substance;
- (B) psychological or physical dependence on alcohol or a controlled substance; or
- (C) addiction to alcohol or a controlled substance.

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

(4) "Commissioner" means:

- (A) the commissioner of state health services in relation to mental health services; and
- (B) the commissioner of aging and disability services in relation to intellectual disability services .

(5) "Community center" means a center established under Subchapter A, Chapter 534.

(6) "Department" means:

- (A) the Department of State Health Services in relation to mental health services; and
- (B) the Department of Aging and Disability Services in relation to intellectual disability services .

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

(9) "ICF-IID" means the medical assistance program serving individuals with an intellectual or developmental disability who receive care in intermediate care facilities.

(10) "Intellectual disability services" includes all services concerned with research, prevention, and detection of intellectual disabilities, and all services related to the education, training, habilitation, care, treatment, and supervision of persons with an intellectual disability, but does not include the education of school-age persons that the public educational system is authorized to provide.

(11) "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.

(12) "Local intellectual and developmental disability authority" means an entity to which the executive commissioner delegates the executive commissioner's 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 intellectual disability services to persons with intellectual and developmental disabilities in the most appropriate and available setting to meet individual needs in one or more local service areas.

(13) "Local mental health authority" means an entity to which the executive commissioner delegates the executive commissioner's 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.

(14) "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, supervise, and rehabilitate persons who have a mental disorder or disability, including persons whose mental disorders or disabilities result from a substance abuse disorder .

(15) "Person with a developmental disability" means an individual with a severe, chronic disability attributable to a mental or physical impairment or a combination of mental and physical impairments that:

- (A) manifests before the person reaches 22 years of age;
- (B) is likely to continue indefinitely;
- (C) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of a lifelong or extended duration and are individually planned and coordinated; and
- (D) results in substantial functional limitations in three or more of the following categories of major life activity:
 - (i) self-care;
 - (ii) receptive and expressive language;
 - (iii) learning;
 - (iv) mobility;
 - (v) self-direction;
 - (vi) capacity for independent living; and
 - (vii) economic self-sufficiency.

(16) "Person with an intellectual disability" means a person, other than a person with a mental disorder, whose mental deficit requires the person to have special training, education, supervision, treatment, or care in the person's home or community or in a state supported living center .

(17) "Priority population" means those groups of persons with mental illness or an intellectual disability identified by the applicable department as being most in need of mental health or intellectual disability services.

(18) "Region" means the area within the boundaries of the local agencies participating in the operation of community centers established under Subchapter A, Chapter 534.

(19) "State supported living center" means a state-supported and structured residential facility operated by the Department of Aging and Disability Services to provide to clients with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.01, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 2, effective September 1, 1995; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 1, effective September 1, 2001; am. Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 17, effective June 11, 2009; am. Acts 2009, 81st Leg., ch. 1292 (H.B. 2303), § 1, effective September 1, 2009; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1333, effective April 2, 2015.

Sec. 531.0021. Reference to State School, Superintendent, or Local Mental Retardation Authority.

(a) A reference in law to a "state school" means a state supported living center.

(b) A reference in law to a "superintendent," to the extent the term is intended to refer to the person in charge of a state supported living center, means the director of a state supported living center.

(c) A reference in law to a "local mental retardation authority" means a local intellectual and developmental disability authority.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 18, effective June 11, 2009; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1333, effective April 2, 2015.

CHAPTER 532

General Provisions Relating to Department of State Health Services

Section 532.001.	Definitions; Mental Health Components of Department.
532.002.	Medical Director.
532.003.	Heads of Departmental Mental Health Facilities.
532.0035.	Board Training. [Deleted]
532.004.	Advisory Committees.
532.005.	Terms. [Deleted]
532.006.	Chairman. [Deleted]
532.007.	Removal of Board Members. [Deleted]
532.008.	Prohibited Activities by Former Officers or Employees [Repealed].
532.009.	Reimbursement for Expenses; Per Diem. [Deleted]
532.010.	Board Meetings. [Deleted]
532.011.	Commissioner. [Deleted]
532.012.	Medical Director. [Renumbered]
532.013.	Forensic Director.
532.0131.	[Expires November 1, 2019] Forensic Work Group.
532.014.	Heads of Departmental Facilities. [Renumbered]
532.015.	Rules and Policies. [Deleted]
532.016.	Personnel. [Deleted]
532.017.	Annual Reports [Repealed].
532.018.	Audits. [Deleted]
532.019.	Public Interest Information and Complaints. [Deleted]
532.020.	Advisory Committees. [Renumbered]
532.021.	Citizens' Planning Advisory Committee. [Deleted]

Sec. 532.001. Definitions; Mental Health Components of Department.

(a) In this chapter:

- (1) "Commissioner" means the commissioner of state health services.
- (2) "Department" means the Department of State Health Services.

(b) The department 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 Rio Grande State Center;
- (10) the Waco Center for Youth; and
- (11) the El Paso Psychiatric Center.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 3, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 500 (S.B. 1057), § 1, effective May 31, 1997; am. Acts 1999, 76th Leg., ch. 543 (S.B. 261), § 1, effective June 18, 1999; am. Acts 2001, 77th Leg., ch. 893 (H.B. 3378), § 1, effective June 14, 2001; am. Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 19, effective June 11, 2009; am. Acts 2013, 83rd Leg., ch. 395 (S.B. 152), § 1, effective June 14, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.002. Medical Director.

- (a) The commissioner shall appoint a medical director.
- (b) To be qualified for appointment as the medical director under this section, 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 the following duties under this title:
 - (1) oversight of the quality and appropriateness of clinical services delivered in department mental health facilities or under contract to the department in relation to mental health services; and
 - (2) leadership in physician recruitment and retention and peer review.

HISTORY: am. Acts 1991, 72nd Leg., 1st C.S., ch. 17 (H.B. 222), § 4.07, effective November 12, 1991; Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 1, effective September 1, 1999; am. Acts 2011, 82nd Leg., ch. 1232 (S.B. 652), § 2.10, effective June 17, 2011; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.003. Heads of Departmental Mental Health Facilities.

- (a) The commissioner shall appoint the head of each mental health facility the department administers.
- (b) The head of a facility serves at the will of the commissioner.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 7, effective September 1, 1995; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015 (renumbered from Sec. 532.014).

Sec. 532.0035. Board Training. [Deleted]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 2, effective September 1, 1999; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.004. Advisory Committees.

- (a) The executive commissioner shall appoint any advisory committees the executive commissioner considers necessary to assist in the effective administration of the department's mental health programs.

- (b) The department may reimburse committee members for travel costs incurred in performing their duties as provided by Section 2110.004, Government Code.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015 (renumbered from Sec. 532.020).

Sec. 532.005. Terms. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.006. Chairman. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.007. Removal of Board Members. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.008. Prohibited Activities by Former Officers or Employees [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 14, effective September 1, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 532.009. Reimbursement for Expenses; Per Diem. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.010. Board Meetings. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.011. Commissioner. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 8.150, effective September 1, 1995; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 5, effective September 1, 1995; am. Acts 1999, 76th Leg., ch. 1460 (H.B. 2641), §§ 2.21, 13.01(3), effective September 1, 1999; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.012. Medical Director. [Renumbered]

- (a) The commissioner shall appoint a medical director.
- (b) To be qualified for appointment as the medical director under this section, 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 the following duties under this title:

(1) oversight of the quality and appropriateness of clinical services delivered in department mental health facilities or under contract to the department in relation to mental health services; and

(2) leadership in physician recruitment and retention and peer review.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 6, effective September 1, 1995; by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.013. Forensic Director.

(a) In this section:

(1) "Forensic patient" means a person with mental illness or a person with an intellectual disability who is:

(A) examined on the issue of competency to stand trial by an expert appointed under Subchapter B, Chapter 46B, Code of Criminal Procedure;

(B) found incompetent to stand trial under Subchapter C, Chapter 46B, Code of Criminal Procedure;

(C) committed to court-ordered mental health services under Subchapter E, Chapter 46B, Code of Criminal Procedure;

(D) found not guilty by reason of insanity under Chapter 46C, Code of Criminal Procedure;

(E) examined on the issue of fitness to proceed with juvenile court proceedings by an expert appointed under Chapter 51, Family Code; or

(F) found unfit to proceed under Subchapter C, Chapter 55, Family Code.

(2) "Forensic services" means a competency examination, competency restoration services, or mental health or intellectual disability services provided to a current or former forensic patient in the community or at a department facility.

(b) The commissioner shall appoint a forensic director.

(c) To be qualified for appointment as forensic director, a person must have proven expertise in the social, health, and legal systems for forensic patients, and in the intersection of those systems.

(d) The forensic director reports to the commissioner and is responsible for:

(1) statewide coordination and oversight of forensic services;

(2) coordination of programs operated by the department relating to evaluation of forensic patients, transition of forensic patients from inpatient to outpatient or community-based services, community forensic monitoring, or forensic research and training; and

(3) addressing issues with the delivery of forensic services in the state, including:

(A) significant increases in populations with serious mental illness and criminal justice system involvement;

(B) adequate availability of department facilities for civilly committed forensic patients;

(C) wait times for forensic patients who require competency restoration services;

(D) interruption of mental health services of recently released forensic patients;

(E) coordination of services provided to forensic patients by state agencies;

(F) provision of input regarding the regional allocation of mental health beds for certain forensic patients and other patients with mental illness under Section 533.0515; and

(G) provision of input regarding the development and maintenance of a training curriculum for judges and attorneys for treatment alternatives to inpatient commitment to a state hospital for certain forensic patients under Section 1001.086.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 207 (S.B. 1507), § 1, effective May 28, 2015; am. Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 26, effective June 14, 2019; am. Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 23, effective September 1, 2019.

Sec. 532.0131. [Expires November 1, 2019] Forensic Work Group.

(a) In this section, "forensic patient" and "forensic services" have the meanings assigned by Section 532.013.

(b) The commissioner shall establish a work group of experts and stakeholders to make recommendations concerning the creation of a comprehensive plan for the effective coordination of forensic services.

(c) The work group must have not fewer than nine members, with the commissioner selecting the total number of members at the time the commissioner establishes the work group.

(d) The executive commissioner of the Health and Human Services Commission shall appoint as members of the work group:

(1) a representative of the department;

(2) a representative of the Texas Department of Criminal Justice;

(3) a representative of the Texas Juvenile Justice Department;

(4) a representative of the Texas Correctional Office on Offenders with Medical or Mental Impairments;

(5) a representative of the Sheriffs' Association of Texas;

(6) a superintendent of a state hospital with a maximum security forensic unit;

(7) a representative of a local mental health authority;

(8) a representative of the protection and advocacy system of this state established in accordance with 42 U.S.C. Section 15043, appointed by the administrative head of that system; and

(9) additional members as needed to comply with the number of members selected by the commissioner, who must be recognized experts in forensic patients or persons who represent the interests of forensic patients, and who may be advocates, family members, psychiatrists, psychologists, social workers, psychiatric nurses, or representatives of hospitals licensed under Chapter 241 or 577.

(e) In developing recommendations, the work group may use information compiled by other work groups in the state, especially work groups for which the focus is mental health issues.

(f) Not later than July 1, 2016, the work group established under this section shall send a report describing the work group's recommendations to the lieutenant governor, the speaker of the house of representatives, and the

standing committees of the senate and the house of representatives with primary jurisdiction over forensic services.

(g) The executive commissioner of the Health and Human Services Commission may adopt rules as necessary to implement this section.

(h) The work group established under this section is dissolved and this section expires November 1, 2019.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 207 (S.B. 1507), § 1, effective May 28, 2015; am. Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 9.004, effective September 1, 2017.

Sec. 532.014. Heads of Departmental Facilities. [Renumbered]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 7, effective September 1, 1995; Renumbered to Tex. Health & Safety Code § 532.003 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.015. Rules and Policies. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.016. Personnel. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 3, effective September 1, 1999; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.017. Annual Reports [Repealed].

Repealed by Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), §25(89), effective June 17, 2011.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 532.018. Audits. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.019. Public Interest Information and Complaints. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.020. Advisory Committees. [Renumbered]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Renumbered to Tex. Health & Safety Code §532.004 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.021. Citizens' Planning Advisory Committee. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2011, 82nd Leg., ch. 1050 (S.B. 71), § 22(7), effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), § 25(90), effective June 17, 2011; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

CHAPTER 532A.

General Provisions Relating to Department of Aging and Disability Services

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532A.001.	Definitions; Intellectual Disability Components of Department.
532A.002.	Medical Director.
532A.003.	Heads of State Supported Living Centers.
532A.004.	Advisory Committees.

Sec. 532A.001. Definitions; Intellectual Disability Components of Department.

(a) In this chapter:

(1) "Commissioner" means the commissioner of aging and disability services.

(2) "Department" means the Department of Aging and Disability Services.

(b) The department includes community services operated by the department and the following facilities:

- (1) the central office of the department;
 - (2) the Abilene State Supported Living Center;
 - (3) the Austin State Supported Living Center;
 - (4) the Brenham State Supported Living Center;
 - (5) the Corpus Christi State Supported Living Center;
 - (6) the Denton State Supported Living Center;
 - (7) the Lubbock State Supported Living Center;
 - (8) the Lufkin State Supported Living Center;
 - (9) the Mexia State Supported Living Center;
 - (10) the Richmond State Supported Living Center;
 - (11) the San Angelo State Supported Living Center;
 - (12) the San Antonio State Supported Living Center;
- and
- (13) the El Paso State Supported Living Center.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532A.002. Medical Director.

(a) The commissioner shall appoint a medical director.

(b) To be qualified for appointment as the medical director under this section, 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 the following duties under this title:

- (1) oversight of the quality and appropriateness of clinical services delivered in state supported living centers or under contract to the department in relation to intellectual disability services; and
- (2) leadership in physician recruitment and retention and peer review.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532A.003. Heads of State Supported Living Centers.

(a) The commissioner shall appoint the head of each state supported living center the department administers.

(b) The head of a state supported living center serves at the will of the commissioner.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532A.004. Advisory Committees.

(a) The executive commissioner shall appoint any advisory committees the executive commissioner considers necessary to assist in the effective administration of the department's intellectual disability programs.

(b) The department may reimburse committee members for travel costs incurred in performing their duties as provided by Section 2110.004, Government Code.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

CHAPTER 533

Powers and Duties of Department of State Health Services

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Subchapter A

General Powers and Duties

Sec. 533.0001. Definitions.

In this chapter:

- (1) "Commissioner" means the commissioner of state health services.
- (2) "Department" means the Department of State Health Services.
- (3) "Department facility" means a facility listed in Section 532.001(b).

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1460 (H.B. 2641), § 2.22, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0002. Commissioner's Powers and Duties; Effect of Conflict With Other Law.

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

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), article 3, § 3.1335, effective April 2, 2015.

Sec. 533.001. Gifts and Grants.

(a) The department may negotiate with a federal agency to obtain grants to assist in expanding and improving mental health 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 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 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.002. Competitive Review Requirement. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 17.13, effective September 1, 1997; 2015, 1 (), § 3.1335, effective April 2, 2015.

Sec. 533.003. Use of Funds for Volunteer Programs in Local Authorities and Community Centers.

(a) To develop or expand a volunteer mental health program in a local mental health authority or a community center, the department may allocate available funds appropriated for providing volunteer mental health services.

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 3, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.004. Liens.

(a) The department and each community center has a lien to secure reimbursement for the cost of providing support, maintenance, and treatment to a patient with mental illness 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 if the patient 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 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 by a person legally responsible for the patient'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 to recover damages for an injury for which the patient 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 for an injury for which the patient 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 the person legally responsible for the patient's support, owns property; or

(2) the patient received or is receiving services.

(e) The notice must contain:

(1) the name and address of the patient;

(2) the name and address of the person legally responsible for the patient'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 and the person legally responsible for the patient'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 executive commissioner 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, 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 support. The clerk shall index the notice record in the name of the patient and, if requested by the person filing the lien, in the name of the person legally responsible for the patient'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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.005. Easements.

The department, in coordination with the executive commissioner, may grant a temporary or permanent easement or right-of-way on land held by the department that relates to services provided under this title. The department, in coordination with the executive commissioner, must grant an easement or right-of-way on terms and conditions the executive commissioner considers to be in the state's best interest.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1175 (S.B. 199), § 1, effective June 18, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.006. Reporting of Allegations Against Physician. [Repealed]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 14.801, effective September 1, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015; Repealed by Acts 2019, 86th Leg., ch. 573 (S.B. 241), § 3.01(3), effective September 1, 2019.

Sec. 533.007. Use Of Criminal History Record Information.

(a) Subject to the requirements of Chapter 250, the department, in relation to services provided under this title, or a local mental health authority or 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 executive commissioner shall adopt rules relating to the use of information obtained under this section, including rules that prohibit an adverse personnel action based on arrest warrant or wanted persons information received by the department.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.02, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 790 (S.B. 510), § 46(26), effective September 1, 1993; am. Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 4, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0075. Exchange of Employment Records.

The department, in relation to services provided under this title, or a local mental health authority or 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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 646 (S.B. 160), § 2, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 5, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.008. Employment Opportunities for Individuals with Mental Illness or an Intellectual Disability.

(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 or an intellectual disability 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 655 (H.B. 1863), § 6.04, effective September 1, 1995; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.009. Exchange of Patient Records.

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 6, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0095. Collection and Maintenance of Information Regarding Persons Found Not Guilty by Reason of Insanity.

(a) The executive commissioner by rule shall require the department to collect information and maintain cur-

rent 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; or

(2) 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.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 3, effective September 1, 2005; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.010. Information Relating to Condition.

(a) A person, including a hospital, nursing facility, 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 illness and intellectual 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 intellectual disability research and education in order to reduce mental illness and intellectual 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 intellectual disability research and education; or
- (3) releases or publishes generally a summary of a study.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.011. Return of Person with Mental Retardation to State of Residence. [Renumbered]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Renumbered to Tex. Health & Safety Code § 533A.011 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.012. Cooperation of State Agencies.

At the department's request and in coordination with the executive commissioner, all state departments, agencies, officers, and employees shall cooperate with the department in activities that are consistent with their functions and that relate to services provided under this title.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.134, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1325 (H.B. 3588), § 13.05, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 281 (H.B. 2702), § 4.03, effective June 14, 2005; am. Acts 2007, 80th Leg., ch. 268 (S.B. 10), § 32(f)(3), effective September 1, 2008; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.013. Duplication of Rehabilitation Services. [Deleted]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 4, effective September 1, 1999; 2015, 1 (), § 3.1335, effective April 2, 2015.

Sec. 533.014. Responsibility of Local Mental Health Authorities in Making Treatment Recommendations.

(a) The executive commissioner shall adopt rules that:

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

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

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

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

(b) The executive commissioner's first consideration in developing rules under this section must be to satisfy individual patient treatment needs in the most appropriate setting. The executive commissioner 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 646 (S.B. 160), § 3, effective August 30, 1993; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 2, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 1214 (S.B. 1145), § 1, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.015. Unannounced Inspections.

The department may make any inspection of a depart-

ment facility or program under the department's jurisdiction under this title without announcing the inspection.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 531 (S.B. 1162), § 2, effective August 28, 1995; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.016. Certain Procurements of Goods and Services by Service Providers.

(a) This section does not apply to a "health and human services agency," as that term is defined by Section 531.001, Government Code.

(a-1) A state agency, local agency, or local mental health authority that expends public money to acquire goods or services in connection with providing or coordinating the provision of mental health 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 32.043 or 32.044, Human Resources Code, if the entity is a public hospital subject to those laws; or

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

(b) An agency or authority under Subsection (a-1)(2) may acquire goods or services by any procurement method that provides the best value to the agency or authority. The agency or authority shall document that the agency or authority considered all relevant factors under Subsection (c) in making the acquisition.

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

(1) any installation costs;

(2) the delivery terms;

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

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

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

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

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

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

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

(10) the acquisition price; and

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

(d) If a state agency to which this section applies acquires goods or services with a value that exceeds \$100,000, the state agency shall consult with and receive

approval from the commission before considering factors other than price and meeting specifications.

(e) The state auditor or the executive commissioner 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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1045 (S.B. 1066), § 5, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.017. Participation in Purchasing Contracts or Group Purchasing Program.

(a) This section does not apply to a "health and human services agency," as that term is defined by Section 531.001, Government Code.

(b) The executive commissioner may allow a state agency, local agency, or local mental health authority that expends public money to purchase goods or services in connection with providing or coordinating the provision of mental health services to purchase goods or services with the public money by participating in:

- (1) a contract the executive commissioner has made to purchase goods or services; or
- (2) a group purchasing program established or designated by the executive commissioner that offers discounts to providers of mental health services.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1045 (S.B. 1066), § 5, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.018. Special Olympics Texas Account. [Renumbered]

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 475 (H.B. 811), § 1, effective September 1, 2001; Renumbered to Tex. Health & Safety Code § 533A.018 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Secs. 533.019 to 533.030. [Reserved for expansion].

Subchapter B

Powers and Duties Relating to Provision of Mental Health Services

Sec. 533.031. Definitions.

In this subchapter:

- (1) "Elderly resident" means a person 65 years of age or older residing in a department facility.
- (2) "Extended care unit" means a residential unit in a department facility that contains patients with chronic mental illness who require long-term care, maintenance, limited programming, and constant supervision.
- (3) "Transitional living unit" means a residential unit that is designed for the primary purpose of facilitating the return of hard-to-place psychiatric patients with chronic mental illness from acute care units to the community through an array of services appropriate for those patients.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2007, 80th Leg., ch. 478 (H.B. 2439), § 1, effective June 16, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.032. Long-Range Planning.

(a) The department shall have a long-range plan relating to the provision of services under this title 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 with mental illness the department serves are met.

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

- (1) solicit input from:
 - (A) local mental health authorities;
 - (B) community representatives;
 - (C) consumers of mental health 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 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 hospital will:
 - (A) serve and support the communities and consumers in its service area; and
 - (B) fulfill statewide needs for specialized services.

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

- (1) conduct two public meetings, one meeting to be held at the beginning of the process and the second meeting to be held at the end of the process, to receive comments from interested parties; and
- (2) consider:
 - (A) the medical needs of the most medically fragile of its patients with mental illness; and
 - (B) input solicited from consumers of services of state hospitals.

(g) The department shall:

- (1) attach the report required by Subsection (c) to the department's legislative appropriations request for each biennium;
- (2) at the time the department presents its legislative appropriations request, present the report 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) commission; and

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

(h) The department shall, in coordination with the 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 commission shall begin to take action to influence the utilization of these state hospitals in order to ensure efficient service delivery.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 646 (S.B. 160), § 4, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(103), effective September 1, 1995; am. Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 5, effective September 1, 1999; am. Acts 2011, 82nd Leg., ch. 1050 (S.B. 71), §§ 12, 22(8), effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), § 25(91), effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 10.004, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0325. Continuum of Services in Campus Facilities.

The executive commissioner by rule shall establish criteria regarding the uses of the department's campus-based facilities as part of a full continuum of services under this title.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 6, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.033. Determination of Required Range of Mental Health Services.

(a) Consistent with the purposes and policies of this subtitle, the commissioner biennially shall determine:

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

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

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2011, 82nd Leg., ch.

1050 (S.B. 71), § 22(9), effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), § 25(92), effective June 17, 2011; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0335. Comprehensive Assessment and Resource Allocation Process. [Renumbered]

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 3.01, effective September 1, 2013; Renumbered to Tex. Health & Safety Code § 533A.0335 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.034. Authority to Contract for Community-Based Services.

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 services.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.73, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0345. State Agency Services Standards.

(a) The executive commissioner by rule shall develop model program standards for mental health services for use by each state agency that provides or pays for mental health services. The department shall provide the model standards to each agency that provides mental health services as identified by the commission.

(b) Model standards developed under Subsection (a) must be designed to improve the consistency of mental health 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.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 7, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0346. Authority to Transfer Services to Community Centers. [Deleted]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 7, effective September 1, 1999; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.035. Local Mental Health Authorities.

(a) The executive commissioner shall designate a local mental health authority in one or more local service areas. The executive commissioner may delegate to the local authority 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 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 both the local mental health authority under this chapter and the local intellectual and

developmental disability authority under Chapter 533A 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 authority department federal and department state funds to be spent in the local service area for:

- (1) community mental health and intellectual disability services; and
- (2) chemical dependency services for persons who are dually diagnosed as having both chemical dependency and mental illness or an intellectual disability.

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

- (1) assembling a network of service providers;
- (2) making recommendations relating to the most appropriate and available treatment alternatives for individuals in need of mental health services; and
- (3) procuring services for a local service area, including a request for proposal or open-enrollment procurement method.

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

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

- (1) the local authority has made every reasonable attempt to solicit the development of an available and appropriate provider base that is sufficient to meet the needs of consumers in its service area; and
- (2) there is not a willing provider of the relevant services in the local authority's service area or in the county where the provision of the services is needed.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.03, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 8, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 869 (H.B. 1734), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 14, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 3, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.74, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 478 (H.B. 2439), §§ 2, 7, effective June 16, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0351. Local Authority Network Advisory Committee. [Repealed]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 8, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1158 (H.B. 2914), § 79, effective September 1, 2001; am. Acts 2007, 80th Leg., ch. 478 (H.B. 2439), § 3, effective June 16, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April

2, 2015; Repealed by Acts 2015, 84th Leg., ch. 946 (S.B. 277), § 1.05(c), effective September 1, 2015.

Sec. 533.0351. Required Composition of Local Mental Health Authority Governing Body.

(a) If a local mental health authority has a governing body, the governing body must include:

- (1) for a local authority that serves only one county, the sheriff of the county as an ex officio nonvoting member; and
- (2) for a local authority that serves two or more counties, two sheriffs chosen in accordance with Subsection (b) as ex officio nonvoting members.

(b) A local mental health authority that serves two or more counties shall take the median population size of each of those counties and choose:

- (1) one sheriff of a county with a population above the median population size to serve as an ex officio nonvoting member under Subsection (a); and
- (2) one sheriff of a county with a population below the median population size to serve as an ex officio nonvoting member under Subsection (a).

(c) A sheriff may designate a representative to serve in the sheriff's place as an ex officio nonvoting member under Subsection (a). Except as provided by Subsection (c-1), a sheriff or representative of the sheriff serves as an ex officio nonvoting member under Subsection (a) for the duration of the applicable sheriff's term in office.

(c-1) A local mental health authority may rotate the positions of ex officio nonvoting members as chosen in accordance with Subsection (b) among the other sheriffs of the counties served by the local authority. A local authority shall consult with each sheriff of the counties served by the local authority in rotating the positions of ex officio nonvoting members under this subsection.

(d) A local mental health authority may not bar or restrict a sheriff or representative of a sheriff who serves as an ex officio nonvoting member under Subsection (a) from speaking or providing input at a meeting of the local authority's governing body.

(e) If a local mental health authority does not have a governing body, the local authority shall:

- (1) for a local authority that serves only one county, consult with the sheriff of the county or a representative of the sheriff regarding the use of funds received under Section 533.035(b); or
- (2) for a local authority that serves two or more counties, take the median population size of each of those counties and consult with both:

(A) a sheriff or a representative of a sheriff of a county with a population above the median population size regarding the use of funds received under Section 533.035(b); and

(B) a sheriff or a representative of a sheriff of a county with a population below the median population size regarding the use of funds received under Section 533.035(b).

(f) This section does not prevent a sheriff or representative of a sheriff from being included in the governing body of a local mental health authority as a voting member of the body.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 962 (S.B. 632), § 1, effective September 1, 2019.

Sec. 533.0352. Local Authority Planning for Local Service Area.

(a) Each local mental health 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 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 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 authority shall:

(1) solicit information regarding community needs from:

- (A) representatives of the local community;
- (B) consumers of community-based mental health services and members of the families of those consumers;
- (C) local law enforcement agencies; 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 divert consumers of services from the criminal justice system;
- (D) 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
- (E) opportunities for innovation in services and service delivery.

(e) The department and the local mental health 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 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).

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 358 (S.B. 1182), § 1, effective June 18, 2003; am. Acts 2005, 79th Leg., ch. 728

(H.B. 2018), § 23.001(52), effective September 1, 2005 (renumbered from Sec. 533.0354); am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 962 (S.B. 632), § 2, effective September 1, 2019.

Sec. 533.03521. Local Network Development Plan Creation and Approval.

(a) A local mental health authority shall develop a local network development plan regarding the configuration and development of the local mental health authority's provider network. The plan must reflect local needs and priorities and maximize consumer choice and access to qualified service providers.

(b) The local mental health authority shall submit the local network development plan to the department 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.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 478 (H.B. 2439), § 4, effective June 16, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0354. Disease Management Practices and Jail Diversion Measures of Local Mental Health Authorities.

(a) A local mental health authority shall ensure the provision of assessment services, crisis services, and intensive and comprehensive services using disease management practices for adults with bipolar disorder, schizophrenia, or clinically severe depression and for children with serious emotional illnesses. The local mental health authority shall ensure that individuals are engaged with treatment services that are:

- (1) ongoing and matched to the needs of the individual in type, duration, and intensity;
- (2) focused on a process of recovery designed to allow the individual to progress through levels of service;
- (3) guided by evidence-based protocols and a strength-based paradigm of service; and

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

(a-1) In addition to the services required under Subsection (a) and using money appropriated for that purpose or money received under the Texas Health Care Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), a local mental health authority may ensure, to the extent feasible, the provision of assessment services, crisis services, and intensive and comprehensive services using disease management practices for children with serious emotional, behavioral, or mental disturbance not described by Subsection (a) and adults with severe mental illness who are experiencing significant functional impairment due to a mental health disorder not described by Subsection (a) that is defined by the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5), including:

- (1) major depressive disorder, including single episode or recurrent major depressive disorder;
- (2) post-traumatic stress disorder;
- (3) schizoaffective disorder, including bipolar and depressive types;
- (4) obsessive-compulsive disorder;
- (5) anxiety disorder;
- (6) attention deficit disorder;
- (7) delusional disorder;
- (8) bulimia nervosa, anorexia nervosa, or other eating disorders not otherwise specified; or
- (9) any other diagnosed mental health disorder.

(a-2) The local mental health authority shall ensure that individuals described by Subsection (a-1) are engaged with treatment services in a clinically appropriate manner.

(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.

(b-1) The department shall require each local mental health authority to incorporate jail diversion strategies into the authority's disease management practices to reduce the involvement of the criminal justice system in managing adults with the following disorders as defined by the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5), who are not described by Subsection (b):

- (1) post-traumatic stress disorder;
- (2) schizoaffective disorder, including bipolar and depressive types;
- (3) anxiety disorder; or
- (4) delusional disorder.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.75, effective September 1, 2003; am. Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), § 25(93), effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 1306 (H.B. 3793), § 2, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 6.06, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0355. Local Mental Retardation Authority Responsibilities. [Renumbered]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.76, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 478 (H.B. 2439), § 5, effective June 16, 2007; am. Acts 2011, 82nd Leg., ch. 1057 (S.B. 222), § 2, effective September 1, 2011; Renumbered to Tex. Health & Safety Code § 533A.0355 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.03551. Flexible, Low-Cost Housing Options. [Renumbered]

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 3.02, effective September 1, 2013; Renumbered to Tex. Health & Safety Code § 533A.03551 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.03552. Behavioral Supports for Individuals with Intellectual and Developmental Disabilities at Risk of Institutionalization; Intervention Teams. [Renumbered]

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 3.02, effective September 1, 2013; Renumbered to Tex. Health & Safety Code § 533A.03552 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0356. Local Behavioral Health Authorities.

(a) The department may designate a local behavioral health authority in a local service area to provide mental health and chemical dependency services in that area. The department 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 461A.056.

(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 for designation as a local behavioral health authority.

(e) The department, 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 as provided by contract, shall use money received under Subsection (e) to ensure that mental health and chemical dependency services are pro-

vided 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 department.

(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 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 that services involving state funds that the authority oversees comply with relevant state standards.

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

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 9, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0357. Best Practices Clearinghouse for Local Mental Health Authorities.

(a) In coordination with local mental health authorities, the department shall establish an online clearinghouse of information relating to best practices of local mental health authorities regarding the provision of mental health services, development of a local provider network, and achievement of the best return on public investment in mental health services.

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

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

(c) The department may contract for the services of one or more contractors to develop, implement, and maintain

a system of collecting and evaluating the best practices of local mental health authorities as provided by this section.

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

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

(1) assist the local mental health authority in attaining training and mentorship in using the best practices established in accordance with this section; and

(2) track and document the local mental health authority's improvements in the provision of service or continued service deficiencies.

(f) Subsection (e) does not apply to the removal of a local mental health authority's designation initiated at the request of a local government official who has responsibility for the provision of mental health services.

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

(h) The department 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).

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 478 (H.B. 2439), § 6, effective June 16, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0358. Local Mental Health Authority's Provision of Services As Provider of Last Resort.

(a) A local mental health authority may serve as a provider of services under Section 533.035(e) only if, through the local network development plan process, the local authority determines that at least one of the following applies:

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

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

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

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

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

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

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

(6) existing contracts or other agreements restrict the local authority from contracting with qualified service

providers for services in the local network development plan.

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

- (1) the proportion of its local network services that the local authority will provide; and
- (2) the local authority's basis for its determination that the local authority must continue to provide services.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 478 (H.B. 2439), § 6, effective June 16, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0359. Rulemaking for Local Mental Health Authorities.

(a) In developing rules governing local mental health authorities under Sections 533.035, 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.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 478 (H.B. 2439), § 6, effective June 16, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015; am. Acts 2015, 84th Leg., ch. 946 (S.B. 277), § 1.05(b), effective September 1, 2015.

Sec. 533.036. Report on Application for Services [Repealed].

Repealed by Acts 2011, 82nd Leg., ch. 1050 (S.B. 71), § 22(10), effective September 1, 2011 and by Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), §25(94), effective June 17, 2011.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 533.037. Service Programs and Sheltered Workshops.

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.038. Coordination of Benefits.

(a) In this section, "Medicaid wrap-around benefit" means a Medicaid-covered service, including a pharmacy or medical benefit, that is provided to a recipient with both Medicaid and primary health benefit plan coverage when the recipient has exceeded the primary health benefit plan coverage limit or when the service is not covered by the primary health benefit plan issuer.

(b) The commission, in coordination with Medicaid managed care organizations and in consultation with the STAR Kids Managed Care Advisory Committee described by Section 533.00254, shall develop and adopt a clear policy for a Medicaid managed care organization to ensure the coordination and timely delivery of Medicaid wrap-around benefits for recipients with both primary health benefit plan coverage and Medicaid coverage. In developing the policy, the commission shall consider requiring a Medicaid managed care organization to allow, notwithstanding Sections 531.073 and 533.005(a)(23) or any other law, a recipient using a prescription drug for which the recipient's primary health benefit plan issuer previously provided coverage to continue receiving the prescription drug without requiring additional prior authorization.

(c) If the commission determines that a recipient's primary health benefit plan issuer should have been the primary payor of a claim, the Medicaid managed care organization that paid the claim shall work with the commission on the recovery process and make every attempt to reduce health care provider and recipient abrasion.

(d) The executive commissioner may seek a waiver from the federal government as needed to:

- (1) address federal policies related to coordination of benefits and third-party liability; and
- (2) maximize federal financial participation for recipients with both primary health benefit plan coverage and Medicaid coverage.

(e) The commission may include in the Medicaid managed care eligibility files an indication of whether a recipient has primary health benefit plan coverage or is enrolled in a group health benefit plan for which the commission provides premium assistance under the health insurance premium payment program. For recipients with that coverage or for whom that premium assis-

tance is provided, the files may include the following up-to-date, accurate information related to primary health benefit plan coverage to the extent the information is available to the commission:

- (1) the health benefit plan issuer's name and address and the recipient's policy number;
- (2) the primary health benefit plan coverage start and end dates; and
- (3) the primary health benefit plan coverage benefits, limits, copayment, and coinsurance information.

(f) To the extent allowed by federal law, the commission shall maintain processes and policies to allow a health care provider who is primarily providing services to a recipient through primary health benefit plan coverage to receive Medicaid reimbursement for services ordered, referred, or prescribed, regardless of whether the provider is enrolled as a Medicaid provider. The commission shall allow a provider who is not enrolled as a Medicaid provider to order, refer, or prescribe services to a recipient based on the provider's national provider identifier number and may not require an additional state provider identifier number to receive reimbursement for the services. The commission may seek a waiver of Medicaid provider enrollment requirements for providers of recipients with primary health benefit plan coverage to implement this subsection.

(g) The commission shall develop a clear and easy process, to be implemented through a contract, that allows a recipient with complex medical needs who has established a relationship with a specialty provider to continue receiving care from that provider.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 623 (S.B. 1207), § 6, effective September 1, 2019.

Sec. 533.038. Facilities and Services for Clients with Mental Retardation. [Renumbered]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 10, effective September 1, 1999; am. Acts 2013, 83rd Leg., ch. 682 (H.B. 2276), § 1, effective September 1, 2013; Renumbered to Tex. Health & Safety Code § 533A.038 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.039. Client Services Ombudsman [Deleted].

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 11, effective September 1, 1999; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.040. Services for Children and Youth.

(a) The department shall ensure the development of programs and the expansion of services at the community level for children with mental illness, or with a dual diagnosis of mental illness and an intellectual disability, and for their families. The department shall:

- (1) prepare and review budgets for services for children;
- (2) develop departmental policies relating to children's programs and service delivery; and
- (3) increase interagency coordination activities to enhance the provision of services for children.

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

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

(d) The department and the Department of Assistive and Rehabilitative Services 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, the departments' activities and services involving children with mental illness and their families.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 6.46, effective September 1, 1997; am. Acts 2003, 78th Leg., ch. 57 (S.B. 490), § 1, effective May 15, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.041. Services for Emotionally Disturbed Children and Youth. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0415. Memorandum of Understanding on Interagency Training.

(a) The executive commissioner, the Texas Juvenile Justice Department, and the Texas Education Agency by rule shall adopt a joint memorandum of understanding to develop interagency training for the staffs of the department, the Texas Juvenile Justice Department, the Department of Family and Protective Services, and the Texas Education Agency who are involved in the functions of assessment, case planning, case management, and in-home or direct delivery of services to children, youth, and their families under this title. 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; and

(C) monitor, evaluate, and revise the training program, including the development of additional curricula based on future training needs identified by staff and professionals.

(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 commission shall act as the lead agency in coordinating the development and implementation of the memorandum.

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

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.04, effective August 30, 1993; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 6.47, effective September 1, 1997; am. Acts 2011, 82nd Leg., ch. 1050 (S.B. 71), § 13, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), § 15, effective June 17, 2011; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.042. Evaluation of Elderly Residents.

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

(b) The department shall consider the proximity to the resident of family, friends, and advocates concerned with the resident's well-being in determining whether the resident should be moved from a department facility or to a different department facility. The department shall recognize that a nursing facility 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 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 authority.

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 646 (S.B. 160), § 5, effective August 30, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.043. Proposals for Geriatric, Extended, and Transitional Care.

(a) The department shall solicit proposals from community providers to operate:

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

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

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

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

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

(e) The department shall require each provider to:

(1) offer adequate assurances of ability to:

(A) provide the required services;

(B) meet department standards; and

(C) safeguard the safety and well-being of each resident; and

(2) sign a memorandum of agreement with the local mental health authority 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 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.044. Memorandum of Understanding on Assessment Tools. [Deleted]

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 905 (S.B. 236), § 4, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 798 (H.B. 869), § 4, effective August 28, 1995; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.045. Use of Certain Drugs for Certain Patients. [Deleted]

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 973 (H.B. 1713), § 1, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 76

(S.B. 959), § 17.01(31), effective September 1, 1995; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.046. Federal Funding for Mental Health Services for Children and Families. [Deleted]

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 373 (H.B. 865), § 1, effective August 28, 1995; Enacted by Acts 1995, 74th Leg., ch. 655 (H.B. 1863), § 6.07, effective September 1, 1995; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.047. Managed Care Organizations: Medic-aid Program. [Deleted]

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 574 (H.B. 600), § 2, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 31.01(59), effective September 1, 1997 (renumbered from Sec. 533.045); 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.048. Guardianship Advisory Committee. [Deleted]

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1239 (S.B. 367), § 5, effective September 1, 2001; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.049. Privatization of State School. [Deleted]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.77(a), effective September 1, 2004; am. Acts 2011, 82nd Leg., ch. 1050 (S.B. 71), § 22(11), effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), § 25(95), effective June 17, 2011; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.050. Privatization of State Mental Hospital. [Deleted]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.78(a), effective September 1, 2004; am. Acts 2011, 82nd Leg., ch. 1050 (S.B. 71), § 22(12), effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), § 25(96), effective June 17, 2011; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.051. Allocation of Outpatient Mental Health Services and Beds in State Hospitals.

(a) To ensure the appropriate and timely provision of mental health services to patients who voluntarily receive those services or who are ordered by a court to receive those services in civil or criminal proceedings, the department, in conjunction with the commission, shall plan for the proper and separate allocation of outpatient or community-based mental health services provided by secure and nonsecure outpatient facilities that provide residential care alternatives and mental health services and for the proper and separate allocation of beds in the state hospitals for the following two groups of patients:

(1) patients who are voluntarily receiving outpatient or community-based mental health services, voluntarily admitted to a state hospital under Chapter 572, admitted to a state hospital for emergency detention under Chapter 573, or ordered by a court under Chapter 574 to receive inpatient mental health services at a state hospital or outpatient mental health services from an outpatient facility that provides residential care alternatives and mental health services; and

(2) patients who are ordered to participate in an outpatient treatment program to attain competency to stand trial under Chapter 46B, Code of Criminal Procedure, or committed to a state hospital or other facility to attain competency to stand trial under Chapter 46B, Code of Criminal Procedure, or to receive inpatient mental health services following an acquittal by reason of insanity under Chapter 46C, Code of Criminal Procedure.

(b) The plan developed by the department under Subsection (a) must include:

(1) a determination of the needs for outpatient mental health services of the two groups of patients described by Subsection (a);

(2) a determination of the minimum number of beds that the state hospital system must maintain to adequately serve the two groups of patients;

(3) a statewide plan for and the allocation of sufficient funds for meeting the outpatient mental health service needs of and for the maintenance of beds by the state hospitals for the two groups of patients; and

(4) a process to address and develop, without adverse impact to local service areas, the accessibility and availability of sufficient outpatient mental health services provided to and beds provided by the state hospitals to the two groups of patients based on the success of contractual outcomes with mental health service providers and facilities under Sections 533.034 and 533.052.

(c) To assist in the development of the plan under Subsection (a), the department shall establish and meet at least monthly with an advisory panel composed of the following persons:

(1) one representative designated by the Texas Department of Criminal Justice;

(2) one representative designated by the Texas Association of Counties;

(3) two representatives designated by the Texas Council of Community Centers, including one representative of an urban local service area and one representative of a rural local service area;

(4) two representatives designated by the County Judges and Commissioners Association of Texas, including one representative who is the presiding judge of a court with jurisdiction over mental health matters;

(5) one representative designated by the Sheriffs' Association of Texas;

(6) two representatives designated by the Texas Municipal League, including one representative who is a municipal law enforcement official;

(7) one representative designated by the Texas Conference of Urban Counties;

(8) two representatives designated by the Texas Hospital Association, including one representative who is a physician;

(9) one representative designated by the Texas Catalyst for Empowerment; and

(10) four representatives designated by the department's Council for Advising and Planning for the Prevention and Treatment of Mental and Substance Use Disorders, including:

(A) the chair of the council;

(B) one representative of the council's members who is a consumer of or advocate for mental health services;

(C) one representative of the council's members who is a consumer of or advocate for substance abuse treatment; and

(D) one representative of the council's members who is a family member of or advocate for persons with mental health and substance abuse disorders.

(d) In developing the plan under Subsection (a), the department and advisory panel shall consider:

(1) needs for outpatient mental health services of the two groups of patients described by Subsection (a);

(2) the frequency of use of beds and the historical patterns of use of beds in the state hospitals and other facilities by the two groups of patients;

(3) local needs and demands for outpatient mental health services by the two groups of patients;

(4) local needs and demands for beds in the state hospitals and other facilities for the two groups of patients;

(5) the availability of outpatient mental health service providers and inpatient mental health facilities that may be contracted with to provide outpatient mental health services and beds for the two groups of patients;

(6) the differences between the two groups of patients with regard to:

(A) admission to and discharge from a state hospital or outpatient facility;

(B) rapid stabilization and discharge to the community;

(C) length of stay in a state hospital or outpatient facility;

(D) disputes arising from the determination of a patient's length of stay in a state hospital by a health maintenance organization or a managed care organization;

(E) third-party billing; and

(F) legal challenges or requirements related to the examination and treatment of the patients; and

(7) public input provided to the department or advisory panel in a form and at a time and place that is effective and appropriate and in a manner that complies with any applicable laws, including administrative rules.

(e) The department shall update the plan biennially.

(i) While the plan required by Subsection (a) is being developed and implemented, the department may not, pursuant to any rule, contract, or directive, impose a sanction, penalty, or fine on a local mental health authority for the authority's noncompliance with any methodology or standard adopted or applied by the department relating to the allocation of beds by authorities for the two groups of patients described by Subsection (a).

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1306 (H.B. 3793), § 3, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0515. Regional Allocation of Mental Health Beds.

(a) In this section, "inpatient mental health facility" has the meaning assigned by Section 571.003.

(b) The commission, with input from local mental health authorities, local behavioral health authorities, stakeholders, and the forensic director appointed under Section 532.013, and after considering any plan developed under Section 533.051, shall divide the state into regions for the purpose of allocating to each region state-funded beds in the state hospitals and other inpatient mental health facilities for patients who are:

(1) voluntarily admitted to a state hospital or other inpatient mental health facility under Subchapter B, Chapter 462, or Chapter 572;

(2) admitted to a state hospital or other inpatient mental health facility for emergency detention under Subchapter C, Chapter 462, or Chapter 573;

(3) ordered by a court to receive at a state hospital or other inpatient mental health facility inpatient chemical dependency treatment under Subchapter D, Chapter 462, or inpatient mental health services under Chapter 574;

(4) committed to a state hospital or other inpatient mental health facility to attain competency to stand trial under Chapter 46B, Code of Criminal Procedure; or

(5) committed to a state hospital or other inpatient mental health facility to receive inpatient mental health services following an acquittal by reason of insanity under Chapter 46C, Code of Criminal Procedure.

(c) The department, in conjunction with the commission, shall convene the advisory panel described by Section 533.051(c) at least quarterly in order for the advisory panel to:

(1) develop, make recommendations to the executive commissioner or department, as appropriate, and monitor the implementation of updates to:

(A) a bed day allocation methodology for allocating to each region designated under Subsection (b) a certain number of state-funded beds in state hospitals and other inpatient mental health facilities for the patients described by Subsection (b) based on the identification and evaluation of factors that impact the use of state-funded beds by patients in a region, including clinical acuity, the prevalence of serious mental illness, and the availability of resources in the region; and

(B) a bed day utilization review protocol that includes a peer review process to:

(i) evaluate:

(a) the use of state-funded beds in state hospitals and other inpatient mental health facilities by patients described by Subsection (b);

(b) alternatives to hospitalization for those patients;

(c) the readmission rate for those patients; and

(d) the average length of admission for those patients; and

(ii) conduct a review of the diagnostic and acuity profiles of patients described by Subsection (b) for the purpose of assisting the department, commission, and advisory panel in making informed decisions and using available resources efficiently and effectively; and

(2) receive and review status updates from the department regarding the implementation of the bed

day allocation methodology and the bed day utilization review protocol.

(d) Not later than December 1 of each even-numbered year, the advisory panel shall submit to the executive commissioner for consideration a proposal for an updated bed day allocation methodology and bed day utilization review protocol, and the executive commissioner shall adopt an updated bed day allocation methodology and bed day utilization review protocol.

(e) Not later than December 1 of each even-numbered year, the department, in conjunction with the commission and the advisory panel, shall prepare and submit to the governor, the lieutenant governor, the speaker of the house of representatives, the senate finance committee, the house appropriations committee, and the standing committees of the legislature having jurisdiction over mental health and human services a report that includes:

(1) a summary of the activities of the commission, department, and advisory panel to develop or update the bed day allocation methodology and bed day utilization review protocol;

(2) the outcomes of the implementation of the bed day allocation methodology by region, including an explanation of how the actual outcomes aligned with or differed from the expected outcomes;

(3) for planning purposes, for each region, the actual value of a bed day for the two years preceding the date of the report and the projected value of a bed day for the five years following the date of the report, as calculated by the department;

(4) for each region, an evaluation of the factors in Subsection (c)(1)(A), including the availability of resources in the region, that impact the use of state-funded beds in state hospitals and other inpatient mental health facilities by the patients described by Subsection (b);

(5) the outcomes of the implementation of the bed day utilization review protocol and the impact of the use of the protocol on the use of state-funded beds in state hospitals and other inpatient mental health facilities by the patients described by Subsection (b); and

(6) any recommendations of the department, commission, or advisory panel to enhance the effective and efficient allocation of state-funded beds in state hospitals and other inpatient mental health facilities for the patients described by Subsection (b).

(f) **[Expires September 1, 2017]** Notwithstanding Subsection (d), not later than March 1, 2016, the advisory panel, with assistance from the department, shall submit to the executive commissioner an initial proposal for a bed day allocation methodology and bed day utilization review protocol for review. The executive commissioner shall adopt an initial bed day allocation methodology and bed day utilization review protocol not later than June 1, 2016. Before the commission adopts the initial bed day allocation methodology, the department shall continue to allocate state-funded beds in the state hospitals and other inpatient mental health facilities according to the department's policy as it existed immediately before September 1, 2015, and the policy is continued in effect for that purpose. This subsection expires September 1, 2017.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 207 (S.B. 1507),

§ 2, effective May 28, 2015; Enacted by Acts 2015, 84th Leg., ch. 207 (S.B. 1507), § 2, effective May 28, 2015.

Sec. 533.052. Contracting with Certain Mental Health Service Providers and Facilities to Provide Services and Beds for Certain Persons.

The department shall make every effort, through collaboration and contractual arrangements with local mental health authorities, to contract with and use a broad base of local community outpatient mental health service providers and inpatient mental health facilities, as appropriate, to make available a sufficient and appropriately located amount of outpatient mental health services and a sufficient and appropriately located number of beds in inpatient mental health facilities, as specified in the plan developed by the department under Section 533.051, to ensure the appropriate and timely provision of mental health services to the two groups of patients described by Section 533.051(a).

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1306 (H.B. 3793), § 3, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.053. Informing Courts of Commitment Options.

The department shall develop and implement a procedure through which a court that has the authority to commit a person who is incompetent to stand trial or who has been acquitted by reason of insanity under Chapters 46B and 46C, Code of Criminal Procedure, is aware of all of the commitment options for the person, including jail diversion and community-based programs.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1306 (H.B. 3793), § 3, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Secs. 533.054 to 533.060. [Reserved for expansion].

Subchapter C

Powers and Duties Relating to ICF-MR Program

Sec. 533.061. Interagency Council on ICF-MR Facilities [Repealed].

Repealed by Acts 1993, 73rd Leg., ch. 646 (S.B. 160), § 16, effective August 30, 1993 and by Acts 1993, 73rd Leg., ch. 747 (S.B. 160), § 57, effective September 1, 1993.

Sec. 533.062. Plan on Long-Term Care for Persons with Mental Retardation. [Renumbered]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.06, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 646 (S.B. 160), § 6, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 747 (H.B. 1510), § 27, effective September 1, 1993; Renumbered to Tex. Health & Safety Code § 533A.062 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.063. Review of ICF-MR Rules. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 76

(S.B. 959), § 8.097, effective September 1, 1995; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.064. Memorandum of Understanding on ICF-MR Services [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 18, effective September 1, 1995.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 533.065. ICF-MR Application Consolidation List. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 8.098, effective September 1, 1995; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.066. Information Relating to ICF-MR Program. [Renumbered]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 8.099, effective September 1, 1995; Renumbered to Tex. Health & Safety Code § 533A.066 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Secs. 533.067 to 533.080. [Reserved for expansion].

Subchapter D

Powers and Duties Relating to Department Facilities

Sec. 533.081. Development of Facility Budgets.

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.082. Determination of Savings in Facilities.

(a) The department shall determine the degree to which the costs of operating department facilities for persons with mental illness 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.083. Criteria for Expansion, Closure, or Consolidation of Facility.

The department shall establish objective criteria for determining when a new facility may be needed and when a facility may be expanded, closed, or consolidated.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.084. Management of Surplus Real Property.

(a) To the extent provided by this subtitle, the department, in coordination with the executive commissioner, may lease, transfer, or otherwise dispose of any surplus real property related to the provision of services under this title, including any improvements under its management and control, or authorize the lease, transfer, or disposal of the property. Surplus property is property the executive commissioner 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 may be appropriated only for improvements to the department's system of mental health facilities.

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

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

(e) Notwithstanding Subsection (c), the executive commissioner, in coordination with 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(5), effective September 1, 1995; am. Acts 1999, 76th Leg., ch. 1175 (S.B. 199), § 2, effective June 18, 1999; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.79, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0844. Mental Health Community Services Account.

(a) The mental health community services account is an account in the general revenue fund that may be

appropriated only for the provision of mental health services by or under contract with the department.

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.80, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0846. Mental Retardation Community Services Account. [Renumbered]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.81, effective September 1, 2003; Renumbered to Tex. Health & Safety Code § 533A.0846 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.085. Facilities for Inmate and Parolee Care.

(a) With the written approval of the governor, the department may contract with the Texas Department of Criminal Justice to transfer facilities to the Texas Department of Criminal Justice or otherwise provide facilities for:

- (1) inmates with mental illness in the custody of the Texas Department of Criminal Justice; or
- (2) persons with mental illness paroled or released under the supervision of the Texas Department of Criminal Justice.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.107, effective September 1, 2009; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.086. Use of Department Facilities by Substance Abusers. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.087. Lease of Real Property.

(a) The department, in coordination with the executive commissioner, may lease real property related to the provision of services under this title, 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, in coordination with the executive commissioner, may award a lease of real property only:

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

(b) The commission 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, in coordination with the executive commissioner, may lease real property related to the provision of services under this title or an improvement for less than the prevailing market rate, without advertisement or without competitive bidding, if:

- (1) the executive commissioner 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 executive commissioner shall adopt leasing rules, forms, and contracts that will protect the state's interests.

(e) The executive commissioner may reject any bid.

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

(g) Notwithstanding Subsections (a) and (b), the executive commissioner, in coordination with 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.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 10, effective September 1, 1995; am. Acts 1999, 76th Leg., ch. 1175 (S.B. 199), § 3, effective June 18, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Secs. 533.088 to 533.100. [Reserved for expansion].

Subchapter E

Jail Diversion Program

Sec. 533.101. Jail Diversion Pilot Program [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 1214 (S.B. 1145), § 2, effective September 1, 2005.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1255 (S.B. 789), § 18, effective June 15, 2001.

Sec. 533.102. Prebooking Diversion [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 1214 (S.B. 1145), § 2, effective September 1, 2005.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1255 (S.B. 789), § 18, effective June 15, 2001.

Sec. 533.103. Postbooking Diversion by Court [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 1214 (S.B. 1145), § 2, effective September 1, 2005.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1255 (S.B. 789), § 18, effective June 15, 2001.

Sec. 533.104. Postbooking Diversion for Person in Jail [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 1214 (S.B. 1145), § 2, effective September 1, 2005.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1255 (S.B. 789), § 18, effective June 15, 2001.

Sec. 533.105. Information System to Support Post-booking Diversion [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 1214 (S.B. 1145), § 2, effective September 1, 2005.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1255 (S.B. 789), § 18, effective June 15, 2001.

Sec. 533.106. Reports to Legislature [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 1214 (S.B. 1145), § 2, effective September 1, 2005.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1255 (S.B. 789), § 18, effective June 15, 2001.

Sec. 533.107. Expiration [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 1214 (S.B. 1145), § 2, effective September 1, 2005.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1255 (S.B. 789), § 18, effective June 15, 2001; am. Acts 2003, 78th Leg., ch. 1214 (S.B. 1145), § 2, effective September 1, 2003.

Sec. 533.108. Prioritization of Funding for Diversion of Persons From Incarceration in Certain Counties.

(a) A local mental health authority may develop and may prioritize its available funding for:

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

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

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

(3) other model programs for offenders and suspects who may be members of the priority population, includ-

ing crisis intervention training for law enforcement personnel.

(b) A local mental health authority developing a system, training, or a model program under Subsection (a) shall collaborate with other local resources, including local law enforcement and judicial systems and local personnel.

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1214 (S.B. 1145), § 3, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

CHAPTER 533A**Powers and Duties of Department of Aging and Disability Services****Subchapter A. General Powers and Duties**

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Subchapter E. Jail Diversion Program

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Subchapter A

General Powers and Duties

Sec. 533A.001. Definitions.

In this chapter:

- (1) "Commissioner" means the commissioner of aging and disability services.
- (2) "Department" means the Department of Aging and Disability Services.
- (3) "Department facility" means a facility listed in Section 532A.001(b).

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.002. Commissioner's Powers and Duties; Effect of Conflict with Other Law.

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

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.003. Use of Funds for Volunteer Programs in Local Authorities and Community Centers.

(a) To develop or expand a volunteer intellectual disability program in a local intellectual and developmental disability authority or a community center, the depart-

ment may allocate available funds appropriated for providing volunteer intellectual disability services.

(b) The department shall develop formal policies that encourage the growth and development of volunteer intellectual disability services in local intellectual and developmental disability authorities and community centers.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.004. Liens.

(a) In this section, "department facility" includes the ICF-IID component of the Rio Grande State Center.

(a-1) The department and each community center has a lien to secure reimbursement for the cost of providing support, maintenance, and treatment to a client with an intellectual disability 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 Subchapter D, Chapter 593, if the 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 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 client or by a person legally responsible for the 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 client to recover damages for an injury for which the 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 client for an injury for which the 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 client, or the person legally responsible for the client's support, owns property; or
- (2) the client received or is receiving services.

(e) The notice must contain:

- (1) the name and address of the client;
- (2) the name and address of the person legally responsible for the 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 client and the person legally responsible for the 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 executive commissioner by rule shall prescribe the procedures to contest the charges.

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

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.005. Easements.

The department, in coordination with the executive commissioner, may grant a temporary or permanent easement or right-of-way on land held by the department that relates to services provided under this title. The department, in coordination with the executive commissioner, must grant an easement or right-of-way on terms and conditions the executive commissioner considers to be in the state's best interest.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.006. Reporting of Allegations Against Physician.

(a) The executive commissioner shall report to the Texas Medical Board any allegation received by the commission that a physician employed by or under contract with the commission in relation to services provided under this title 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 Medical Board a copy of any report or finding relating to an investigation of an allegation reported to that board.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 573 (S.B. 241), § 1.31, effective September 1, 2019.

Sec. 533A.007. Use of Criminal History Record Information.

(a) Subject to any applicable requirements of Chapter

250, the department, in relation to services provided under this title, or a local intellectual and developmental disability authority or 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 executive commissioner shall adopt rules relating to the use of information obtained under this section, including rules that prohibit an adverse personnel action based on arrest warrant or wanted persons information received by the department.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.0075. Exchange of Employment Records.

The department, in relation to services provided under this title, or a local intellectual and developmental disability authority or 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.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.008. Employment Opportunities for Individuals with Mental Illness or an Intellectual Disability.

(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 or an intellectual disability 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.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.009. Exchange of Client Records.

(a) Department facilities, local intellectual and developmental disability authorities, community centers, other designated providers, and subcontractors of intellectual disability services are component parts of one service delivery system within which client records may be exchanged without the client's consent.

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

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.0095. Collection and Maintenance of Information Regarding Persons Found Not Guilty by Reason of Insanity.

(a) The executive commissioner 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) 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

(2) 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.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.010. Information Relating to Condition.

(a) A person, including a hospital, nursing facility, 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 illness and intellectual 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 intellectual disability research and education in order to reduce mental illness and intellectual 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 intellectual disability research and education; or

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

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.011. Return of Person with an Intellectual Disability To State Of Residence.

(a) In this section, "department facility" includes the ICF-IID component of the Rio Grande State Center.

(a-1) The department may return a nonresident person with an intellectual disability who is committed to a department facility 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 an intellectual disability 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 department facilities in this state, or facilities for persons with an intellectual disability in another state, to the state of their residence.

(d) The director of a department facility may detain for not more than 96 hours pending a court order in a commitment proceeding in this state a person with an intellectual disability returned to this state.

(e) The state returning a person with an intellectual disability to another state shall bear the expenses of returning the person.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015 (Renumbered from Sec. 533.011).

Sec. 533A.012. Cooperation of State Agencies.

At the department's request and in coordination with the executive commissioner, all state departments, agencies, officers, and employees shall cooperate with the department in activities that are consistent with their functions and that relate to services provided under this title.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.015. Unannounced Inspections.

The department may make any inspection of a department facility or program under the department's jurisdiction under this title without announcing the inspection.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.016. Certain Procurements of Goods and Services by Service Providers.

(a) This section does not apply to a "health and human services agency," as that term is defined by Section 531.001, Government Code.

(a-1) A state agency, local agency, or local intellectual and developmental disability authority that expends public money to acquire goods or services in connection with providing or coordinating the provision of intellectual disability 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 533A.017 or in accordance with:

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

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

(b) An agency or authority under Subsection (a-1)(2) may acquire goods or services by any procurement method that provides the best value to the agency or authority. The agency or authority shall document that the agency or authority considered all relevant factors under Subsection (c) in making the acquisition.

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

(1) any installation costs;

(2) the delivery terms;

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

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

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

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

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

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

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

(10) the acquisition price; and

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

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

(e) The state auditor or the executive commissioner 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.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.017. Participation in Purchasing Contracts or Group Purchasing Program.

(a) This section does not apply to a "health and human services agency," as that term is defined by Section 531.001, Government Code.

(b) The executive commissioner may allow a state agency, local agency, or local intellectual and developmental disability authority that expends public money to purchase goods or services in connection with providing or coordinating the provision of intellectual disability services to purchase goods or services with the public money by participating in:

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

(2) a group purchasing program established or designated by the executive commissioner that offers discounts to providers of intellectual disability services.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.018. Revenue from Special Olympics Texas License Plates.

Annually, the department shall distribute the money deposited under Section 504.621, Transportation Code, to the credit of the account created in the trust fund created under Section 504.6012, Transportation Code, 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.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 475 (H.B. 811), § 1, effective September 1, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015 (Renumbered from Sec. 533.018).

Subchapter B

Powers and Duties Relating to Provision of Intellectual Disability Services

Sec. 533A.031. Definitions.

In this subchapter:

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

(2) "ICF-IID and related waiver programs" includes ICF-IID Section 1915(c) waiver programs, home and community-based services, Texas home living waiver services, or another Medicaid program serving persons with an intellectual disability.

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

(4) "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)).

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.032. Long-Range Planning.

(a) The department shall have a long-range plan relating to the provision of services under this title covering at least six years that includes at least the provisions re-

quired 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 with an intellectual disability the department serves are met.

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

(1) solicit input from:

(A) local intellectual and developmental disability authorities;

(B) community representatives;

(C) consumers of intellectual disability 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 supported living centers;

(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 supported living center will:

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

(B) fulfill statewide needs for specialized services.

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

(1) conduct two public meetings, one meeting to be held at the beginning of the process and the second meeting to be held at the end of the process, to receive comments from interested parties; and

(2) consider:

(A) the medical needs of the most medically fragile of its clients with an intellectual disability;

(B) the provision of services to clients with a severe and profound intellectual disability and to persons with an intellectual disability who are medically fragile or have behavioral problems;

(C) the program and service preference information collected under Section 533A.038; and

(D) input solicited from consumers of services of state supported living centers.

(g) The department shall:

(1) attach the report required by Subsection (c) to the department's legislative appropriations request for each biennium;

(2) at the time the department presents its legislative appropriations request, present the report 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) commission; and

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

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.0325. Continuum of Services in Department Facilities.

The executive commissioner by rule shall establish criteria regarding the uses of department facilities as part of a full continuum of services under this title.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.0335. Comprehensive Assessment and Resource Allocation Process.

(a) In this section:

(1) "Advisory committee" means the Intellectual and Developmental Disability System Redesign Advisory Committee established under Section 534.053, Government Code.

(2) "Functional need," "ICF-IID program," and "Medicaid waiver program" have the meanings assigned those terms by Section 534.001, Government Code.

(b) Subject to the availability of federal funding, the department shall develop and implement a comprehensive assessment instrument and a resource allocation process for individuals with intellectual and developmental disabilities as needed to ensure that each individual with an intellectual or developmental disability receives the type, intensity, and range of services that are both appropriate and available, based on the functional needs of that individual, if the individual receives services through one of the following:

(1) a Medicaid waiver program;

(2) the ICF-IID program; or

(3) an intermediate care facility operated by the state and providing services for individuals with intellectual and developmental disabilities.

(b-1) [Expired pursuant to Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 3.01, effective September 1, 2015.]

(c) The department, in consultation with the advisory committee, shall establish a prior authorization process for requests for supervised living or residential support services available in the home and community-based services (HCS) Medicaid waiver program. The process must ensure that supervised living or residential support services available in the home and community-based services (HCS) Medicaid waiver program are available only to individuals for whom a more independent setting is not appropriate or available.

(d) [Expires January 1, 2024] The department shall cooperate with the advisory committee to establish the prior authorization process required by Subsection (c). This subsection expires January 1, 2024.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 3.01, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015 (Renumbered from Sec. 533.0335).

Sec. 533A.034. Authority to Contract for Community-Based Services.

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 intellectual disability services.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.0345. State Agency Services Standards.

(a) The executive commissioner by rule shall develop model program standards for intellectual disability services for use by each state agency that provides or pays for intellectual disability services. The department shall provide the model standards to each agency that provides intellectual disability services as identified by the commission.

(b) Model standards developed under Subsection (a) must be designed to improve the consistency of intellectual disability 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.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.035. Local Intellectual and Developmental Disability Authorities.

(a) The executive commissioner shall designate a local intellectual and developmental disability authority in one or more local service areas. The executive commissioner may delegate to the local authority 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 intellectual disability 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 both the local mental health authority under Chapter 533 and the local intellectual and developmental disability authority under this chapter 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 intellectual and developmental disability authority department federal and department state funds to be spent in the local service area for community intellectual disability services.

(c) A local intellectual and developmental disability authority, with the approval of the department, shall use the funds received under Subsection (b) to ensure intellectual disability services are provided in the local service area. The local authority shall consider public input, ultimate cost-benefit, and client care issues to ensure consumer choice and the best use of public money in:

- (1) assembling a network of service providers;
- (2) making recommendations relating to the most appropriate and available treatment alternatives for

individuals in need of intellectual disability services; and

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

(d) A local intellectual and developmental disability 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) A local intellectual and developmental disability authority may serve as a provider of ICF-IID and related waiver programs only if:

- (1) the local authority complies with the limitations prescribed by Section 533A.0355(d); or
- (2) the ICF-IID 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-IID and related waiver program qualified service provider in the local authority's service area where the service is needed.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.0352. Local Authority Planning for Local Service Area.

(a) Each local intellectual and developmental disability 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 intellectual and developmental disability 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 533A.032.

(c) The department and a local intellectual and developmental disability 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 intellectual and developmental disability authority shall:

- (1) solicit information regarding community needs from:
 - (A) representatives of the local community;
 - (B) consumers of community-based intellectual disability services and members of the families of those consumers;
 - (C) consumers of services of state supported living centers, members of families of those consumers, and members of state supported living center volunteer services councils, if a state supported living center 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 ensure a client with an intellectual disability is placed in the least restrictive environment appropriate to the person's care;

(C) opportunities for innovation to ensure that the local authority is communicating to all potential and incoming consumers about the availability of services of state supported living centers for persons with an intellectual disability in the local service area of the local authority;

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

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

(e) The department and the local intellectual and developmental disability 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 intellectual and developmental disability 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).

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.0355. Local Intellectual and Developmental Disability Authority Responsibilities.

(a) The executive commissioner shall adopt rules establishing the roles and responsibilities of local intellectual and developmental disability authorities.

(b) In adopting rules under this section, the executive commissioner must include rules regarding the following local intellectual and developmental disability authority responsibilities:

(1) access;

(2) intake;

(3) eligibility functions;

(4) enrollment, initial person-centered assessment, and service authorization;

(5) utilization management;

(6) safety net functions, including crisis management services and assistance in accessing facility-based care;

(7) service coordination functions;

(8) provision and oversight of state general revenue services;

(9) local planning functions, including stakeholder involvement, technical assistance and training, and provider complaint and resolution processes; and

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

(c) In determining eligibility under Subsection (b)(3), a local intellectual and developmental disability authority must offer a state supported living center 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 supported living center admission, regardless of whether other residential services are available to the individual.

(d) In establishing a local intellectual and developmental disability authority's role as a qualified service provider of ICF-IID and related waiver programs under Section 533A.035(e), the executive commissioner shall require the local intellectual and developmental disability authority to:

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

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

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

(B) the local authority's voluntary conversion from an ICF-IID 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;

(ii) do not include increases that unnecessarily promote the local authority's provider role over its role as a local intellectual and developmental disability 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 intellectual and developmental disability authority's provider capacity, to be reduced by attrition.

(f) At least biennially, the department shall review and determine the local intellectual and developmental disability 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 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 intellectual and developmental disabilities into the community in accordance with relevant independence initiatives and permanency planning laws.

(h) The department shall ensure that local intellectual and developmental disability authorities are informing and counseling individuals and their legally authorized representatives, if applicable, about all program and service options for which the individuals are eligible in accordance with Section 533A.038(d), including options such as the availability and types of ICF-IID placements for which an individual may be eligible while the individual is on a department interest list or other waiting list for other services.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.76, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 478 (H.B. 2439), § 5, effective June 16, 2007; am. Acts 2011, 82nd Leg., ch. 1057 (S.B. 222), § 2, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015 (renumbered from Sec. 533.0355).

Sec. 533A.03551. Flexible, Low-Cost Housing Options.

(a) To the extent permitted under federal law and regulations, the executive commissioner shall adopt or amend rules as necessary to allow for the development of additional housing supports for individuals with disabilities, including individuals with intellectual and developmental disabilities, in urban and rural areas, including:

(1) a selection of community-based housing options that comprise a continuum of integration, varying from most to least restrictive, that permits individuals to select the most integrated and least restrictive setting appropriate to the individual's needs and preferences;

(2) provider-owned and non-provider-owned residential settings;

(3) assistance with living more independently; and

(4) rental properties with on-site supports.

(b) The department, in cooperation with the Texas Department of Housing and Community Affairs, the Department of Agriculture, the Texas State Affordable Housing Corporation, and the Intellectual and Developmental Disability System Redesign Advisory Committee established under Section 534.053, Government Code, shall coordinate with federal, state, and local public housing entities as necessary to expand opportunities for accessible, affordable, and integrated housing to meet the complex needs of individuals with disabilities, including individuals with intellectual and developmental disabilities.

(c) The department shall develop a process to receive input from statewide stakeholders to ensure the most comprehensive review of opportunities and options for housing services described by this section.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 3.02, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015 (renumbered from Sec. 533.03551).

Sec. 533A.03552. Behavioral Supports for Individuals with Intellectual and Developmental Disabilities at Risk of Institutionalization; Intervention Teams.

(a) Subject to the availability of federal funding, the department shall develop and implement specialized training for providers, family members, caregivers, and first responders providing direct services and supports to individuals with intellectual and developmental disabilities and behavioral health needs who are at risk of institutionalization.

(b) Subject to the availability of federal funding, the department shall establish one or more behavioral health intervention teams to provide services and supports to individuals with intellectual and developmental disabilities and behavioral health needs who are at risk of institutionalization. An intervention team may include a:

(1) psychiatrist or psychologist;

(2) physician;

(3) registered nurse;

(4) pharmacist or representative of a pharmacy;

(5) behavior analyst;

(6) social worker;

(7) crisis coordinator;

(8) peer specialist; and

(9) family partner.

(c) In providing services and supports, a behavioral health intervention team established by the department shall:

(1) use the team's best efforts to ensure that an individual remains in the community and avoids institutionalization;

(2) focus on stabilizing the individual and assessing the individual for intellectual, medical, psychiatric, psychological, and other needs;

(3) provide support to the individual's family members and other caregivers;

(4) provide intensive behavioral assessment and training to assist the individual in establishing positive behaviors and continuing to live in the community; and

(5) provide clinical and other referrals.

(d) The department shall ensure that members of a behavioral health intervention team established under this section receive training on trauma-informed care, which is an approach to providing care to individuals with behavioral health needs based on awareness that a history of trauma or the presence of trauma symptoms may create the behavioral health needs of the individual.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 3.02, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015 (renumbered from Sec. 533.03552).

Sec. 533A.037. Service Programs and Sheltered Workshops.

(a) The department may provide intellectual disability services through halfway houses, sheltered workshops, community centers, and other intellectual disability 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.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.038. Facilities and Services for Clients with an Intellectual Disability.

(a) In this section, "department facility" includes the ICF-IID component of the Rio Grande State Center.

(a-1) The department may designate all or any part of a department facility as a special facility for the diagnosis, special training, education, supervision, treatment, or care of clients with an intellectual disability.

(b) The department may specify the facility in which a client with an intellectual disability 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 an intellectual disability 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 an intellectual disability, 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 supported living centers, community ICF-IID 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 533A.032.

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

(g) In addition to the explanation required under Subsection (d), the department shall ensure that each person inquiring about residential services receives:

(1) a pamphlet or similar informational material explaining that any programs and services for which the person is determined to be eligible, including state supported living centers, community ICF-IID programs, waiver services under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)), or other services, may be an option available to an individual who is eligible for those services; and

(2) information relating to whether appropriate residential services are available in each program and service for which the person is determined to be eligible, including state supported living centers, community ICF-IID programs, waiver services under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)), or other services located nearest to the residence of the proposed resident.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 10, effective September 1, 1999; am. Acts 2013, 83rd Leg., ch. 682 (H.B. 2276), § 1, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015 (renumbered from Sec. 533.038).

Sec. 533A.040. Services for Children and Youth.

The department shall ensure the development of programs and the expansion of services at the community level for children with an intellectual disability, or with a dual diagnosis of an intellectual disability and mental illness, 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.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.0415. Memorandum of Understanding on Interagency Training.

(a) The executive commissioner, the Texas Juvenile Justice Department, and the Texas Education Agency by

rule shall adopt a joint memorandum of understanding to develop interagency training for the staffs of the department, the Texas Juvenile Justice Department, and the Texas Education Agency who are involved in the functions of assessment, case planning, case management, and in-home or direct delivery of services to children, youth, and their families under this title. 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; and
 - (C) monitor, evaluate, and revise the training program, including the development of additional curricula based on future training needs identified by staff and professionals.
- (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 commission shall act as the lead agency in coordinating the development and implementation of the memorandum.
- (e) The executive commissioner and the agencies shall review and by rule revise the memorandum not later than August each year.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.042. Evaluation of Elderly Residents.

- (a) The department shall evaluate each elderly resident at least annually to determine if the resident can be appropriately served in a less restrictive setting.
- (b) The department shall consider the proximity to the resident of family, friends, and advocates concerned with the resident's well-being in determining whether the resident should be moved from a department facility or to a different department facility. The department shall recognize that a nursing facility 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 appropriate interdisciplinary team shall conduct the evaluation of an elderly resident of a department 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 intellectual and developmental disability authority.

(f) A local intellectual and developmental disability authority shall provide continuing care for an elderly resident placed in the authority's service area under this section.

(g) The local intellectual and developmental disability authority shall have the right of access to all residents and records of residents who request continuing care services.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.043. Proposals for Geriatric Care.

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

(b) 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 intellectual and developmental disability authority outlining the responsibilities for continuity of care and monitoring, if the provider is not the local authority.

(c) The department may fund a proposal through a contract if the provider agrees to meet the requirements prescribed by Subsection (b) 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.

(d) The appropriate local intellectual and developmental disability 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.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Subchapter C

Powers and Duties Relating to ICF-IID Program

Sec. 533A.062. Plan on Long-Term Care for Persons with an Intellectual Disability.

(a) The department shall biennially develop a proposed plan on long-term care for persons with an intellectual disability.

(b) The proposed plan must specify the capacity of the HCS waiver program for persons with an intellectual disability and the number and levels of new ICF-IID 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.

(b-1) As part of the proposed plan, the commission shall review the statewide bed capacity of community ICF-IID facilities for individuals with an intellectual disability or a related condition and, based on the review, develop a process to reallocate beds held in suspension by the commission. The process may include:

- (1) criteria by which ICF-IID program providers may apply to the commission to receive reallocated beds; and
- (2) a means to reallocate the beds among health services regions.

(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 commission for approval.

(d) The commission may modify the proposed plan as necessary before its final approval.

(e) The commission shall submit the proposed plan to the Legislative Budget Board and the governor not later than October 15 of each even-numbered year.

(f) After legislative action on the appropriation for long-term care services for persons with an intellectual disability, the commission shall adjust the plan to ensure that the number of ICF-IID 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 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 commission.

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.06, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 646 (S.B. 160), § 6, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 747 (H.B. 1510), § 27, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015 (renumbered from Sec. 533.062); am. Acts 2019, 86th Leg., ch. 573 (S.B. 241), § 1.32, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 1153 (H.B. 3117), § 1, effective June 14, 2019.

Sec. 533A.066. Information Relating to ICF-IID Program.

(a) At least annually, the department shall sponsor a conference on the ICF-IID program to:

- (1) assist providers in understanding survey rules;
- (2) review deficiencies commonly found in ICF-IID facilities; and
- (3) inform providers of any recent changes in the rules or in the interpretation of the rules relating to the ICF-IID program.

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 8.099, effective September 1, 1995; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015 (renumbered from Sec. 533.066).

Subchapter D

Powers and Duties Relating to Department Facilities

Sec. 533A.081. Development of Facility Budgets.

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

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.082. Determination of Savings in Facilities.

(a) The department shall determine the degree to which the costs of operating department facilities for persons with an intellectual disability 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 intellectual disability programs any savings realized in operating department facilities for persons with an intellectual disability.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.083. Criteria for Expansion, Closure, or Consolidation of Facility.

The department shall establish objective criteria for determining when a new facility may be needed and when a state supported living center may be expanded, closed, or consolidated.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.084. Management of Surplus Real Property.

(a) To the extent provided by this subtitle, the department, in coordination with the executive commissioner, may lease, transfer, or otherwise dispose of any surplus real property related to the provision of services under this title, including any improvements under its management and control, or authorize the lease, transfer, or disposal of the property. Surplus property is property the executive commissioner 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 may be appropriated only for improvements to the department's system of intellectual disability facilities.

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

(d) This section does not authorize the executive commissioner or department to close or consolidate a state supported living center without first obtaining legislative approval.

(e) Notwithstanding Subsection (c), the executive commissioner, in coordination with 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.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.0846. Intellectual Disability Community Services Account.

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

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.81, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015 (renumbered from Sec. 533.0846).

Sec. 533A.085. Facilities for Inmate and Parolee Care.

(a) With the written approval of the governor, the department may contract with the Texas Department of Criminal Justice to transfer facilities to the Texas Department of Criminal Justice or otherwise provide facilities for:

- (1) inmates with an intellectual disability in the custody of the Texas Department of Criminal Justice; or
- (2) persons with an intellectual disability paroled or released under the supervision of the Texas Department of Criminal Justice.

(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.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.087. Lease of Real Property.

(a) The department, in coordination with the executive commissioner, may lease real property related to the provision of services under this title, 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, in coordination with the executive commissioner, may award a lease of real property only:

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

(b) The commission 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, in coordination with the executive commissioner, may lease real property related to the provision of services under this title or an improvement for less than the prevailing market rate, without advertisement or without competitive bidding, if:

- (1) the executive commissioner 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 executive commissioner shall adopt leasing rules, forms, and contracts that will protect the state's interests.

(e) The executive commissioner may reject any bid.

(f) This section does not authorize the executive commissioner or department to close or consolidate a facility used to provide intellectual disability services without legislative approval.

(g) Notwithstanding Subsections (a) and (b), the executive commissioner, in coordination with 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.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Subchapter E

Jail Diversion Program

Sec. 533A.108. Prioritization of Funding for Diversion of Persons From Incarceration in Certain Counties.

(a) A local intellectual and developmental disability

authority may develop and may prioritize its available funding for:

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

- (A) screening and assessment services; and
- (B) treatment services, including:
 - (i) short-term residential services;
 - (ii) crisis respite residential services; and
 - (iii) continuity of care services;

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

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

(b) A local intellectual and developmental disability authority developing a system, training, or a model program under Subsection (a) shall collaborate with other local resources, including local law enforcement and judicial systems and local personnel.

(c) A local intellectual and developmental disability authority may not implement a system, training, or a model program developed under this section until the system, training, or program is approved by the department.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

CHAPTER 534

Community Services

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Subchapter A

Community Centers

Sec. 534.0001. Definitions.

In this subchapter:

- (1) "Commissioner" means:
 - (A) the commissioner of state health services in relation to:
 - (i) a community mental health center; or
 - (ii) the mental health services component of a community mental health and intellectual disability center; and
 - (B) the commissioner of aging and disability services in relation to:
 - (i) a community intellectual disability center; or
 - (ii) the intellectual disability services component of a community mental health and intellectual disability center.
- (2) "Department" means:
 - (A) the Department of State Health Services in relation to:
 - (i) a community mental health center; or
 - (ii) the mental health services component of a community mental health and intellectual disability center; and

(B) the Department of Aging and Disability Services in relation to:

- (i) a community intellectual disability center; or
- (ii) the intellectual disability services component of a community mental health and intellectual disability center.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.001. Establishment.

(a) A county, municipality, hospital district, or 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 intellectual disability center that provides intellectual disability services; or
- (3) a community mental health and intellectual disability center that provides mental health and intellectual disability 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 a copy of the contract between the participating local agencies, if applicable, to:

(A) the Department of State Health Services for a proposed center that will provide mental health services;

(B) the Department of Aging and Disability Services for a proposed center that will provide intellectual disability services; or

(C) both departments if the proposed center will provide mental health and intellectual disability services;

(2) each appropriate department approves the proposed center's plan to develop and make available to the region's residents an effective mental health or intellectual disability 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) each department from which the proposed center seeks approval determines that the center can appropriately, effectively, and efficiently provide those services in the region.

(e) Except as provided by this section, 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 executive commissioner 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. In addition to the services described in a center's plan, the center may provide other health and human services and supports as provided by a contract with or a grant received from a local, state, or federal agency.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.07, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 601 (H.B. 553), § 1, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 835 (H.B. 587), § 1, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 8.276, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.82, effective September 1, 2006; am. Acts 2009, 81st Leg., ch. 1292 (H.B. 2303), § 2, effective June 19, 2009; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.0015. Purpose and Policy.

(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 with mental illness or an intellectual disability.

(b) It is the policy of this state that community centers strive to develop services for persons with mental illness or an intellectual disability, and may provide requested services to persons with developmental disabilities or with chemical dependencies, that are effective alternatives to treatment in a large residential facility.

HISTORY: Am. Acts 2009, 81st Leg., ch. 1292 (H.B. 2303), § 3, effective September 1, 2009; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.002. Board of Trustees for Center Established by One Local Agency.

(a) 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;
- (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; and

(3) a sheriff or a representative of a sheriff of a county in the region served by the community center who is appointed by the local agency's governing body to serve as an ex officio nonvoting member.

(b) If a qualified voter appointed to a community center under Subsection (a)(2) is the sheriff of the only county in the region served by a community center, Subsection (a)(3) does not apply.

(c) If a qualified voter appointed to a community center under Subsection (a)(2) is a sheriff of a county in the region served by a community center and the region served by the community center consists of more than one county, under Subsection (a)(3) the local agency's governing body shall appoint a sheriff or a representative of a sheriff from a different county in the region served by the community center.

(d) Subsection (a)(3) does not prevent a sheriff or representative of a sheriff from being included on the board of trustees of a community center as a voting member of the board.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.09, effective August 30, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 962 (S.B. 632), § 3, effective September 1, 2019.

Sec. 534.003. Board of Trustees for Center Established by at Least Two Local Agencies.

(a) Except as provided by Subsection (a-1), 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.

(a-1) In addition to the members described by Subsection (a), the board of trustees of a community center must include:

(1) if the region served by the community center consists of only one county, the sheriff of that county or a representative of the sheriff to serve as an ex officio nonvoting member; or

(2) if the region served by the community center consists of more than one county, sheriffs from at least two of the counties in the region served by the community center or representatives of the sheriffs to serve as ex officio nonvoting members.

(a-2) Subsection (a-1) does not prevent a sheriff or representative of a sheriff from being included on the board of trustees of a community center as a voting member of the board.

(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 the:

- (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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.10, effective August 30, 1993; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.200, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 962 (S.B. 632), § 4, effective September 1, 2019.

Sec. 534.004. Procedures Relating to Board of Trustees Membership.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.11, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 12, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.005. Terms; Vacancies.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.12, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 13, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.006. Training.

(a) The executive commissioner 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 an intellectual disability 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 Chapter 551, Government Code, and Chapter 552, Government Code;
- (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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.13, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(82), (88), effective September 1, 1995; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.0065. Qualifications; Conflict of Interest; Removal.

(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 chapter.

(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);

(3) does not maintain during service on the board of trustees the qualifications required by Subsections (b) and (c);

(4) violates a provision of Subsection (e);

(5) violates a provision of Section 534.0115; or

(6) does not execute the affidavit required by Subsection (f).

(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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 107, Sec. 6.13, effective August 30, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.007. Prohibited Activities by Former Officers or Employees; Offense.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 14, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.008. Administration by Board.

(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 applicable rules and standards of each appropriate department.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.14, effective August 30, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.009. Meetings.

(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 Chapter 551, Government Code.

(c) The board of trustees shall keep a record of its proceedings in accordance with Chapter 551, Government Code. The record is open for public inspection in accordance with that law.

(d) The board of trustees shall send to each appropriate 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.15, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(84), effective September 1, 1995; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.010. Executive Director.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.16, effective August 30, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.011. Personnel.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.17, effective August 30, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.0115. Nepotism.

(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), the related member of the board of trustees may not participate in the deliberation of 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.

HISTORY: false, Enacted by Acts 1993, 73rd Leg., ch. 107, § 6.18, effective August 30, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.012. Advisory Committees.

(a) The board of trustees may appoint committees, including medical committees, to advise the board of trustees on matters relating to mental health and intellectual disability 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107, § 6.19, effective August 30, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.013. Cooperation of Departments.

Each appropriate 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.014. Budget; Request for Funds.

(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.

HISTORY: , Enacted by Acts 1993, 73rd Leg., ch. 107, § 6.20, effective August 30, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.015. Provision of Services.

(a) The board of trustees may adopt rules to regulate the administration of mental health or intellectual disability 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 intellectual disability services.

(c) With the approval of each appropriate commissioner, the board of trustees may contract with the governing body of another county or municipality to provide mental health and intellectual disability 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.0155. For Whom Services May Be Provided.

(a) This subtitle does not prevent a community center from providing services to:

- (1) a person with a chemical dependency;
- (2) a person with a developmental disability; or
- (3) a person younger than four years of age who is eligible for early childhood intervention services .

(b) A community center may provide those services by contracting with a public or private agency in addition to the appropriate department.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 107, § 6.21, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 646, § 7(a), effective August 30, 1993; Am. Acts 2009, 81st Leg., ch. 1292 (H.B. 2303), § 4, effective September 1, 2009; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.016. Screening and Continuing Care Services.

(a) A community center shall provide screening services for:

(1) a person who requests voluntary admission to a Department of State Health Services facility for persons with mental illness; and

(2) a person for whom proceedings for involuntary commitment to a Department of State Health Services or Department of Aging and Disability Services facility for persons with mental illness or an intellectual disability 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 of State Health Services facility and for whom the facility superintendent has recommended a continuing care plan.

(c) Services provided under this section must be consistent with the applicable rules and standards of each appropriate department.

(d) The appropriate 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.017. Fees for Services.

(a) A community center shall charge reasonable fees for 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 or clients that each appropriate 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107, § 6.22, effective August 30, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.0175. Trust Exemption.

(a) If a patient or 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 patient or client or the patient's or client's estate and is not liable for the patient's or 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 patient or client or the patient's or client's estate and are liable for the patient's or 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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 166 (H.B. 367), § 1, effective September 1, 1993; am. Acts 2001, 77th Leg., ch. 1020 (H.B. 1316), § 1, effective June 15, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.018. Gifts and Grants.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107, § 6.23, effective August 30, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.019. Contribution by Local Agency.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107, § 6.23, effective August 30, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.020. Acquisition and Construction of Property and Facilities by Community Center.

(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; and

(3) a majority of the board approves the transaction.

(c) The board of trustees shall establish in accordance with relevant rules of each appropriate department competitive bidding procedures and practices for capital purchases and for purchases involving department funds or required local matching funds.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107, § 6.23,

effective August 30, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.021. Approval and Notification Requirements.

(a) A community center must receive from each appropriate department prior written approval to acquire real property, including a building, if the acquisition involves the use of funds of that department or local funds required to match funds of that department. 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 each appropriate 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 funds of that department or local funds required to match funds of that department. Each appropriate commissioner, on request, may waive the 30-day requirement on a case-by-case basis.

(c) The executive commissioner shall adopt rules relating to the approval and notification process.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 646, § 9(a), effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.022. Financing of Property and Improvements.

(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.

(e) A county or municipality acting alone or two or more counties or municipalities acting jointly pursuant to inter-local 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 obligation 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.24, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 161 (S.B. 1322), § 1, effective May 16, 1993; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 11, effective September 1, 1995; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 8.277, effective September 1, 2001; am. Acts 2005, 79th Leg., ch. 826 (S.B. 812), § 1, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 1050 (S.B. 71), § 22(13), effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), § 25(97), effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.023. Sale of Real Property Acquired Solely Through Private Gift or Grant.

(a) Except as provided by Subsection (d), a community center may sell center real property, including a building, without the approval of each appropriate department or any local agency that appoints members to the board of trustees, only if the real property was acquired solely through a gift or grant of money or real property from a private entity, including an individual.

(b) A community center that acquires real property by gift or grant shall, on the date the center acquires the gift or grant, notify the private entity providing the gift or grant that:

- (1) the center may subsequently sell the real property; and
- (2) the sale is subject to the provisions of this section.

(c) Except as provided by Subsection (d), real property sold under Subsection (a) must be sold for the property's fair market value.

(d) Real property sold under Subsection (a) may be sold for less than fair market value only if the board of trustees adopts a resolution stating:

(1) the public purpose that will be achieved by the sale; and

(2) the conditions and circumstances for the sale, including conditions to accomplish and maintain the public purpose.

(e) A community center must notify each appropriate department and each local agency that appoints members to the board of trustees not later than the 31st day before the date the center enters into a binding obligation to sell real property under this section. Each appropriate commissioner, on request, may waive the 30-day notice requirement on a case-by-case basis.

(f) The executive commissioner shall adopt rules relating to the notification process.

(g) A community center may use proceeds received from a sale of real property under this section only for a purpose authorized by this subchapter or for a public purpose authorized for a community center by state or federal law.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 231 (H.B. 243), § 1, effective June 14, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.024. Department Funding for Facility Renovation [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 1175 (S.B. 199), § 4, effective June 18, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 534.025. Priorities for Funding [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 1175 (S.B. 199), § 4, effective June 18, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 534.026. Terms of Construction or Renovation Agreement [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 1175 (S.B. 199), § 4, effective June 18, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.26, effective August 30, 1993.

Sec. 534.027. Community Centers Facilities Construction and Renovation Fund [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 1175 (S.B. 199), § 4, effective June 18, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 534.028. Transfer of Title; Release of Lien [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 1175 (S.B. 199), § 4, effective June 18, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 534.029. Default [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 1175 (S.B. 199), § 4, effective June 18, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 534.030. State Funds [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 1175 (S.B. 199), § 4, effective June 18, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.26, effective August 30, 1993.

Sec. 534.031. Surplus Personal Property.

The executive commissioner, in coordination with the appropriate department, may transfer, with or without reimbursement, ownership and possession of surplus personal property under that department's control or jurisdiction to a community center for use in providing mental health or intellectual disability services, as appropriate.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.032. Research.

A community center may engage in research and may contract for that purpose.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.033. Limitation on Department Control and Review.

(a) It is the intent of the legislature that each department limit its control over, and routine reviews of, community center programs to those programs that:

(1) use funds from that department or use required local funds that are matched with funds from that department;

(2) provide core or required services;

(3) provide services to former clients or patients of a facility of that department; or

(4) are affected by litigation in which that department is a defendant.

(b) Each appropriate 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) Each appropriate department may determine whether a particular program uses funds from that department or uses required local matching funds.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107, § 6.27, effective August 30, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.034. Memorandum of Understanding on Program Reviews [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 869 (H.B. 1734), § 5, effective September 1, 1997.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 534.035. Review, Audit, and Appeal Procedures.

(a) The executive commissioner 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 each appropriate commissioner, the community center fails to respond to a deficiency identified in a review or audit to the satisfaction of that commissioner, that department may sanction the center in accordance with department rules.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.28, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 8, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.036. Financial Audit.

(a) The executive commissioner shall prescribe procedures for financial audits of community centers. The executive commissioner shall develop the procedures with the assistance of the state agencies and departments that contract with community centers. The executive commissioner 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 or 534.121, as appropriate. Before prescribing or amending the procedures, the executive commissioner shall set a deadline for those state agencies and departments to submit to the executive commissioner proposals relating to the financial audit procedures. The procedures must be consistent with any requirements connected with federal funding received by the community center.

(b) Each state agency or department that contracts with a community center shall comply with the procedures developed under this section.

(c) The executive commissioner shall develop protocols for a state agency or department to conduct additional financial audit activities of a community center.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 869 (H.B. 1734), § 2, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.037. Program Audit.

(a) The executive commissioner 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 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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 869 (H.B. 1734), § 3, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.038. Appointment of Manager or Management Team.

(a) Each appropriate 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 that 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;

(6) 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 rules of that department.

(b) Each appropriate 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) Each appropriate commissioner may require the center to pay costs incurred by the manager or management team.

(d) The center may appeal a commissioner's decision to appoint a manager or management team as prescribed by rules of that department. 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).

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1520 (S.B. 773), § 1, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 839 (S.B. 464), § 1, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.039. Powers and Duties of Management Team.

(a) As each appropriate 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 each appropriate 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.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1520 (S.B. 773), § 1, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.040. Restoring Management to Center.

(a) Each month, each appropriate 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 each appropriate commissioner determines that the relevant factors listed under Section 534.038(a) no longer apply.

(c) Following a determination under Subsection (b), each appropriate 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.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1520 (S.B. 773), § 1, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 839 (S.B. 464), § 2, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Secs. 534.041 to 534.050. [Reserved for expansion].

Subchapter B

Community-Based Mental Health Services

Sec. 534.051. Definitions.

In this subchapter:

- (1) "Commissioner" means the commissioner of state health services.
- (2) "Department" means the Department of State Health Services.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.052. Rules and Standards.

(a) The executive commissioner shall adopt rules, including standards, the executive commissioner considers necessary and appropriate to ensure the adequate provision of community-based mental health services through a local mental health authority under this subchapter.

(b) The department shall send a copy of the rules to each local mental health authority or other provider receiving contract funds as a local mental health authority or designated provider.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.29, effective August 30, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.053. Required Community-Based Mental Health Services.

(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) medication-related services, including medication clinics, laboratory monitoring, medication education, mental health maintenance education, and the provision of medication; and
- (5) psychosocial rehabilitation programs, including social support activities, independent living skills, and vocational training.

(b) The department shall arrange for appropriate community-based services 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, 42A.104, or 42A.506, Code of Criminal Procedure.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 4.021, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015; am. Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 2.69, effective January 1, 2017.

Sec. 534.0535. Joint Discharge Planning.

(a) The executive commissioner shall adopt, and the department shall enforce, rules that require continuity of services and planning for patient care between department facilities and local mental health authorities.

(b) At a minimum, the rules must require joint discharge planning between a department facility and a local mental health authority before a facility discharges a patient or places the patient on an extended furlough with an intent to discharge.

(c) The local mental health authority shall plan with the department facility and determine the appropriate community services for the patient.

(d) The local mental health 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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 107, § 6.30, effective August 30, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.054. Designation of Provider.

(a) The department shall identify and contract with a local mental health authority for each service area to ensure that services are provided to patient populations determined by the department. A local mental health 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) [Repealed by Acts 1997, 75th Leg., ch. 869 (H.B. 1734), § 5, effective September 1, 1997.]

(c) 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 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 authority does not have the capacity to ensure the availability of that service.

(d) [Repealed by Acts 1997, 75th Leg., ch. 869 (H.B. 1734), § 5, effective September 1, 1997.]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.31, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 12, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 869 (H.B. 1734), § 5, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.055. Contracts for Certain Community Services.

(a)

The executive commissioner shall design a competitive procurement or similar system that a mental health authority shall use in awarding an initial contract for the

provision of services at the community level for persons with mental illness, including residential services, if the contract involves the use of state money or money for which the state has oversight responsibility.

(b) The system must require that each local mental health 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.

(c) Each local mental health 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.32, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 13, effective September 1, 1995; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.056. Coordination of Activities.

A local mental health authority shall coordinate its activities with the activities of other appropriate agencies that provide care and treatment for persons with drug or alcohol problems.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107, § 6.33, effective August 30, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.057. Respite Care. [Renumbered]

HISTORY: Renumbered to Tex. Health & Safety Code § 534.1075 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.058. Standards of Care.

(a) The executive commissioner shall develop standards of care for the services provided by a local mental health authority and its subcontractors under this subchapter.

(b) The standards must be designed to ensure that the quality of the community-based mental health services is consistent with the quality of care available in department facilities.

(c) In conjunction with local mental health authorities, the executive commissioner shall review the standards biennially to determine if each standard is necessary to ensure the quality of care.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107, § 6.34, effective August 30, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.059. Contract Compliance for Local Authorities.

(a) The department shall evaluate a local mental health 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 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 authority may appeal the department's decision to impose a sanction on the authority. The executive commissioner 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 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 authority to monthly distributions.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.35, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 9, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.060. Program and Service Monitoring and Review of Local Authorities.

(a) The department shall develop mechanisms for monitoring the services provided by a local mental health authority.

(b) The department shall review the program quality and program performance results of a local mental health authority in accordance with a risk assessment and evalu-

ation 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 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.36, effective August 30, 1993; am. Acts 1997, 75th Leg., ch. 869 (H.B. 1734), § 4, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 10, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.0601. Coordinated Program Audits of Local Authorities.

(a) The executive commissioner shall coordinate with each agency or department of the state that contracts with a local mental health 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 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 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 executive commissioner.

(e) This section does not prohibit an agency, department, or other entity providing funding to a local mental health authority from investigating a complaint against the authority or performing additional contract monitoring of the authority.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 11, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.0602. Financial Audits of Local Authorities.

(a) The executive commissioner shall prescribe procedures for a financial audit of a local mental health authority. The procedures must be consistent with requirements for the receipt of federal funding by the authority.

(b) The executive commissioner shall develop the procedures with the assistance of each agency or department of the state that contracts with a local mental health authority. The executive commissioner 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 executive commissioner must set a deadline for agencies and departments of the state that contract with local mental health authorities to submit proposals relating to the procedure.

(d) An agency or department of the state that contracts with a local mental health 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 executive commissioner.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 11, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.0603. Additional Financial Audit Activity.

(a) The executive commissioner shall develop protocols for an agency or department of the state to conduct additional financial audit activities of a local mental health authority.

(b) An agency or department of the state may not conduct additional financial audit activities relating to a local mental health authority without the approval of the executive commissioner.

(c) This section, and a protocol developed under this section, do not apply to an audit conducted under Chapter 321, Government Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 11, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.061. Program and Service Monitoring and Review of Certain Community Services.

(a) The local mental health authority shall monitor the services of a provider who contracts with the authority to provide services for persons with mental illness to ensure that the provider is delivering the services in a manner consistent with the provider's contract.

(b) Each provider contract involving the use of state funds or funds for which the state has oversight responsibility must authorize the local mental health 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.

(c) The department may withdraw funding from a local mental health 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 department rules.

(d) The executive commissioner by rule shall prescribe procedures a local mental health authority must follow in remedying a problem with a provider.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch.

1209 (S.B. 542), § 12, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.062. Review of Crisis Residential and Hospitalization Services [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 18, effective September 1, 1995.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 534.063. Peer Review Organization.

The department shall assist a local mental health authority in developing a peer review organization to provide self-assessment of programs and to supplement department reviews under Section 534.060.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107, § 6.37, effective August 30, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.064. Contract Renewal.

The executive commissioner may refuse to renew a contract with a local mental health authority and may select other agencies, entities, or organizations to be the local mental health authority if the department's evaluation of the authority's performance under Section 534.059 indicates that the authority cannot ensure the availability of the specific services to priority populations required by the department and this subtitle.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.38, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 14, effective September 1, 1995; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.065. Renewal of Certain Contracts for Community Services.

(a) A local mental health 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 services at the community level, including residential services; and
- (3) involves the use of state funds or funds for which the state has oversight responsibility.

(b) The local mental health authority may renew the contract only if the contract meets the criteria provided by Section 533.016.

(c) The local mental health authority and private provider shall negotiate a contract renewal at arm's 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 15, effective September 1, 1995; am. Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 15, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.066. Local Match Requirement.

(a) The department shall include in a contract with a local mental health 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 authority's board of trustees and based on the authority's financial capability and its overall commitment to other mental health programs, as appropriate.

(b)

Patient fee income, third-party insurance income, services and facilities contributed by the local mental health 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 authority. The department may disallow or reduce the value of services claimed as support.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.38, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 16, effective September 1, 1995; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.067. Fee Collection Policy.

The executive commissioner shall establish a uniform fee collection policy for all local mental health authorities that is equitable, provides for collections, and maximizes contributions to local revenue.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107, § 6.38, effective August 30, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.0675. Notice of Denial, Reduction, or Termination of Services.

The executive commissioner by rule, in cooperation with local mental health authorities, consumers, consumer advocates, and service providers, shall establish a uniform procedure that each local mental health authority shall use to notify consumers in writing of the denial, involuntary reduction, or termination of services and of the right to appeal those decisions.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 107, § 6.38, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 646, § 11, effective August 30, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.068. Audits.

(a) As a condition to receiving funds under this subtitle, a local mental health authority other than 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 authority shall use an invitation-for-proposal process as prescribed by the executive commissioner to select the auditor.

(a-1) The audit required under Subsection (a) may be published electronically on the local mental health authority's Internet website. An authority that electronically publishes an audit under this subsection shall notify the department that the audit is available on the authority's Internet website on or before the date the audit is due.

(b) The audit must meet the minimum requirements as shall be, and be in the form and in the number of copies as may be, prescribed by the executive commissioner, subject to review and comment by the state auditor.

(c) The local mental health authority shall file the required number of copies of the audit report with the department by the date prescribed by the executive commissioner. From the copies filed with the department, copies of the report shall be submitted to the governor and Legislative Budget Board.

(d) The local mental health 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 copies 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.

(g) The report required under Subsection (f) may be published electronically on the department's Internet website. The department shall notify each entity entitled to receive a copy of the report that the report is available on the department's Internet website on or before the date the report is due.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.39, effective August 30, 1993; am. Acts 2013, 83rd Leg., ch. 1312 (S.B. 59), § 68, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), article 3, § 3.1336, effective April 2, 2015.

Sec. 534.069. Criteria for Providing Funds for Start-Up Costs.

(a) The executive commissioner 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.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.070. Use of Prospective Payment Funds.

(a) Each local mental health 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 executive commissioner 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 local mental health 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 local mental health authority to provide community services to certain persons with mental illness.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.071. Advisory Committee.

A local mental health authority may appoint a committee to advise its governing board on a matter relating to the oversight and provision of mental health services. The appointment of a committee does not relieve the authority's governing board of a responsibility prescribed by this subtitle.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 13, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Secs. 534.072 to 534.100. [Reserved for expansion].

Subchapter B-1

Community-Based Intellectual Disability Services

Sec. 534.101. Definitions.

In this subchapter:

- (1) "Commissioner" means the commissioner of aging and disability services.
- (2) "Department" means the Department of Aging and Disability Services.
- (3) "Department facility" means a state supported living center, including the ICF-IID component of the Rio Grande State Center.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.102. Rules and Standards.

(a) The executive commissioner shall adopt rules, including standards, the executive commissioner considers necessary and appropriate to ensure the adequate provision of community-based intellectual disability services through a local intellectual and developmental disability authority under this subchapter.

(b) The department shall send a copy of the rules to each local intellectual and developmental disability authority or other provider receiving contract funds as a local intellectual and developmental disability authority or designated provider.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.103. Required Community-Based Intellectual Disability Services.

(a) The department shall ensure that, at a minimum, the following services are available in each service area:

- (1) community-based assessments, including diagnosis and evaluation services;
- (2) respite care; and
- (3) case management services.

(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 ensure that the services listed in this section are available for children, including adolescents, as well as adults, in each service area.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.104. Joint Discharge Planning.

(a) The executive commissioner shall adopt, and the department shall enforce, rules that require continuity of services and planning for client care between department facilities and local intellectual and developmental disability authorities.

(b) At a minimum, the rules must require joint discharge planning between a department facility and a local intellectual and developmental disability authority before a facility discharges a client or places the client on an extended furlough with an intent to discharge.

(c) The local intellectual and developmental disability authority shall plan with the department facility and determine the appropriate community services for the client.

(d) The local intellectual and developmental disability 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.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.105. Designation of Provider.

(a) The department shall identify and contract with a local intellectual and developmental disability authority for each service area to ensure that services are provided to client populations determined by the department. A local intellectual and developmental disability 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 534.102.

(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 intellectual and developmental disability authority to ensure that a specific required service for priority populations is available in that service area; or
- (2) determines that a local intellectual and developmental disability authority does not have the capacity to ensure the availability of that service.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.106. Contracts for Certain Community Services.

(a) The executive commissioner shall design a competitive procurement or similar system that an intellectual and developmental disability authority shall use in awarding an initial contract for the provision of services at the community level for persons with an intellectual disability, including residential services, if the contract involves the use of state money or money for which the state has oversight responsibility.

(b) The system must require that each local intellectual and developmental disability 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.

(c) Each local intellectual and developmental disability 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.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.107. Coordination of Activities.

A local intellectual and developmental disability authority shall coordinate its activities with the activities of other appropriate agencies that provide care and treatment for persons with drug or alcohol problems.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.1075. Respite Care.

(a) The executive commissioner 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 executive commissioner shall establish service and performance standards for department facilities and designated providers to use in operating the in-home respite care program. The executive commissioner shall establish the standards from information obtained from the families of clients receiving in-home respite care and from providers of in-home respite care. The executive commissioner may obtain the information at a public hearing or from an advisory group.

(d) The service and performance standards established by the executive commissioner under Subsection (c) must:

(1) prescribe minimum personnel qualifications the executive commissioner determines are necessary to protect health and safety;

(2) establish levels of personnel qualifications that are dependent on the needs of the 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 executive commissioner determines that additional training is necessary.

HISTORY: am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015 (renumbered from Sec. 534.057).

Sec. 534.108. Standards of Care.

(a) The executive commissioner shall develop standards of care for the services provided by a local intellectual and developmental disability authority and its subcontractors under this subchapter.

(b) The standards must be designed to ensure that the quality of community-based intellectual disability services is consistent with the quality of care available in department facilities.

(c) In conjunction with local intellectual and developmental disability authorities, the executive commissioner

shall review the standards biennially to determine if each standard is necessary to ensure the quality of care.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.109. Contract Compliance for Local Authorities.

(a) The department shall evaluate a local intellectual and developmental disability 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 intellectual and developmental disability 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 intellectual and developmental disability authority may appeal the department's decision to impose a sanction on the authority. The executive commissioner 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 intellectual and developmental disability 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 intellectual and developmental disability authority to monthly distributions.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.110. Program and Service Monitoring and Review of Local Authorities.

(a) The department shall develop mechanisms for monitoring the services provided by a local intellectual and developmental disability authority.

(b) The department shall review the program quality and program performance results of a local intellectual and developmental disability 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 intellectual and developmental disability 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.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.111. Coordinated Program Audits of Local Authorities.

(a) The executive commissioner shall coordinate with each agency or department of the state that contracts with

a local intellectual and developmental disability 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 intellectual and developmental disability 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 intellectual and developmental disability 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 executive commissioner.

(e) This section does not prohibit an agency, department, or other entity providing funding to a local intellectual and developmental disability authority from investigating a complaint against the authority or performing additional contract monitoring of the authority.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.112. Financial Audits of Local Authorities.

(a) The executive commissioner shall prescribe procedures for a financial audit of a local intellectual and developmental disability authority. The procedures must be consistent with requirements for the receipt of federal funding by the authority.

(b) The executive commissioner shall develop the procedures with the assistance of each agency or department of the state that contracts with a local intellectual and developmental disability authority. The executive commissioner 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 534.121.

(c) Before prescribing or amending a procedure under this section, the executive commissioner must set a deadline for agencies and departments of the state that contract with local intellectual and developmental disability authorities to submit proposals relating to the procedure.

(d) An agency or department of the state that contracts with a local intellectual and developmental disability 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 executive commissioner.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.113. Additional Financial Audit Activity.

(a) The executive commissioner shall develop protocols for an agency or department of the state to conduct

additional financial audit activities of a local intellectual and developmental disability authority.

(b) An agency or department of the state may not conduct additional financial audit activities relating to a local intellectual and developmental disability authority without the approval of the executive commissioner.

(c) This section, and a protocol developed under this section, do not apply to an audit conducted under Chapter 321, Government Code.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.114. Program and Service Monitoring and Review of Certain Community Services.

(a) The local intellectual and developmental disability authority shall monitor the services of a provider who contracts with the authority to provide services to persons with an intellectual disability to ensure that the provider is delivering the services in a manner consistent with the provider's contract.

(b) Each provider contract involving the use of state funds or funds for which the state has oversight responsibility must authorize the local intellectual and developmental disability 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.

(c) The department may withdraw funding from a local intellectual and developmental disability 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 department rules.

(d) The executive commissioner by rule shall prescribe procedures a local intellectual and developmental disability authority must follow in remedying a problem with a provider.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.115. Peer Review Organization.

The department shall assist a local intellectual and developmental disability authority in developing a peer review organization to provide self-assessment of programs and to supplement department reviews under Section 534.110.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.116. Contract Renewal.

The executive commissioner may refuse to renew a contract with a local intellectual and developmental disability authority and may select other agencies, entities, or organizations to be the local intellectual and develop-

mental disability authority if the department's evaluation of the authority's performance under Section 534.109 indicates that the authority cannot ensure the availability of the specific services to priority populations required by the department and this subtitle.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.117. Renewal of Certain Contracts for Community Services.

(a) A local intellectual and developmental disability authority shall review a contract scheduled for renewal that:

- (1) is between the authority and a private provider;
- (2) is for the provision of intellectual disability services at the community level, including residential services; and
- (3) involves the use of state funds or funds for which the state has oversight responsibility.

(b) The local intellectual and developmental disability authority may renew the contract only if the contract meets the criteria provided by Section 533A.016.

(c) The local intellectual and developmental disability authority and private provider shall negotiate a contract renewal at arm's 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.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.118. Local Match Requirement.

(a) The department shall include in a contract with a local intellectual and developmental disability 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 authority's board of trustees and based on the authority's financial capability and its overall commitment to other intellectual disability programs, as appropriate.

(b) Client fee income, third-party insurance income, services and facilities contributed by the local intellectual and developmental disability 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 intellectual and developmental disability authority. The department may disallow or reduce the value of services claimed as support.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.119. Fee Collection Policy.

The executive commissioner shall establish a uniform fee collection policy for all local intellectual and developmental disability authorities that is equitable, provides for collections, and maximizes contributions to local revenue.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.120. Notice of Denial, Reduction, or Termination of Services.

The executive commissioner by rule, in cooperation with local intellectual and developmental disability authorities, consumers, consumer advocates, and service providers, shall establish a uniform procedure that each local intellectual and developmental disability authority shall use to notify consumers in writing of the denial, involuntary reduction, or termination of services and of the right to appeal those decisions.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.121. Audits.

(a) As a condition to receiving funds under this subtitle, a local intellectual and developmental disability authority other than 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 intellectual and developmental disability authority shall use an invitation-for-proposal process as prescribed by the executive commissioner to select the auditor.

(a-1) The audit required under Subsection (a) may be published electronically on the local intellectual and developmental disability authority's Internet website. An authority that electronically publishes an audit under this subsection shall notify the department that the audit is available on the authority's Internet website on or before the date the audit is due.

(b) The audit must meet the minimum requirements as shall be, and be in the form and in the number of copies as may be, prescribed by the executive commissioner, subject to review and comment by the state auditor.

(c) The local intellectual and developmental disability authority shall file the required number of copies of the audit report with the department by the date prescribed by the executive commissioner. From the copies filed with the department, copies of the report shall be submitted to the governor and Legislative Budget Board.

(d) The local intellectual and developmental disability 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 copies 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.

(g) The report required under Subsection (f) may be published electronically on the department's Internet website. The department shall notify each entity entitled to receive a copy of the report that the report is available on the department's Internet website on or before the date the report is due.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.122. Criteria for Providing Funds for Start-Up Costs.

(a) The executive commissioner 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 an intellectual disability.

(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.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.123. Use of Prospective Payment Funds.

(a) Each local intellectual and developmental disability 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 executive commissioner 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 local intellectual and developmental disability 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 local intellectual and developmental disability authority to provide community services to certain persons with an intellectual disability.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.124. Advisory Committee.

A local intellectual and developmental disability authority may appoint a committee to advise its governing board on a matter relating to the oversight and provision of intellectual disability services. The appointment of a committee does not relieve the authority's governing board of a responsibility prescribed by this subtitle.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

*Subchapter C**Health Maintenance Organizations***Sec. 534.151. Health Maintenance Organization Certificate of Authority.**

(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 each appropriate 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 each appropriate 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 to 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. Each appropriate department shall verify that the services provided under any capitated or other at-risk payment arrangement are within the scope of services approved by each appropriate 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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 835 (H.B. 587), § 2, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1229 (S.B. 753), § 2, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), § 10A.530, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.152. Laws and Rules.

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 843, Insurance Code, the Texas Nonprofit Corporation Law as described by Section 1.008(d), Business Organizations Code, and rules of the Texas Department of Insurance.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 835 (H.B. 587), § 2, effective September 1, 1997; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), § 10A.531, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.153. Application of Laws and Rules.

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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 835 (H.B. 587), § 2, effective September 1, 1997; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), § 10A.532, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.154. Applicability of Specific Laws.

(a) A nonprofit health maintenance organization created under Section 534.151 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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 835 (H.B. 587), § 2, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 14.802, effective September 1, 2001; am. Acts

2003, 78th Leg., ch. 1276 (H.B. 3507), § 10A.533, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.155. Consideration of Bids.

Each appropriate 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.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 835 (H.B. 587), § 2, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.156. Conditions for Certain Contracts.

A contract between each appropriate 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.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 16, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

CHAPTER 535

Support Services [Repealed]

Sec. 535.001. Definitions. [Repealed]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 10.005(b), effective September 1, 2001; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(103), effective April 2, 2015.

Sec. 535.002. Adoption of Rules and Implementation of Program. [Repealed]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 10.005(c), effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.82A, effective September 1, 2006; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(103), effective April 2, 2015.

Sec. 535.003. Eligibility. [Repealed]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 10.005(d), effective September 1, 2001; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(103), effective April 2, 2015.

Sec. 535.004. Provision of Assistance and Support Services. [Repealed]

HISTORY: Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(103), effective April 2, 2015.

Sec. 535.005. Support Services for Certain Clients. [Repealed]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch.

1420 (H.B. 2812), § 10.005(e), effective September 1, 2001; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(103), effective April 2, 2015.

Sec. 535.006. Limitation of Duty. [Repealed]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 10.005(f), effective September 1, 2001; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(103), effective April 2, 2015.

Sec. 535.007. Payment of Assistance. [Repealed]

HISTORY: Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(103), effective April 2, 2015.

Sec. 535.008. Selection of Programs or Providers. [Repealed]

HISTORY: Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(103), effective April 2, 2015.

Sec. 535.009. Copayment System. [Repealed]

HISTORY: Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(103), effective April 2, 2015.

Sec. 535.010. Charge. [Repealed]

HISTORY: Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(103), effective April 2, 2015.

Sec. 535.011. Client Responsibility for Payment. [Repealed]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 10.005(g), effective September 1, 2001; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(103), effective April 2, 2015.

Sec. 535.012. Review of Client's Needs. [Repealed]

HISTORY: Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(103), effective April 2, 2015.

Sec. 535.013. Notification of Change in Circumstances. [Repealed]

HISTORY: Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(103), effective April 2, 2015.

Sec. 535.014. Criminal Penalty. [Repealed]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 10.005(h), effective September 1, 2001; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(103), effective April 2, 2015.

Sec. 535.021. Definitions [Repealed].

Repealed by Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.41(a), effective August 30, 1993.

Sec. 535.022. Application to Boarding Homes Operated by Department or Authority [Repealed].

Repealed by Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.41(a), effective August 30, 1993.

Sec. 535.023. Registration by Authority [Repealed].
 Repealed by Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.41(a), effective August 30, 1993.

Sec. 535.024. Referral to Unregistered Boarding Home [Repealed].
 Repealed by Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.41(a), effective August 30, 1993.

Sec. 535.025. Establishment and Approval of Guidelines [Repealed].
 Repealed by Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.41(a), effective August 30, 1993.

Sec. 535.026. Inspections [Repealed].
 Repealed by Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.41(a), effective August 30, 1993.

Sec. 535.027. Services [Repealed].
 Repealed by Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.41(a), effective August 30, 1993.

Sec. 535.028. Fees [Repealed].
 Repealed by Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.41(a), effective August 30, 1993.

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CHAPTER 551
General Provisions

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Subchapter A

General Powers and Duties Relating to State Facilities

Sec. 551.001. Definitions.

In this subtitle:

- (1) "Commission" means the Health and Human Services Commission.
- (2) "Commissioner" means:
 - (A) the commissioner of state health services in relation to mental health services; and
 - (B) the commissioner of aging and disability services in relation to intellectual disability services.
- (3) "Department" means:
 - (A) the Department of State Health Services in relation to mental health services; and
 - (B) the Department of Aging and Disability Services in relation to intellectual disability services.
- (4) "Department facility" means:
 - (A) a facility for persons with mental illness under the jurisdiction of the Department of State Health Services; and
 - (B) a facility for persons with an intellectual disability under the jurisdiction of the Department of Aging and Disability Services.
- (5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.002. Prohibition of Interest.

The superintendent or director of a department facility or a person connected with that 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.003. Deposit of Patient or Client Funds.

(a) The superintendent or director 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 or director 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 or director may combine the funds of facility patients or clients only to deposit or invest the funds.

(d) The person performing the function of business manager at that facility shall maintain records of the amount of funds on deposit for each facility patient or client.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.004. Benefit Fund.

(a) The superintendent or director 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 or director is the trustee of the fund.

(b) The superintendent or director 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.005. Disbursement of Patient or Client Funds.

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 or director and the person performing the function of business manager at that facility.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.006. Facility Standards.

(a) The executive commissioner 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) Each department shall approve facilities of that department that meet applicable standards and, when requested, shall certify the approval to the Centers for Medicare and Medicaid Services.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.007. Building and Improvement Program.

(a) The executive commissioner, in coordination with the appropriate department, shall design, construct, equip, furnish, and maintain buildings and improvements authorized by law at department facilities.

(b) The executive commissioner may employ architects and engineers to prepare plans and specifications and to supervise construction of buildings and improvements. The executive commissioner 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) to (e) [Deleted by Acts 2015, 84th Leg., ch. 1 (SB 219), § 3.1337, effective April 2, 2015.]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.008. Transfer of Facilities. [Deleted]

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 312 (H.B. 2278), § 2, effective June 5, 1995; am. Acts 2007, 80th Leg., ch. 263 (S.B. 103), § 24, effective June 8, 2007; 2015, 1 (), § 3.1337, effective April 2, 2015.

Sec. 551.008. Regional Laundry Centers.

A regional laundry center operated by the commission to provide laundry services to department facilities may contract with federal agencies, other state agencies, or local political subdivisions to provide or receive laundry services.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 111 (S.B. 1234), § 1, effective May 22, 2019.

Sec. 551.009. Hill Country Local Mental Health Authority Crisis Stabilization Unit.

(a) In this section, "department" means the Department of State Health Services.

(a-1) The department shall contract with the local mental health authority serving the Hill Country area, including Kerr County, to operate a crisis stabilization unit on the grounds of the Kerrville State Hospital as provided by this section. The unit must be a 16-bed facility separate from the buildings used by the Kerrville State Hospital.

(b) The department shall include provisions in the contract requiring the local mental health authority to ensure that the crisis stabilization unit provides short-term residential treatment, including medical and nursing services, designed to reduce a patient's acute symptoms of mental illness and prevent a patient's admission to an inpatient mental health facility.

(c) The local mental health authority shall contract with Kerrville State Hospital to provide food service, laundry service, and lawn care to the local mental health authority operating a crisis stabilization unit on the grounds of the Kerrville State Hospital as provided by this section.

(d) The crisis stabilization unit may not be used to provide care to:

- (1) children; or
- (2) adults committed to or court ordered to a department facility as provided by Chapter 46C, Code of Criminal Procedure.

(e) The local mental health authority operating the crisis stabilization unit under contract shall use, for the purpose of operating the 16-bed unit, the money appropriated to the department for operating 16 beds in state hospitals that is allocated to the local mental health authority. The department shall ensure that the local mental health authority retains the remainder of the local authority's state hospital allocation that is not used for operating the 16-bed unit. The department may allocate additional funds appropriated to the department for state hospitals to the crisis stabilization unit.

(f) The department shall reduce the number of beds the department operates in the state hospital system by 16. The department, in collaboration with the local mental health authority, shall ensure that the 16 beds in the crisis stabilization unit are made available to other mental health authorities for use as designated by the department.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1188 (H.B. 654), § 1, effective June 15, 2007; am. Acts 2009, 81st Leg., ch. 83 (S.B. 1054), §§ 1—3, effective May 20, 2009; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 111 (S.B. 1234), § 2, effective May 22, 2019.

Secs. 551.010 to 551.020. [Reserved for expansion].

Subchapter B

Provisions Applicable to Facility Superintendent or Director

Sec. 551.021. Qualifications of Certain Superintendents [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 18, effective September 1, 1995.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 551.022. Powers and Duties of Superintendent.

(a) The superintendent of a department facility for persons with mental illness 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;
- (2) keep a register of all patients 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 department rules and departmental operating procedures, the superintendent may:

(1) establish policy to govern the facility that the superintendent considers will best promote the patients' 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.

(e) This section does not apply to a state supported living center or the director of a state supported living center.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 17, effective September 1, 1995; am. Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 20, effective June 11, 2009; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.0225. Powers and Duties of State Supported Living Center Director.

(a) The director of a state supported living center is the administrative head of the center.

(b) The director of a state supported living center has the custody of and responsibility to care for the buildings, grounds, furniture, and other property relating to the center.

(c) The director of a state supported living center shall:

- (1) oversee the admission and discharge of residents and clients;
- (2) keep a register of all residents and clients admitted to or discharged from the center;
- (3) ensure that the civil rights of residents and clients of the center are protected;
- (4) ensure the health, safety, and general welfare of residents and clients of the center;
- (5) supervise repairs and improvements to the center;
- (6) ensure that center money is spent judiciously and economically;

(7) keep an accurate and detailed account of all money received and spent, stating the source of the money and on whom and the purpose for which the money is spent;

(8) keep a full record of the center's operations;

(9) monitor the arrival and departure of individuals to and from the center as appropriate to ensure the safety of residents; and

(10) ensure that residents' family members and legally authorized representatives are notified of serious events that may indicate problems in the care or treatment of residents.

(d) In accordance with department rules and operating procedures, the director of a state supported living center may:

(1) establish policy to govern the center that the director considers will best promote the residents' interest and welfare;

(2) hire subordinate officers, teachers, and other employees and set their salaries, in the absence of other law; and

(3) dismiss a subordinate officer, teacher, or employee for good cause.

(e) The Department of Aging and Disability Services shall, with input from residents of a state supported living center, and the family members and legally authorized representatives of those residents, develop a policy that defines “serious event” for purposes of Subsection (c)(10).

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 21, effective June 11, 2009; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.023. Reports from Superintendent [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 18, effective September 1, 1995.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 551.024. Superintendent’s or Director’s Duty to Admit Commissioner and Executive Commissioner.

(a) The superintendent or director shall admit into every part of the department facility the commissioner of that department and the executive commissioner.

(b) The superintendent or director shall on request show any book, paper, or account relating to the department facility’s business, management, discipline, or government to the commissioner of that department or the executive commissioner.

(c) The superintendent or director shall give to the commissioner of that department or the executive commissioner any requested copy, abstract, or report.

HISTORY: am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.025. Duty to Report Missing Patient or Client.

If a person receiving inpatient intellectual disability services or court-ordered inpatient mental health services leaves a department facility without notifying the facility or without the facility’s consent, the facility director or 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.

HISTORY: am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.026. Person Performing Business Manager Function.

(a) The person performing the function of business manager of a department facility is the chief disbursing officer of the department facility.

(b) The person performing the function of business manager of a department facility is directly responsible to the superintendent or director.

HISTORY: am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Secs. 551.027 to 551.040. [Reserved for expansion].

Subchapter C

Powers and Duties Relating to Patient or Client Care

Sec. 551.041. Medical and Dental Treatment.

(a) Each department shall provide or perform recognized medical and dental treatment or services to a person admitted or committed to that department’s care. Each department may perform this duty through an authorized agent.

(b) Each 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 facility 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 a 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 or director of a department facility shall order:

(1) medical treatment or services for the person on the advice and consent of three primary care providers, at least two of whom are physicians licensed by the Texas Medical Board; or

(2) dental treatment or services for the person on the advice and consent of two dentists licensed by the State Board of Dental Examiners and of one physician licensed by the Texas Medical Board.

(d) This section does not authorize the performance of an operation involving sexual sterilization or a frontal lobotomy.

(e) For purposes of this section, “primary care provider” means a health care professional who provides health care services to a defined population of residents. The term includes a physician licensed by the Texas Medical Board, an advanced practice registered nurse licensed by the Texas Board of Nursing, and a physician assistant licensed by the Texas Physician Assistant Board.

HISTORY: am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015; am. Acts 2017, 85th Leg., ch. 437 (S.B. 1565), § 1, effective September 1, 2017.

Sec. 551.042. Outpatient Clinics.

(a) If funds are available, the Department of State Health Services 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:

(1) the department may:

(A) acquire facilities;

(B) hire personnel;

and

(C) contract with persons, corporations, and local, state, and federal agencies; and

(2) the executive commissioner may adopt rules.

HISTORY: am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.043. Mental Hygiene Clinic Service. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 6.49, effective September 1, 1997; 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.044. Occupational Therapy Programs.

(a) Each department may provide equipment, materials, and merchandise for occupational therapy programs at department facilities.

(b) The superintendent or director of a department facility may, in accordance with rules of that department, 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 applicable 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' or clients' benefit fund, the patients' or clients' trust fund, or a revolving fund for use by the patients or clients. A patient or client may keep the finished product if the patient or client purchases the material for the product from the state.

(d) Each 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 the policy of that department.

HISTORY: am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

CHAPTER 552

State Hospitals

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552.0012.	Study Regarding New Location for Austin State Hospital. [Expired]
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Subchapter B. Indigent and Nonindigent Patients

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552.012.	Classification and Definition of Patients.
552.013.	Support of Indigent and Nonindigent Patients.
552.014.	Child Support Payments for Benefit of Patient.
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552.016.	Fees.
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552.018.	Trust Principals.
552.019.	Filing of Claims.
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Section	
552.021 to 552.030.	[Reserved].
552.031.	Security at San Antonio State Hospital [Repealed].
552.032 to 552.040.	[Reserved].
552.041.	Austin State Hospital Annex [Repealed].

Subchapter C. Powers and Duties of Department Relating to State Hospitals

552.051.	Reports of Illegal Drug Use; Policy.
552.052.	State Hospital Employee Training.
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Subchapter D. Inspector General Duties

552.101.	Assisting Law Enforcement Agencies with Certain Investigations.
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Subchapter E. State Hospital Operations

552.151.	Transition Planning for Contracted Operations of a Certain State Hospital.
552.152.	Plan Requirements.
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Subchapter A

General Provisions

Sec. 552.001. Hospital Districts.

(a) The department shall divide the state into hospital districts.

(b) The department may change the districts.

(c) The department shall designate the state hospitals to which persons with mental illness from each district shall be admitted.

Sec. 552.0011. Definitions.

In this chapter:

(1) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(104), effective April 2, 2015.]

(2) "Department" means the Department of State Health Services.

(3) "Direct care employee" means a state hospital employee who provides direct delivery of services to a patient.

(4) "Direct supervision" means supervision of the employee by the employee's supervisor with the supervisor physically present and providing the employee with direction and assistance while the employee performs his or her duties.

(5) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(104), effective April 2, 2015.]

(6) "Inspector general" means the Health and Human Services Commission's office of inspector general.

(7) "Patient" means an individual who is receiving voluntary or involuntary mental health services at a state hospital.

(8) "State hospital" means a hospital operated by the department primarily to provide inpatient care and treatment for persons with mental illness.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 395 (S.B. 152), § 2, effective June 14, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(104), effective April 2, 2015.

Sec. 552.0012. Study Regarding New Location for Austin State Hospital. [Expired]

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 2.26, effective September 1, 2015; expired by 2015, 84th Leg., ch. 837 (S.B. 200), § 2.26, effective September 1, 2017.

Sec. 552.002. Carrying of Handgun by License Holder in State Hospital.

(a) In this section:

(1) "License holder" has the meaning assigned by Section 46.035(f), Penal Code.

(2) "State hospital" means the following facilities:

- (A) the Austin State Hospital;
- (B) the Big Spring State Hospital;
- (C) the El Paso Psychiatric Center;
- (D) the Kerrville State Hospital;
- (E) the North Texas State Hospital;
- (F) the Rio Grande State Center;
- (G) the Rusk State Hospital;
- (H) the San Antonio State Hospital;
- (I) the Terrell State Hospital; and
- (J) the Waco Center for Youth.

(3) "Written notice" means a sign that is posted on property and that:

(A) includes in both English and Spanish written language identical to the following: "Pursuant to Section 552.002, Health and Safety Code (carrying of handgun by license holder in state hospital), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun";

(B) appears in contrasting colors with block letters at least one inch in height; and

(C) is displayed in a conspicuous manner clearly visible to the public at each entrance to the property.

(b) A state hospital may prohibit a license holder from carrying a handgun under the authority of Subchapter H, Chapter 411, Government Code, on the property of the hospital by providing written notice.

(c) A license holder who carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, on the property of a state hospital at which written notice is provided is liable for a civil penalty in the amount of:

- (1) \$100 for the first violation; or
- (2) \$500 for the second or subsequent violation.

(d) The attorney general or an appropriate prosecuting attorney may sue to collect a civil penalty under this section.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 1143 (H.B. 435), § 7, effective September 1, 2017.

Secs. 552.003 to 552.010. [Reserved for expansion].

Subchapter B

Indigent and Nonindigent Patients

Sec. 552.011. Definition [Repealed].

Repealed by Acts 2013, 83rd Leg., ch. 395 (S.B. 152), § 7, effective June 14, 2013.

Sec. 552.012. Classification and Definition of Patients.

(a) A patient is classified as either indigent or nonindigent.

(b) An indigent patient is a patient who:

- (1) possesses no property;
- (2) has no person legally responsible for the patient's support; and

(3) is unable to reimburse the state for the costs of the patient's support, maintenance, and treatment.

(c) A nonindigent patient is a patient who:

(1) possesses property from which the state may be reimbursed for the costs of the patient's support, maintenance, and treatment; or

(2) has a person legally responsible for the patient's support.

Sec. 552.013. Support of Indigent and Nonindigent Patients.

(a) A person may not be denied services under this subtitle because of an inability to pay for the services.

(b) The state shall support, maintain, and treat indigent and nonindigent patients at the expense of the state.

(c) The state is entitled to reimbursement for the support, maintenance, and treatment of a nonindigent patient.

(d) A patient who does not own a sufficient estate shall be maintained at the expense:

- (1) of the patient's spouse, if able to do so; or
- (2) if the patient is younger than 18 years of age, of the patient's father or mother, if able to do so.

Sec. 552.014. Child Support Payments for Benefit of Patient.

(a) Child support payments for the benefit of a patient paid or owed by a parent under court order are considered the property and estate of the patient, and the state may be reimbursed for the costs of a patient's support, maintenance, and treatment from those amounts.

(b) The state shall credit the amount of child support a parent actually pays for a patient against charges for which the parent is liable, based on ability to pay.

(c) A parent who receives child support payments for a patient is liable for the 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 patient to require payment of the child support directly to the state hospital or facility in which the patient resides for the patient's support, maintenance, and treatment if:

(1) the patient's parent fails to pay child support as required by the order; or

(2) the patient'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 patient paid directly to the patient's state hospital or facility to the extent that the state is entitled to reimbursement of the patient's charges from the child support obligation.

Sec. 552.015. Investigation to Determine Means of Support.

(a) The department may demand and conduct an investigation in a county court to determine whether a patient possesses or is entitled to property or whether a person other than the patient is liable for the payment of the costs of the patient's support, maintenance, and treatment.

(b) The department may have citation issued and witnesses summoned to be heard on the investigation.

Sec. 552.016. Fees.

(a) Except as provided by this section, the department may not charge a fee that exceeds the cost to the state to support, maintain, and treat a patient.

(b) The executive commissioner may use the projected cost of providing inpatient services to establish by rule the maximum fee that may be charged to a payer.

(c) The executive commissioner by rule may establish the maximum fee according to 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 executive commissioner by rule may establish a fee in excess of the department's projected cost of providing inpatient 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1338, effective April 2, 2015.

Sec. 552.017. Sliding Fee Schedule.

(a) The executive commissioner by rule shall establish a sliding fee schedule for the payment by the patient's parents of the state's total costs for the support, maintenance, and treatment of a patient younger than 18 years of age.

(b) The executive commissioner 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 current financial statement or most recent federal income tax return.

(d) In determining the portion of the costs of the patient's support, maintenance, and treatment that the parents are required to pay, the department, in accordance with rules adopted by the executive commissioner, 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 executive commissioner shall evaluate and, if necessary, revise the fee schedule at least once every five years.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 278 (S.B. 605), § 1, effective June 5, 1995; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1339, effective April 2, 2015.

Sec. 552.018. Trust Principals.

(a) If a patient 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 patient or the patient's estate and is not liable for the patient'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 patient or the patient's estate and are liable for the patient's support.

(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 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 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 financial statement if the court finds that the trustee has failed to provide the statement.

(e) 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 administered under the Estates 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 1020 (H.B. 1316), § 2, effective June 15, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1340, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 846 (H.B. 2780), § 8, effective September 1, 2019.

Sec. 552.019. Filing of Claims.

(a) A county or district attorney shall, on the written request of the department, represent the state in filing a claim in probate court or a petition in a court of competent jurisdiction to require the person responsible for a patient to appear in court and show cause why the state should not have judgment against the person for the costs of the patient's support, maintenance, and treatment.

(b) On a sufficient showing, the court may enter judgment against the person responsible for the patient for the costs of the patient's support, maintenance, and treatment.

(c) Sufficient evidence to authorize the court to enter judgment is a verified account, sworn to by the superintendent of the hospital in which the patient is being treated, or has been treated, as to the amount due.

(d) The judgment may be enforced as in other cases.

(e) The county or district attorney representing the state is entitled to a commission of 10 percent of the amount collected.

(f) The attorney general shall represent the state if the county and district attorney refuse or are unable to act on the department's request.

(g) In this section, "person responsible for a patient" means the guardian of a patient, a person liable for the support of the patient, or both.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1341, effective April 2, 2015.

Sec. 552.020. Application.

Except as provided by Subchapter C, Chapter 73, Education Code, this subchapter does not apply to The University of Texas M. D. Anderson Cancer Center.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 3 (S.B. 192), § 4, effective September 1, 1995.

Secs. 552.021 to 552.030. [Reserved for expansion].

Sec. 552.031. Security at San Antonio State Hospital [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 500 (S.B. 1057), § 3(1), effective May 31, 1997.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Secs. 552.032 to 552.040. [Reserved for expansion].

Sec. 552.041. Austin State Hospital Annex [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 500 (S.B. 1057), § 3(1), effective May 31, 1997.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Subchapter C

Powers and Duties of Department Relating to State Hospitals

Sec. 552.051. Reports of Illegal Drug Use; Policy.

The executive commissioner shall adopt a policy requiring a state hospital employee who knows or reasonably suspects that another state hospital employee is illegally using or under the influence of a controlled substance, as defined by Section 481.002, to report that knowledge or reasonable suspicion to the superintendent of the state hospital.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 395 (S.B. 152), § 3, effective June 14, 2013.

Sec. 552.052. State Hospital Employee Training.

(a) Before a state hospital employee begins to perform the employee's duties without direct supervision, the department shall provide the employee with competency training and a course of instruction about the general duties of a state hospital employee. Upon completion of such training and instruction, the department shall evalu-

ate the employee for competency. The department shall ensure the basic state hospital employee competency course focuses on:

(1) the uniqueness of the individuals the state hospital employee serves;

(2) techniques for improving quality of life for and promoting the health and safety of individuals with mental illness; and

(3) the conduct expected of state hospital employees.

(b) The department shall ensure the training required by Subsection (a) provides instruction and information regarding topics relevant to providing care for individuals with mental illness, including:

(1) the general operation and layout of the state hospital at which the person is employed, including armed intruder lockdown procedures;

(2) an introduction to mental illness;

(3) an introduction to substance abuse;

(4) an introduction to dual diagnosis;

(5) the rights of individuals with mental illness who receive services from the department;

(6) respecting personal choices made by patients;

(7) the safe and proper use of restraints;

(8) recognizing and reporting:

(A) evidence of abuse, neglect, and exploitation of individuals with mental illness;

(B) unusual incidents;

(C) reasonable suspicion of illegal drug use in the workplace;

(D) workplace violence; or

(E) sexual harassment in the workplace;

(9) preventing and treating infection;

(10) first aid;

(11) cardiopulmonary resuscitation;

(12) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); and

(13) the rights of state hospital employees.

(c) In addition to the training required by Subsection (a) and before a direct care employee begins to perform the direct care employee's duties without direct supervision, the department shall provide the direct care employee with training and instructional information regarding implementation of the interdisciplinary treatment program for each patient for whom the direct care employee will provide direct care, including the following topics:

(1) prevention and management of aggressive or violent behavior;

(2) observing and reporting changes in behavior, appearance, or health of patients;

(3) positive behavior support;

(4) emergency response;

(5) person-directed plans;

(6) self-determination; and

(7) trauma-informed care.

(d) In addition to the training required by Subsection (c), the department shall provide, in accordance with the specialized needs of the population being served, a direct care employee with training and instructional information as necessary regarding:

(1) seizure safety;

(2) techniques for:

(A) lifting;

- (B) positioning; and
 - (C) movement and mobility;
 - (3) working with aging patients;
 - (4) assisting patients:
 - (A) who have a visual impairment;
 - (B) who have a hearing deficit; or
 - (C) who require the use of adaptive devices and specialized equipment;
 - (5) communicating with patients who use augmentative and alternative devices for communication;
 - (6) assisting patients with personal hygiene;
 - (7) recognizing appropriate food textures;
 - (8) using proper feeding techniques to assist patients with meals; and
 - (9) physical and nutritional management plans.
- (e) The executive commissioner shall adopt rules that require a state hospital to provide refresher training courses to employees at least annually, unless the department determines in good faith and with good reason a particular employee's performance will not be adversely affected in the absence of such refresher training.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 395 (S.B. 152), § 3, effective June 14, 2013.

Sec. 552.053. Information Management, Reporting, and Tracking System.

The department shall develop an information management, reporting, and tracking system for each state hospital to provide the department with information necessary to monitor serious allegations of abuse, neglect, or exploitation.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 395 (S.B. 152), § 3, effective June 14, 2013.

Sec. 552.054. Risk Assessment Protocols.

The department shall develop risk assessment protocols for state hospital employees for use in identifying and assessing possible instances of abuse or neglect.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 395 (S.B. 152), § 3, effective June 14, 2013.

Subchapter D

Inspector General Duties

Sec. 552.101. Assisting Law Enforcement Agencies with Certain Investigations.

The inspector general shall employ and commission peace officers for the purpose of assisting a state or local law enforcement agency in the investigation of an alleged criminal offense involving a patient of a state hospital. A peace officer employed and commissioned by the inspector general is a peace officer for purposes of Article 2.12, Code of Criminal Procedure.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 395 (S.B. 152), § 3, effective June 14, 2013.

Sec. 552.102. Summary Report.

(a) The inspector general shall prepare a summary report for each investigation conducted with the assistance of the inspector general under this subchapter. The

inspector general shall ensure that the report does not contain personally identifiable information of an individual mentioned in the report.

(b) The summary report must include:

- (1) a summary of the activities performed during an investigation for which the inspector general provided assistance;
- (2) a statement regarding whether the investigation resulted in a finding that an alleged criminal offense was committed; and
- (3) a description of the alleged criminal offense that was committed.

(c) The inspector general shall deliver the summary report to the:

- (1) executive commissioner;
- (2) commissioner of state health services;
- (3) commissioner of the Department of Family and Protective Services;
- (4) State Health Services Council;
- (5) governor;
- (6) lieutenant governor;
- (7) speaker of the house of representatives;
- (8) standing committees of the senate and house of representatives with primary jurisdiction over state hospitals;
- (9) state auditor; and
- (10) alleged victim or the alleged victim's legally authorized representative.

(d) A summary report regarding an investigation is subject to required disclosure under Chapter 552, Government Code. All information and materials compiled by the inspector general in connection with an investigation are confidential, not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the inspector general or the inspector general's employees or agents involved in the investigation, except that this information may be disclosed to the Department of Family and Protective Services, the office of the attorney general, the state auditor's office, and law enforcement agencies.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 395 (S.B. 152), § 3, effective June 14, 2013.

Sec. 552.103. Annual Status Report.

(a) The inspector general shall prepare an annual status report of the inspector general's activities under this subchapter. The annual report may not contain personally identifiable information of an individual mentioned in the report.

(b) The annual status report must include information that is aggregated and disaggregated by individual state hospital regarding:

- (1) the number and type of investigations conducted with the assistance of the inspector general;
- (2) the number and type of investigations involving a state hospital employee;
- (3) the relationship of an alleged victim to an alleged perpetrator, if any;
- (4) the number of investigations conducted that involve the suicide, death, or hospitalization of an alleged victim; and

(5) the number of completed investigations in which commission of an alleged offense was confirmed or unsubstantiated or in which the investigation was inconclusive, and a description of the reason that allegations were unsubstantiated or the investigation was inconclusive.

(c) The inspector general shall submit the annual status report to the:

- (1) executive commissioner;
- (2) commissioner of state health services;
- (3) commissioner of the Department of Family and Protective Services;
- (4) State Health Services Council;
- (5) Family and Protective Services Council;
- (6) governor;
- (7) lieutenant governor;
- (8) speaker of the house of representatives;
- (9) standing committees of the senate and house of representatives with primary jurisdiction over state hospitals;
- (10) state auditor; and
- (11) comptroller.

(d) An annual status report submitted under this section is public information under Chapter 552, Government Code.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 395 (S.B. 152), § 3, effective June 14, 2013.

Sec. 552.104. Retaliation Prohibited.

The department or a state hospital may not retaliate against a department employee, a state hospital employee, or any other person who in good faith cooperates with the inspector general under this subchapter.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 395 (S.B. 152), § 3, effective June 14, 2013.

Subchapter E

State Hospital Operations

Sec. 552.151. Transition Planning for Contracted Operations of a Certain State Hospital.

The commission shall establish a plan under which the commission may contract with a local public institution of higher education to transfer the operations of Austin State Hospital from the commission to a local public institution of higher education.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 676 (S.B. 2111), § 1, effective September 1, 2019.

Sec. 552.152. Plan Requirements.

- (a) In developing the plan, the commission shall:
- (1) consult with local public institutions of higher education;
 - (2) establish procedures and policies to ensure that a local public institution of higher education that contracts with the commission to operate Austin State Hospital operates the hospital at a quality level at least equal to the quality level achieved by the commission; and
 - (3) establish procedures and policies to monitor the care of affected state hospital patients.

(b) The procedures and policies required to be established under Subsection (a) must ensure that the commission is able to obtain and maintain information on activities carried out under the contract without violating privacy or confidentiality rules. The procedures and policies must account for the commission obtaining and maintaining information on:

- (1) client outcomes;
- (2) individual and average lengths of stay, including computation of lengths of stay according to the number of days a patient is in the facility during each calendar year, regardless of discharge and readmission;
- (3) the number of incidents in which patients were restrained or secluded;
- (4) the number of incidents of serious assaults in the hospital setting; and
- (5) the number of occurrences in the hospital setting involving contacts with law enforcement personnel.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 676 (S.B. 2111), § 1, effective September 1, 2019.

Sec. 552.153. Report.

Not later than September 1, 2020, the commission shall prepare and deliver to the governor, the lieutenant governor, the speaker of the house of representatives, and the legislature a written report containing the plan and any recommendations for legislation or other actions necessary.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 676 (S.B. 2111), § 1, effective September 1, 2019.

CHAPTER 553

San Antonio State Supported Living Center

Subchapter A. General Provisions

Section	
553.001.	Epilepsy. [Renumbered]
553.002 to 553.020.	[Reserved].

Subchapter B. State Schools

553.021.	Lufkin State School [Repealed].
553.022.	San Antonio State Supported Living Center.

Subchapter A

General Provisions

Sec. 553.001. Epilepsy. [Renumbered]

HISTORY: Renumbered to Tex. Health & Safety Code § 593.014 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1343, effective April 2, 2015.

Secs. 553.002 to 553.020. [Reserved for expansion].

Subchapter B

State Schools

Sec. 553.021. Lufkin State School [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 500 (S.B. 1057), § 3(2), effective May 31, 1997.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 553.022. San Antonio State Supported Living Center.

(a) The San Antonio State Supported Living Center is for the education, care, and treatment of persons with an intellectual disability.

(b) The Department of Aging and Disability Services may enter into agreements with the Department of State Health Services for use of the excess facilities of a public health hospital as defined by Section 13.033 in the operation of the state supported living center.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 107 (S.B. 297), § 8, effective September 1, 1995; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1344, effective April 2, 2015.

CHAPTER 554

State Centers and Homes

Subchapter A. Waco Center for Youth

Section	
554.0001.	Definition.
554.001.	Admission of Certain Juveniles.
554.002.	Services.
554.003 to 554.010.	[Reserved].

Subchapter B. Laredo State Center [Repealed.]

554.011.	Purpose [Repealed].
554.012.	Acquisition of Land [Repealed].
554.013.	Construction of Buildings [Repealed].
554.014 to 554.020.	[Reserved].

Subchapter C. Leander Rehabilitation Center

554.021.	Contract for Use of Leander Rehabilitation Center [Repealed].
554.022 to 554.030.	[Reserved].

Subchapter D. Dallas Neuropsychiatric Institute [Repealed.]

554.031.	Definitions [Repealed].
554.032.	Establishment; Department Powers [Repealed].
554.033.	Location and Acquisition of Land [Repealed].
554.034.	Construction of Buildings [Repealed].
554.035.	Staff [Repealed].

Subchapter A

Waco Center for Youth

Sec. 554.0001. Definition.

In this chapter, “department” means the Department of State Health Services.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1345, effective April 2, 2015.

Sec. 554.001. Admission of Certain Juveniles.

(a) The department shall use the Waco Center for Youth as a residential treatment facility for emotionally disturbed juveniles who:

- (1) have been admitted under Subtitle C to a facility of the department; or

(2) are under the managing conservatorship of the Department of Family and Protective Services and have been admitted under Subtitle C to the Waco Center for Youth.

(b) An emotionally disturbed juvenile who has been found to have engaged in delinquent conduct or conduct indicating a need for supervision under Title 3, Family Code, may not be admitted to the Waco Center for Youth.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 8.077, effective September 1, 1995; am. Acts 2011, 82nd Leg., ch. 427 (S.B. 957), § 1, effective June 17, 2011.

Sec. 554.002. Services.

(a) The department shall provide without charge appropriate education services for all clients residing at the Waco Center for Youth.

(b) The department shall pay for those services from funds appropriated to the center for that purpose.

(c) A client of the center who is not a resident of the Waco Independent School District may receive education services from the Waco Independent School District only with the prior approval of the superintendent of the district.

Secs. 554.003 to 554.010. [Reserved for expansion].

Subchapter B

Laredo State Center [Repealed.]

Sec. 554.011. Purpose [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 500 (S.B. 1057), § 3(3), effective May 31, 1997.

Sec. 554.012. Acquisition of Land [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 500 (S.B. 1057), § 3(3), effective May 31, 1997.

Sec. 554.013. Construction of Buildings [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 500 (S.B. 1057), § 3(3), effective May 31, 1997.

Secs. 554.014 to 554.020. [Reserved for expansion].

Subchapter C

Leander Rehabilitation Center

Sec. 554.021. Contract for Use of Leander Rehabilitation Center [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 500 (S.B. 1057), § 3(3), effective May 31, 1997.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Secs. 554.022 to 554.030. [Reserved for expansion].

*Subchapter D**Dallas Neuropsychiatric Institute [Repealed.]***Sec. 554.031. Definitions [Repealed].**

Repealed by Acts 1997, 75th Leg., ch. 500 (S.B. 1057), § 3(3), effective May 31, 1997.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 554.032. Establishment; Department Powers [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 500 (S.B. 1057), § 3(3), effective May 31, 1997.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 554.033. Location and Acquisition of Land [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 500 (S.B. 1057), § 3(3), effective May 31, 1997.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 554.034. Construction of Buildings [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 500 (S.B. 1057), § 3(3), effective May 31, 1997.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 554.035. Staff [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 500 (S.B. 1057), § 3(3), effective May 31, 1997.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

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*Subchapter A**General Provisions***Sec. 555.001. Definitions.**

In this chapter:

(1) "Alleged offender resident" means a person with an intellectual disability who:

(A) was committed to or transferred to a state supported living center under Chapter 46B or 46C, Code of Criminal Procedure, as a result of being charged with or convicted of a criminal offense; or

(B) is a child committed to or transferred to a state supported living center under Chapter 55, Family Code, as a result of being alleged by petition or having been found to have engaged in delinquent conduct constituting a criminal offense.

(2) "Center" means the state supported living centers and the ICF-IID component of the Rio Grande State Center.

(3) "Center employee" means an employee of a state supported living center or the ICF-IID component of the Rio Grande State Center.

(4) "Client" means a person with an intellectual disability who receives ICF-IID services from a state supported living center or the ICF-IID component of the Rio Grande State Center.

(5) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(107), effective April 2, 2015.]

(6) "Complaint" means information received by the office of independent ombudsman regarding a possible violation of a right of a resident or client and includes information received regarding a failure by a state supported living center or the ICF-IID component of the Rio Grande State Center to comply with the department's policies and procedures relating to the community living options information process.

(7) "Department" means the Department of Aging and Disability Services.

(8) "Direct care employee" means a center employee who provides direct delivery of services to a resident or client.

(9) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(107), effective April 2, 2015.]

(10) "High-risk alleged offender resident" means an alleged offender resident who has been determined under Section 555.003 to be at risk of inflicting substantial physical harm to another.

(10-a) "ICF-IID" has the meaning assigned by Section 531.002.

(11) "Independent ombudsman" means the individual who has been appointed to the office of independent ombudsman for state supported living centers.

(12) "Inspector general" means the Health and Human Services Commission's office of inspector general.

(13) "Interdisciplinary team" has the meaning assigned by Section 591.003.

(14) "Office" means the office of independent ombudsman for state supported living centers established under Subchapter C.

(15) "Resident" means a person with an intellectual disability who resides in a state supported living center or the ICF-IID component of the Rio Grande State Center.

(16) "State supported living center" has the meaning assigned by Section 531.002.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1346, 3.1639(107), effective April 2, 2015.

Sec. 555.002. Forensic State Supported Living Centers.

(a) The department shall designate separate forensic state supported living centers for the care of high-risk alleged offender residents. The department shall designate the Mexia and San Angelo State Supported Living Centers for this purpose.

(b) In establishing the forensic state supported living centers, the department shall:

(1) transfer an alleged offender resident already residing in a center who is classified as a high-risk alleged offender resident in accordance with Section 555.003, to a forensic state supported living center;

(2) place high-risk alleged offender residents in appropriate homes at a forensic state supported living center based on whether an individual is:

(A) an adult or a person younger than 18 years of age; or

(B) male or female;

(3) place alleged offender residents who are charged with or convicted of a felony offense or who are alleged

by petition or have been found to have engaged in delinquent conduct defined as a felony offense, at the time the residents are initially committed to or transferred to a center, in a forensic state supported living center until a determination under Section 555.003 has been completed;

(4) transfer all residents who request a transfer, other than high-risk alleged offender residents and alleged offender residents described by Subdivision (3) and for whom a determination has not been completed under Section 555.003, from a forensic state supported living center; and

(5) provide training regarding the service delivery system for high-risk alleged offender residents to direct care employees of a forensic state supported living center.

(c) An alleged offender resident committed to a forensic state supported living center, for whom a determination under Section 555.003 has been completed and who is not classified as a high-risk alleged offender resident, may request a transfer to another center in accordance with Subchapter B, Chapter 594.

(d) The department shall ensure that each forensic state supported living center:

(1) complies with the requirements for ICF-IID certification under the Medicaid program, as appropriate; and

(2) has a sufficient number of center employees, including direct care employees, to protect the safety of center employees, residents, and the community.

(e) The department shall collect data regarding the commitment of alleged offender residents to state supported living centers, including any offense with which an alleged offender resident is charged, the location of the committing court, whether the alleged offender resident has previously been in the custody of the Texas Juvenile Justice Department or the Department of Family and Protective Services, and whether the alleged offender resident receives mental health services or previously received any services under a Section 1915(c) waiver program. The department shall annually submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committees of the legislature with primary subject matter jurisdiction over state supported living centers a report of the information collected under this section. The report may not contain personally identifiable information for any person in the report.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1347, effective April 2, 2015; am. Acts 2017, 85th Leg., ch. 207 (S.B. 1300), §§ 1, 2, effective September 1, 2017.

Sec. 555.003. Determination of High-Risk Alleged Offender Status.

(a) Not later than the 30th day after the date an alleged offender resident is first committed to a state supported living center and, if the resident is classified as a high-risk alleged offender resident, annually on the anniversary of that date, an interdisciplinary team shall determine whether the alleged offender resident is at risk of inflicting substantial physical harm to another and should be

classified or remain classified as a high-risk alleged offender resident.

(b) In making a determination under Subsection (a), the interdisciplinary team shall document and collect evidence regarding the reason the alleged offender resident is determined to be at risk of inflicting substantial physical harm to another.

(c) The interdisciplinary team shall provide the team's findings regarding whether the alleged offender resident is at risk of inflicting substantial physical harm to another and the documentation and evidence collected under this section to:

- (1) the department;
- (2) the director of the state supported living center;
- (3) the independent ombudsman;
- (4) the alleged offender resident or the alleged offender resident's parent if the resident is a minor; and
- (5) the alleged offender resident's legally authorized representative.

(d) An alleged offender resident who is determined to be at risk of inflicting substantial physical harm to another and is classified as a high-risk alleged offender resident is entitled to an administrative hearing with the department to contest that determination and classification.

(e) An individual who has exhausted the administrative remedies provided by Subsection (d) may bring a suit to appeal the determination and classification in district court in Travis County. The suit must be filed not later than the 30th day after the date the final order in the administrative hearing is provided to the individual. An appeal under this section is by trial de novo.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009.

Secs. 555.004 to 555.020. [Reserved for expansion].

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009.

Subchapter B

Powers and Duties

Sec. 555.021. Required Criminal History Checks for Employees, Contractors, and Volunteers.

(a) The department, the Department of State Health Services, and the Health and Human Services Commission shall perform a state and federal criminal history background check on a person:

- (1) who is:
 - (A) an applicant for employment with the agency;
 - (B) an employee of the agency;
 - (C) a volunteer with the agency;
 - (D) an applicant for a volunteer position with the agency;
 - (E) an applicant for a contract with the agency; or
 - (F) a contractor of the agency; and
- (2) who would be placed in direct contact with a resident or client.

(b) The department, the Department of State Health Services, and the Health and Human Services Commission shall require a person described by Subsection (a) to submit fingerprints in a form and of a quality acceptable

to the Department of Public Safety and the Federal Bureau of Investigation for use in conducting a criminal history background check.

(c) Each agency shall obtain electronic updates from the Department of Public Safety of arrests and convictions of a person:

- (1) for whom the agency performs a background check under Subsection (a); and
- (2) who remains an employee, contractor, or volunteer of the agency and continues to have direct contact with a resident or client.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; am. Acts 2013, 83rd Leg., ch. 1027 (H.B. 2673), § 10, effective June 14, 2013.

Sec. 555.022. Drug Testing; Policy.

(a) The executive commissioner shall adopt a policy regarding random testing and reasonable suspicion testing for the illegal use of drugs by a center employee.

(b) The policy adopted under Subsection (a) must provide that a center employee may be terminated solely on the basis of a single positive test for illegal use of a controlled substance. The policy must establish an appeals process for a center employee who tests positively for illegal use of a controlled substance.

(c) The director of a state supported living center or the superintendent of the Rio Grande State Center shall enforce the policy adopted under Subsection (a) by performing necessary drug testing of the center employees for the use of a controlled substance as defined by Section 481.002.

(d) Testing under this section may be performed on a random basis or on reasonable suspicion of the use of a controlled substance.

(e) For purposes of this section, a report made under Section 555.023 is considered reasonable suspicion of the use of a controlled substance.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009.

Sec. 555.023. Reports of Illegal Drug Use; Policy.

The executive commissioner shall adopt a policy requiring a center employee who knows or reasonably suspects that another center employee is illegally using or under the influence of a controlled substance, as defined by Section 481.002, to report that knowledge or reasonable suspicion to the director of the state supported living center or the superintendent of the Rio Grande State Center, as appropriate.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009.

Sec. 555.024. Center Employee Training.

(a) Before a center employee begins to perform the employee's duties without direct supervision, the department shall provide the employee with competency training and a course of instruction about the general duties of a center employee. The department shall ensure the basic center employee competency course focuses on:

- (1) the uniqueness of the individuals the center employee serves;

(2) techniques for improving quality of life for and promoting the health and safety of individuals with an intellectual disability; and

(3) the conduct expected of center employees.

(b) The department shall ensure the training required by Subsection (a) provides instruction and information regarding the following topics:

(1) the general operation and layout of the center at which the person is employed, including armed intruder lockdown procedures;

(2) an introduction to intellectual disabilities;

(3) an introduction to autism;

(4) an introduction to mental illness and dual diagnosis;

(5) the rights of individuals with an intellectual disability who receive services from the department;

(6) respecting personal choices made by residents and clients;

(7) the safe and proper use of restraints;

(8) recognizing and reporting:

(A) evidence of abuse, neglect, and exploitation of individuals with an intellectual disability;

(B) unusual incidents;

(C) reasonable suspicion of illegal drug use in the workplace;

(D) workplace violence; or

(E) sexual harassment in the workplace;

(9) preventing and treating infection;

(10) first aid;

(11) cardiopulmonary resuscitation;

(12) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); and

(13) the rights of center employees.

(c) In addition to the training required by Subsection (a) and before a direct care employee begins to perform the direct care employee's duties without direct supervision, the department shall provide a direct care employee with training and instructional information regarding implementation of the interdisciplinary treatment program for each resident or client for whom the direct care employee will provide direct care, including the following topics:

(1) prevention and management of aggressive or violent behavior;

(2) observing and reporting changes in behavior, appearance, or health of residents and clients;

(3) positive behavior support;

(4) emergency response;

(5) person-directed plans;

(6) self-determination;

(7) seizure safety;

(8) techniques for:

(A) lifting;

(B) positioning; and

(C) movement and mobility;

(9) working with aging residents and clients;

(10) assisting residents and clients:

(A) who have a visual impairment;

(B) who have a hearing deficit; or

(C) who require the use of adaptive devices and specialized equipment;

(11) communicating with residents and clients who use augmentative and alternative devices for communication;

(12) assisting residents and clients with personal hygiene;

(13) recognizing appropriate food textures;

(14) using proper feeding techniques to assist residents and clients with meals;

(15) physical and nutritional management plans; and

(16) home and community-based services, including the principles of community inclusion and participation and the community living options information process.

(d) The executive commissioner shall adopt rules that require a center to provide refresher training courses to direct care employees on a regular basis.

(e) A center may allow an employee of an ICF-IID licensed by the department, an employee of a person licensed or certified to provide Section 1915(c) waiver program services, or another employee or professional involved in the provision of services to persons with an intellectual disability to receive information and training under this section, as appropriate. The center may charge an administrative fee in an amount not to exceed the cost of providing the information or training.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1348, effective April 2, 2015.

Sec. 555.025. Video Surveillance.

(a) In this section, "private space" means a place in a center in which a resident or client has a reasonable expectation of privacy, including:

(1) a bedroom;

(2) a bathroom;

(3) a place in which a resident or client receives medical or nursing services;

(4) a place in which a resident or client meets privately with visitors; or

(5) a place in which a resident or client privately makes phone calls.

(b) The department shall install and operate video surveillance equipment in a center for the purpose of detecting and preventing the exploitation or abuse of residents and clients.

(c) Except as provided by Subchapter E, the department may not install or operate video surveillance equipment in a private space or in a location in which video surveillance equipment can capture images within a private space.

(d) The department shall ensure that the use of video surveillance equipment under this section complies with federal requirements for ICF-IID certification.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; am. Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 1, effective May 25, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1349, effective April 2, 2015.

Sec. 555.026. Drinking Water Quality: Texas Commission on Environmental Quality Guidance on Lead and Copper Testing.

To ensure the quality of water provided by public drinking water supply systems to state supported living centers, the department or its successor agency, with guidance from the Texas Commission on Environmental Quality, shall:

- (1) develop:
 - (A) a testing plan and monitoring strategy;
 - (B) outreach and educational materials for distribution to residents and department staff;
 - (C) requirements for using an accredited laboratory and sample chain of custody procedures; and
 - (D) guidance for compliance with the federal lead and copper rules (40 C.F.R. Part 141, Subpart I);
- (2) review:
 - (A) public notification procedures to staff, residents, and visitors regarding water quality;
 - (B) sampling protocols and procedures;
 - (C) locations of taps used for monitoring;
 - (D) analytical data on lead or copper levels exceeding the applicable action level;
 - (E) remediation activities; and
 - (F) customer service inspection reports;
- (3) compile a list of qualified customer service inspectors; and
- (4) perform:
 - (A) on-site training and evaluation of sampling; and
 - (B) on-site evaluation of customer service inspections through licensed customer service inspectors.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 559 (S.B. 546), § 1, effective June 9, 2017.

Secs. 555.027 to 555.050. [Reserved for expansion].

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009.

Sec. 555.027. Anatomical Gift.

(a) The executive commissioner by rule shall prescribe a form that a resident's guardian may sign on behalf of a resident if the resident's guardian elects to make an anatomical gift on behalf of the resident in accordance with Chapter 692A.

(b) Subsection (a) does not preclude a guardian from executing a document in accordance with Chapter 692A that supersedes the form executed under that subsection.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 843 (H.B. 2734), § 1, effective September 1, 2019.

Subchapter C

Office of Independent Ombudsman for State Supported Living Centers

Sec. 555.051. Establishment; Purpose.

The office of independent ombudsman is established for the purpose of investigating, evaluating, and securing the rights of residents and clients of state supported living centers and the ICF-IID component of the Rio Grande State Center. The office is administratively attached to the department. The department shall provide administrative support and resources to the office as necessary for the office to perform its duties.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1350, effective April 2, 2015.

Sec. 555.052. Independence.

The independent ombudsman in the performance of the ombudsman's duties and powers under this subchapter acts independently of the department.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009.

Sec. 555.053. Appointment of Independent Ombudsman.

(a) The governor shall appoint the independent ombudsman for a term of two years expiring February 1 of odd-numbered years.

(b) The governor may appoint as independent ombudsman only an individual with at least five years of experience managing and ensuring the quality of care and services provided to individuals with an intellectual disability.

(c) A person appointed as independent ombudsman may be reappointed.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; am. Acts 2013, 83rd Leg., ch. 573 (S.B. 747), § 1, effective June 14, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1351, effective April 2, 2015.

Sec. 555.054. Assistant Ombudsmen.

(a) The independent ombudsman shall:

(1) hire assistant ombudsmen to perform, under the direction of the independent ombudsman, the same duties and exercise the same powers as the independent ombudsman; and

(2) station an assistant ombudsman at each center.

(b) The independent ombudsman may hire as assistant ombudsmen only individuals with at least five years of experience ensuring the quality of care and services provided to individuals with an intellectual disability.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1352, effective April 2, 2015.

Sec. 555.055. Conflict of Interest.

A person may not serve as independent ombudsman or as an assistant ombudsman if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds from the department;

(2) owns or controls, directly or indirectly, any interest in a business entity or other organization receiving funds from the department; or

(3) is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities or compensation on behalf of a profession related to the operation of the department.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009.

Sec. 555.056. Report.

(a) The independent ombudsman shall submit on a biannual basis to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the standing committees of the senate and the house of representatives with primary jurisdiction over state sup-

ported living centers a report that is both aggregated and disaggregated by individual center and describes:

- (1) the work of the independent ombudsman;
- (2) the results of any review or investigation undertaken by the independent ombudsman, including a review or investigation of services contracted by the department;
- (3) any recommendations that the independent ombudsman has in relation to the duties of the independent ombudsman; and
- (4) any recommendations that the independent ombudsman has for systemic improvements needed to decrease incidents of abuse, neglect, or exploitation at an individual center or at all centers.

(b) The independent ombudsman shall ensure that information submitted in a report under Subsection (a) does not permit the identification of an individual.

(c) The independent ombudsman shall immediately report to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the standing committees of the senate and the house of representatives having primary jurisdiction over the Department of Aging and Disability Services any particularly serious or flagrant:

- (1) case of abuse or injury of a resident or client about which the independent ombudsman is made aware;
- (2) problem concerning the administration of a center program or operation; or
- (3) interference by a center, the department, or the commission, other than actions by the commission's office of inspector general in accordance with the office's duties, with an investigation conducted by the independent ombudsman.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009.

Sec. 555.057. Communication and Confidentiality.

(a) The department shall allow any resident or client, authorized representative of a resident or client, family member of a resident or client, or other interested party to communicate with the independent ombudsman or an assistant ombudsman. The communication:

- (1) may be in person, by mail, or by any other means; and
- (2) is confidential and privileged.

(b) The records of the independent ombudsman are confidential, except that the independent ombudsman shall:

- (1) share with the Department of Family and Protective Services a communication that may involve the abuse, neglect, or exploitation of a resident or client;
- (2) share with the inspector general a communication that may involve an alleged criminal offense;
- (3) share with the regulatory services division of the department a communication that may involve a violation of an ICF-IID standard or condition of participation; and
- (4) disclose the ombudsman's nonprivileged records if required by a court order on a showing of good cause.

(c) The independent ombudsman may make reports relating to an investigation by the independent ombudsman public after the investigation is complete but only if

the name and any other personally identifiable information of a resident or client, legally authorized representative of a resident or client, family member of a resident or client, center, center employee, or other individual are redacted from the report and remain confidential. The independent ombudsman may provide an unredacted report to the center involved in the investigation, the department, the Department of Family and Protective Services, and the inspector general.

(d) The name, address, or other personally identifiable information of a person who files a complaint with the office of independent ombudsman, information generated by the office of independent ombudsman in the course of an investigation, and confidential records obtained by the office of independent ombudsman are confidential and not subject to disclosure under Chapter 552, Government Code, except as provided by this section.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1353, effective April 2, 2015.

Sec. 555.058. Promotion of Awareness of Office.

The independent ombudsman shall promote awareness among the public, residents, clients, and center employees of:

- (1) how the office may be contacted;
- (2) the purpose of the office; and
- (3) the services the office provides.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009.

Sec. 555.059. Duties and Powers.

(a) The independent ombudsman shall:

- (1) evaluate the process by which a center investigates, reviews, and reports an injury to a resident or client or an unusual incident;
- (2) evaluate the delivery of services to residents and clients to ensure that the rights of residents and clients are fully observed, including ensuring that each center conducts sufficient unannounced patrols;
- (3) immediately refer a complaint alleging the abuse, neglect, or exploitation of a resident or client to the Department of Family and Protective Services;
- (4) refer a complaint alleging employee misconduct that does not involve abuse, neglect, or exploitation or a possible violation of an ICF-IID standard or condition of participation to the regulatory services division of the department;
- (5) refer a complaint alleging a criminal offense, other than an allegation of abuse, neglect, or exploitation of a resident or client, to the inspector general;
- (6) conduct investigations of complaints, other than complaints alleging criminal offenses or the abuse, neglect, or exploitation of a resident or client, if the office determines that:
 - (A) a resident or client or the resident's or client's family may be in need of assistance from the office; or
 - (B) a complaint raises the possibility of a systemic issue in the center's provision of services;
- (7) conduct biennial on-site audits at each center of:
 - (A) the ratio of direct care employees to residents;
 - (B) the provision and adequacy of training to:

- (i) center employees; and
- (ii) direct care employees; and
- (C) if the center serves alleged offender residents, the provision of specialized training to direct care employees;
- (8) conduct an annual audit of each center's policies, practices, and procedures to ensure that each resident and client is encouraged to exercise the resident's or client's rights, including:
 - (A) the right to file a complaint; and
 - (B) the right to due process;
- (9) prepare and deliver an annual report regarding the findings of each audit to the:
 - (A) executive commissioner;
 - (B) commissioner;
 - (C) Aging and Disability Services Council;
 - (D) governor;
 - (E) lieutenant governor;
 - (F) speaker of the house of representatives;
 - (G) standing committees of the senate and house of representatives with primary jurisdiction over state supported living centers; and
 - (H) state auditor;
- (10) require a center to provide access to all records, data, and other information under the control of the center that the independent ombudsman determines is necessary to investigate a complaint or to conduct an audit under this section;
- (11) review all final reports produced by the Department of Family and Protective Services, the regulatory services division of the department, and the inspector general regarding a complaint referred by the independent ombudsman;
- (12) provide assistance to a resident, client, authorized representative of a resident or client, or family member of a resident or client who the independent ombudsman determines is in need of assistance, including advocating with an agency, provider, or other person in the best interests of the resident or client;
- (13) make appropriate referrals under any of the duties and powers listed in this subsection; and
- (14) monitor and evaluate the department's actions relating to any problem identified or recommendation included in a report received from the Department of Family and Protective Services relating to an investigation of alleged abuse, neglect, or exploitation of a resident or client.
 - (b) The independent ombudsman may apprise a person who is interested in a resident's or client's welfare of the rights of the resident or client.
 - (c) To assess whether a resident's or client's rights have been violated, the independent ombudsman may, in any matter that does not involve an alleged criminal offense or the abuse, neglect, or exploitation of a resident or client, contact or consult with an administrator, employee, resident, client, family member of a resident or client, expert, or other individual in the course of the investigation or to secure information.
 - (d) Notwithstanding any other provision of this chapter, the independent ombudsman may not investigate an alleged criminal offense or the alleged abuse, neglect, or exploitation of a resident or client.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1354, effective April 2, 2015.

Sec. 555.060. Retaliation Prohibited.

The department or a center may not retaliate against a department employee, center employee, or any other person who in good faith makes a complaint to the office of independent ombudsman or cooperates with the office in an investigation.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009.

Sec. 555.061. Toll-Free Number.

(a) The office shall establish a permanent, toll-free number for the purpose of receiving any information concerning the violation of a right of a resident or client.

(b) The office shall ensure that:

(1) the toll-free number is prominently displayed in the main administration area and other appropriate common areas of a center; and

(2) a resident, a client, the legally authorized representative of a resident or client, and a center employee have confidential access to a telephone for the purpose of calling the toll-free number.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009.

Secs. 555.062 to 555.100. [Reserved for expansion].

Subchapter D

Inspector General Duties

Sec. 555.101. Assisting Law Enforcement Agencies with Certain Investigations.

The inspector general shall employ and commission peace officers for the purpose of assisting a state or local law enforcement agency in the investigation of an alleged criminal offense involving a resident or client of a center. A peace officer employed and commissioned by the inspector general is a peace officer for purposes of Article 2.12, Code of Criminal Procedure.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009.

Sec. 555.102. Summary Report.

(a) The inspector general shall prepare a summary report for each investigation conducted with the assistance of the inspector general under this subchapter. The inspector general shall ensure that the report does not contain personally identifiable information of an individual mentioned in the report.

(b) The summary report must include:

(1) a summary of the activities performed during an investigation for which the inspector general provided assistance;

(2) a statement regarding whether the investigation resulted in a finding that an alleged criminal offense was committed; and

(3) a description of the alleged criminal offense that was committed.

(c) The inspector general shall deliver the summary report to the:

- (1) executive commissioner;
- (2) governor;
- (3) lieutenant governor;
- (4) speaker of the house of representatives;
- (5) standing committees of the senate and house of representatives with primary jurisdiction over centers;
- (6) state auditor;
- (7) independent ombudsman and the assistant ombudsman for the center involved in the report; and
- (8) alleged victim or the alleged victim's legally authorized representative.

(d) A summary report regarding an investigation is subject to required disclosure under Chapter 552, Government Code. All information and materials compiled by the inspector general in connection with an investigation are confidential, and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the inspector general or the inspector general's employees or agents involved in the investigation, except that this information may be disclosed to the office of the attorney general, the state auditor's office, and law enforcement agencies.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; am. Acts 2019, 86th Leg., ch. 573 (S.B. 241), § 1.33, effective September 1, 2019.

Sec. 555.103. Annual Status Report.

(a) The inspector general shall prepare an annual status report of the inspector general's activities under this subchapter. The annual report may not contain personally identifiable information of an individual mentioned in the report.

(b) The annual status report must include information that is aggregated and disaggregated by individual center regarding:

- (1) the number and type of investigations conducted with the assistance of the inspector general;
- (2) the number and type of investigations involving a center employee;
- (3) the relationship of an alleged victim to an alleged perpetrator, if any;
- (4) the number of investigations conducted that involve the suicide, death, or hospitalization of an alleged victim; and
- (5) the number of completed investigations in which commission of an alleged offense was confirmed or unsubstantiated or in which the investigation was inconclusive, and a description of the reason that allegations were unsubstantiated or the investigation was inconclusive.

(c) The inspector general shall submit the annual status report to the:

- (1) executive commissioner;
- (2) governor;
- (3) lieutenant governor;
- (4) speaker of the house of representatives;
- (5) standing committees of the senate and house of representatives with primary jurisdiction over centers;
- (6) state auditor; and

(7) comptroller.

(d) An annual status report submitted under this section is public information under Chapter 552, Government Code.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; am. Acts 2019, 86th Leg., ch. 573 (S.B. 241), § 1.34, effective September 1, 2019.

Sec. 555.104. Retaliation Prohibited.

The department or a center may not retaliate against a department employee, a center employee, or any other person who in good faith cooperates with the inspector general under this subchapter.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009.

Subchapter E

Electronic Monitoring of Resident's Room

Sec. 555.151. Definitions.

In this subchapter:

(1) "Authorized electronic monitoring" means the placement of an electronic monitoring device in a resident's room and making tapes or recordings with the device after making a request to the center to allow electronic monitoring.

(2) "Electronic monitoring device":

(A) includes:

(i) video surveillance cameras installed in a resident's room; and

(ii) audio devices installed in a resident's room designed to acquire communications or other sounds occurring in the room; and

(B) does not include an interception device that is specifically used for the nonconsensual interception of wire or electronic communications.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 2, effective May 25, 2013; am. Acts 2017, 85th Leg., ch. 1058 (H.B. 2931), § 3.14, effective January 1, 2019.

Sec. 555.152. Criminal and Civil Liability.

(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 a resident's room.

(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 a resident's room 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 Article 18A.001, Code of Criminal Procedure; or
- (2) a communication as defined by Section 123.001, Civil Practice and Remedies Code.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 2, effective May 25, 2013; am. Acts 2017, 85th Leg., ch. 1058 (H.B. 2931), § 3.15, effective January 1, 2019.

Sec. 555.153. Covert Use of Electronic Monitoring Device; Liability of Department or Center.

(a) For purposes of this subchapter, the placement and use of an electronic monitoring device in a resident's room are considered to be covert if:

- (1) the placement and use of the device are not open and obvious; and
- (2) the center 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 center may not be held to be civilly liable in connection with the covert placement or use of an electronic monitoring device in a resident's room.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 2, effective May 25, 2013.

Sec. 555.154. Required Form on Admission.

The executive commissioner by rule shall prescribe a form that must be completed and signed on a resident's admission to a center by or on behalf of the resident. The form must state:

- (1) that a person who places an electronic monitoring device in a resident's room 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 a resident's room or who consents to or acquiesces in the covert placement of the device in a resident's room 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 this subchapter, and that if the center refuses to permit the electronic monitoring or fails to make reasonable physical accommodations for the authorized electronic monitoring the person should contact the department;
- (4) the basic procedures that must be followed to request authorized electronic monitoring;
- (5) the manner in which this subchapter affects the legal requirement to report abuse, neglect, or exploitation when electronic monitoring is being conducted; and
- (6) any other information regarding covert or authorized electronic monitoring that the executive commissioner considers advisable to include on the form.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 2, effective May 25, 2013.

Sec. 555.155. Authorized Electronic Monitoring: Who May Request.

(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.

(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 executive commissioner by rule shall prescribe:

- (1) guidelines that will assist centers, 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 executive commissioner.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 2, effective May 25, 2013.

Sec. 555.156. Authorized Electronic Monitoring: Form of Request; Consent of Other Residents in Room.

(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 center on a form prescribed by the executive commissioner.

(b) The form prescribed by the executive commissioner must require the resident or the resident's guardian or legal representative to:

- (1) release the center 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 executive commissioner, 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 555.155(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 executive commissioner under Subsection (b)(3) must condition the consent of another resident in the room on the other resident also releasing the center 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 a resident's room 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 executive commissioner may include other information that the executive commissioner considers to be appropriate on either of the forms that the executive commissioner is required to prescribe under this section.

(h) The executive commissioner by rule may prescribe 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 center; 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.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 2, effective May 25, 2013.

Sec. 555.157. Authorized Electronic Monitoring: General Provisions.

(a) A center shall permit a resident or the resident's guardian or legal representative to monitor the resident's room through the use of electronic monitoring devices.

(b) The center 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) A center may not refuse to admit an individual to residency in the center and may not remove a resident from the center because of a request to conduct authorized electronic monitoring. A center may not remove a resident from the center because covert electronic monitoring is being conducted by or on behalf of a resident.

(e) A center 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) A center 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 executive commissioner by rule may adopt guidelines regarding the safe placement of an electronic monitoring device.

(h) If authorized electronic monitoring is conducted, the center may require the resident or the resident's guardian or legal representative to conduct the electronic monitoring in plain view.

(i) A center may but is not required to place a resident in a different room to accommodate a request to conduct authorized electronic monitoring.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 2, effective May 25, 2013.

Sec. 555.158. Reporting Abuse, Neglect, or Exploitation.

(a) A person who is conducting authorized electronic monitoring under this subchapter and who has cause to believe, based on the viewing of or listening to a tape or recording, that a resident is in a state of abuse, neglect, or exploitation or has been abused, neglected, or exploited shall:

(1) report that information to the Department of Family and Protective Services as required by Section 48.051, Human Resources Code; and

(2) provide the original tape or recording to the Department of Family and Protective Services.

(b) If the Department of Family and Protective Services has cause to believe that a resident has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense, the department shall immediately notify law enforcement and the inspector general as provided by Section 48.1522, Human Resources Code, and provide a copy of the tape or recording to law enforcement or the inspector general on request.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 2, effective May 25, 2013.

Sec. 555.159. Use of Tape or Recording by Agency or Court.

(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 exploitation or evidence of neglect may be found. The executive commissioner by rule may encourage persons who send a tape or recording to the department to identify the place on the tape or recording where an incident of abuse or evidence of neglect may be found.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 2, effective May 25, 2013.

Sec. 555.160. Notice at Entrance to Center.

Each center shall post a notice at the entrance to the center 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 executive commissioner by rule shall prescribe the format and the precise content of the notice.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 2, effective May 25, 2013.

Sec. 555.161. Enforcement.

The department may impose appropriate sanctions under this chapter on a director of a center 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 center because of a request to conduct authorized electronic monitoring;
- (3) allows the removal of a resident from the center because covert electronic monitoring is being conducted by or on behalf of the resident; or
- (4) violates another provision of this subchapter.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 2, effective May 25, 2013.

Sec. 555.162. Interference with Device; Criminal Penalty.

(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 subsection 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.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 2, effective May 25, 2013.

CHAPTERS 556 TO 570

[Reserved for expansion]

SUBTITLE C

TEXAS MENTAL HEALTH CODE

Chapter	
571.	General Provisions
572.	Voluntary Mental Health Services
573.	Emergency Detention
574.	Court-ordered Mental Health Services
575.	Admission and Transfer Procedures for Inpatient Services
576.	Rights of Patients
577.	Private Mental Hospitals and Other Mental Health Facilities
578.	Electroconvulsive and Other Therapies
Chapter. 579.	Mental Health Jail Diversion Pilot Program; Harris County [Expires September 1, 2017]

CHAPTER 571

General Provisions

Section	
571.001.	Short Title.
571.002.	Purpose.
571.003.	Definitions.
571.004.	Least Restrictive Appropriate Setting.
571.005.	Texas Mental Health Code Information Program.
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571.026.	Recovery of Costs.
571.027.	Advisory Committee on Inpatient Mental Health Services. [Repealed]

Sec. 571.001. Short Title.

This subtitle may be cited as the Texas Mental Health Code.

Sec. 571.002. Purpose.

The purpose of this subtitle is to provide to each person having severe mental illness access to humane care and treatment by:

- (1) facilitating treatment in an appropriate setting;
- (2) enabling the person to obtain necessary evaluation, care, treatment, and rehabilitation with the least possible trouble, expense, and embarrassment to the person and the person's family;
- (3) eliminating, if requested, the traumatic effect on the person's mental health of public trial and criminal-like procedures;
- (4) protecting the person's right to a judicial determination of the person's need for involuntary treatment;
- (5) defining the criteria the state must meet to order involuntary care and treatment;
- (6) establishing the procedures to obtain facts, carry out examinations, and make prompt and fair decisions;
- (7) safeguarding the person's legal rights so as to advance and not impede the therapeutic and protective purposes of involuntary care; and
- (8) safeguarding the rights of the person who voluntarily requests inpatient care.

Sec. 571.003. Definitions.

In this subtitle:

- (1) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), 3.1639(108), effective April 2, 2015.]
- (2) "Commissioner" means the commissioner of state health services.
- (3) "Commitment order" means a court order for involuntary inpatient mental health services under this subtitle.
- (4) "Community center" means a center established under Subchapter A, Chapter 534 that provides mental health services.
- (5) "Department" means the Department of State Health Services.
- (5-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.
- (6) "Facility administrator" means the individual in charge of a mental health facility.
- (7) "General hospital" means a hospital operated primarily to diagnose, care for, and treat persons who are physically ill.
- (8) "Hospital administrator" means the individual in charge of a hospital.

(9) "Inpatient mental health facility" means a mental health facility that can provide 24-hour residential and psychiatric services and that is:

- (A) a facility operated by the department;
- (B) a private mental hospital licensed by the department;
- (C) a community center, facility operated by or under contract with a community center or other entity the department designates to provide mental health services;
- (D) a local mental health authority or a facility operated by or under contract with a local mental health authority;
- (E) an identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by the department; or
- (F) a hospital operated by a federal agency.

(10) "Legal holiday" includes a holiday listed in Section 662.021, Government Code, and an officially designated county holiday applicable to a court in which proceedings under this subtitle are held.

(11) "Local mental health authority" means an entity to which the executive commissioner delegates the executive commissioner's 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.

(12) "Mental health facility" means:

- (A) an inpatient or outpatient mental health facility operated by the department, a federal agency, a political subdivision, or any person;
- (B) a community center or a facility operated by a community center;
- (C) that identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided; or
- (D) with respect to a reciprocal agreement entered into under Section 571.0081, any hospital or facility designated as a place of commitment by the department, a local mental health authority, and the contracting state or local authority.

(13) "Mental hospital" means a hospital:

- (A) operated primarily to provide inpatient care and treatment for persons with mental illness; or
- (B) operated by a federal agency that is equipped to provide inpatient care and treatment for persons with mental illness.

(14) "Mental illness" means an illness, disease, or condition, other than epilepsy, dementia, substance abuse, or intellectual disability, that:

- (A) substantially impairs a person's thought, perception of reality, emotional process, or judgment; or
- (B) grossly impairs behavior as demonstrated by recent disturbed behavior.

(15) "Non-physician mental health professional" means:

- (A) a psychologist licensed to practice in this state and designated as a health-service provider;

(B) a registered nurse with a master's or doctoral degree in psychiatric nursing;

(C) a licensed clinical social worker;

(D) a licensed professional counselor licensed to practice in this state; or

(E) a licensed marriage and family therapist licensed to practice in this state.

(16) "Patient" means an individual who is receiving voluntary or involuntary mental health services under this subtitle.

(17) "Person" includes an individual, firm, partnership, joint-stock company, joint venture, association, and corporation.

(18) "Physician" means:

(A) a person licensed to practice medicine in this state;

(B) a person employed by a federal agency who has a license to practice medicine in any state; or

(C) a person authorized to perform medical acts under a physician-in-training permit at a Texas post-graduate training program approved by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or the Texas Medical Board.

(19) "Political subdivision" includes a county, municipality, or hospital district in this state but does not include a department, board, or agency of the state that has statewide authority and responsibility.

(20) "Private mental hospital" means a mental hospital operated by a person or political subdivision.

(21) "State mental hospital" means a mental hospital operated by the department.

(22) [Repealed by Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 19, effective September 1, 2001.]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 573 (S.B. 210), § 4.01, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(15), effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 500 (S.B. 1057), § 2, effective May 31, 1997; am. Acts 1999, 76th Leg., ch. 75 (H.B. 677), § 1, effective May 12, 1999; am. Acts 1999, 76th Leg., ch. 543 (S.B. 261), § 2, effective June 18, 1999; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), §§ 4, 19, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 722 (S.B. 684), § 1, effective June 13, 2001; am. Acts 2003, 78th Leg., ch. 892 (S.B. 810), § 27, effective September 1, 2003; am. Acts 2013, 83rd Leg., ch. 169 (S.B. 1889), § 1, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1355, 3.1639(108), effective April 2, 2015.

Sec. 571.004. Least Restrictive Appropriate Setting.

The least restrictive appropriate setting for the treatment of a patient is the treatment setting that:

(1) is available;

(2) provides the patient with the greatest probability of improvement or cure; and

(3) is no more restrictive of the patient's physical or social liberties than is necessary to provide the patient with the most effective treatment and to protect adequately against any danger the patient poses to himself or others.

Sec. 571.005. Texas Mental Health Code Information Program.

(a) The department shall hold seminars as necessary to

increase understanding of and properly implement revisions to this subtitle.

(b) The department may arrange for community centers, other state agencies, and other public and private organizations or programs to prepare instructional materials and conduct the seminars.

(c) The department may solicit, receive, and expend funds it receives from public or private organizations to fund the seminars.

Sec. 571.006. Executive Commissioner and Department Powers.

(a) The executive commissioner may adopt rules as necessary for the proper and efficient treatment of persons with mental illness.

(b) The department may:

(1) prescribe the form and content of applications, certificates, records, and reports provided for under this subtitle;

(2) require reports from a facility administrator relating to the admission, examination, diagnosis, release, or discharge of any patient;

(3) regularly visit each mental health facility to review the commitment procedure for each new patient admitted after the last visit; and

(4) visit a mental health facility to investigate a complaint made by a patient or by a person on behalf of a patient.

HISTORY: , Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1356, effective April 2, 2015.

Sec. 571.0065. Treatment Methods.

(a) The executive commissioner by rule may adopt procedures for an advisory committee to review treatment methods for persons with mental illness.

(b) A state agency that has knowledge of or receives a complaint relating to an abusive treatment method shall report that knowledge or forward a copy of the complaint to the department.

(c) A mental health facility, physician, or other mental health professional is not liable for an injury or other damages sustained by a person as a result of the failure of the facility, physician, or professional to administer or perform a treatment prohibited by statute or rules adopted by the executive commissioner.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 573 (S.B. 210), § 3.01(a), effective September 1, 1993; am. Acts 1997, 75th Leg., ch. 337 (S.B. 264), § 1, effective May 31, 1997; am. Acts 2011, 82nd Leg., ch. 1050 (S.B. 71), § 22(14), effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), § 25(98), effective June 17, 2011; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1357, effective April 2, 2015.

Sec. 571.0066. Prescription Medication Information.

(a) The executive commissioner by rule shall require a mental health facility that admits a patient under this subtitle to provide to the patient in the patient's primary language, if possible, information relating to prescription medications ordered by the patient's treating physician.

(b) At a minimum, the required information must:

(1) identify the major types of prescription medications; and

(2) specify for each major type:

(A) the conditions the medications are commonly used to treat;

(B) the beneficial effects on those conditions generally expected from the medications;

(C) side effects and risks associated with the medications;

(D) commonly used examples of medications of the major type; and

(E) sources of detailed information concerning a particular medication.

(c) The facility shall also provide the information to the patient's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.01, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 17.01(32), effective September 1, 1995 (renumbered from Sec. 571.0065); am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1358, effective April 2, 2015.

Sec. 571.0067. Restraint and Seclusion.

A person providing services to a patient of a mental hospital or mental health facility shall comply with Chapter 322 and the rules adopted under that chapter.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 698 (S.B. 325), § 6, effective September 1, 2005.

Sec. 571.007. Delegation of Powers and Duties.

(a) Except as otherwise expressly provided by this subtitle, an authorized, qualified department employee may exercise a power granted to or perform a duty imposed on the department.

(b) Except as otherwise expressly provided by this subtitle, an authorized, qualified person designated by a facility administrator may exercise a power granted to or perform a duty imposed on the facility administrator.

(c) The delegation of a duty under this section does not relieve the department or a facility administrator from responsibility.

Sec. 571.008. Return of Committed Patient to State of Residence.

(a) The department may return a nonresident patient committed to a department mental health facility or other mental health facility under Section 571.0081 to the proper agency of the patient's state of residence.

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

(c) Subject to Section 571.0081, the department may enter into reciprocal agreements with the state or local authorities, as defined by Section 571.0081, of other states to facilitate the return of persons committed to mental health facilities in this state or another state to the states of their residence.

(d) A department facility administrator may detain for not more than 96 hours pending a court order in a commitment proceeding in this state a patient returned to

this state from another state where the person was committed.

(e) The state returning a committed patient to another state shall bear the expenses of returning the patient, unless the state agrees to share costs under a reciprocal agreement under Section 571.0081.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2013, 83rd Leg., ch. 169 (S.B. 1889), § 2, effective September 1, 2013.

Sec. 571.0081. Return of Committed Patient to State of Residence; Reciprocal Agreements.

(a) In this section, "state or local authority" means a state or local government authority or agency or a representative of a state or local government authority or agency acting in an official capacity.

(b) If a state or local authority of another state petitions the department, the department shall enter into a reciprocal agreement with the state or local authority to facilitate the return of persons committed to mental health facilities in this state to the state of their residence unless the department determines that the terms of the agreement are not acceptable.

(c) A reciprocal agreement entered into by the department under Subsection (b) must require the department to develop a process for returning persons committed to mental health facilities to their state of residence. The process must:

(1) provide suitable care for the person committed to a mental health facility;

(2) use available resources efficiently; and

(3) consider commitment to a proximate mental health facility to facilitate the return of the committed patient to the patient's state of residence.

(d) For the purpose of this section, the department shall coordinate, as appropriate, with a mental health facility, a mental hospital, health service providers, courts, and law enforcement personnel located in the geographic area nearest the petitioning state.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 169 (S.B. 1889), § 3, effective September 1, 2013.

Sec. 571.009. Effect of Certain Conditions on Admission or Commitment.

A person with mental illness may not be denied admission or commitment to a mental health facility because the person also suffers from epilepsy, dementia, substance abuse, or intellectual disability.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 16, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1359, effective April 2, 2015.

Sec. 571.010. Agent for Service of Process.

(a) The facility administrator or the superintendent, supervisor, or manager of an inpatient mental health facility is the agent for service of process on a patient confined in the facility.

(b) The person receiving process shall sign a certificate with the person's name and title that states that the person is aware of the provisions of this subtitle. The certificate shall be attached to the citation and returned by the serving officer.

(c) The person receiving process, not later than the third day after its receipt, shall forward it by registered mail to the patient's legal guardian or personally deliver it to the patient, whichever appears to be in the patient's best interest.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 16, effective September 1, 1991.

Sec. 571.011. Application to Persons Charged with Crime.

(a) A child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision under Title 3, Family Code, is not considered under this subtitle to be a person charged with a criminal offense.

(b) The provisions in this subtitle relating to the discharge, furlough, or transfer of a patient do not apply to a person charged with a criminal offense who is admitted to a mental health facility under Subchapter D or E, Chapter 46B, Code of Criminal Procedure.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 9, effective January 1, 2004.

Sec. 571.012. Court Hours; Availability of Judge or Magistrate.

The probate court or court having probate jurisdiction shall be open for proceedings under this subtitle during normal business hours. The probate judge or magistrate shall be available at all times at the request of a person apprehended or detained under Chapter 573, or a proposed patient under Chapter 574.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 485 (H.B. 1073), § 1, effective June 11, 2001.

Sec. 571.013. Method of Giving Notice.

Except as otherwise provided by this subtitle, notice required under this subtitle may be given by delivering a copy of the notice or document in person or in another manner directed by the court that is reasonably calculated to give actual notice.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 16, effective September 1, 1991.

Sec. 571.014. Filing Requirements.

(a) Each application, petition, certificate, or other paper permitted or required to be filed in a probate court or court having probate jurisdiction under this subtitle must be filed with the county clerk of the proper county.

(b) The county clerk shall file each paper after endorsing on it:

- (1) the date on which the paper is filed;
- (2) the docket number; and
- (3) the clerk's official signature.

(c) A person may initially file a paper with the county clerk by the use of reproduced, photocopied, or electronically transmitted paper if the person files the original signed copies of the paper with the clerk not later than the 72nd hour after the hour on which the initial filing is made. If the 72-hour period ends on a Saturday, Sunday, or legal holiday, the filing period is extended until 4 p.m. on

the first succeeding business day. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may by written order made each day extend the filing period until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster. If a person detained under this subtitle would otherwise be released because the original signed copy of a paper is not filed within the 72-hour period but for the extension of the filing period under this section, the person may be detained until the expiration of the extended filing period. This subsection does not affect another provision of this subtitle requiring the release or discharge of a person.

(d) If the clerk does not receive the original signed copy of a paper within the period prescribed by this section, the judge may dismiss the proceeding on the court's own motion or on the motion of a party and, if the proceeding is dismissed, shall order the immediate release of a proposed patient who is not at liberty.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 16, effective September 1, 1991; am. Acts 1993, 73rd Leg. ch. 107 (H.B. 947), § 6.42, effective August 30, 1993.

Sec. 571.015. Inspection of Court Records.

(a) Each paper in a docket for mental health proceedings in the county clerk's office, including the docket book, indexes, and judgment books, is a public record of a private nature that may be used, inspected, or copied only under a written order issued by the county judge, a judge of a court that has probate jurisdiction, or a judge of a district court having jurisdiction in the county in which the docket is located.

(b) A judge may not issue an order under Subsection (a) unless the judge enters a finding that:

- (1) the use, inspection, or copying is justified and in the public interest; or
- (2) the paper is to be released to the person to whom it relates or to a person designated in a written release signed by the person to whom the paper relates.

(c) In addition to the finding required by Subsection (b), if a law relating to confidentiality of mental health information or physician-patient privilege applies, the judge must find that the reasons for the use, inspection, or copying fall within the applicable statutory exemptions.

(d) The papers shall be released to an attorney representing the proposed patient in a proceeding held under this subtitle.

(e) This section does not affect access of law enforcement personnel to necessary information in execution of a writ or warrant.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 16, effective September 1, 1991.

Sec. 571.016. Representation of State.

Unless specified otherwise, in a hearing held under this subtitle, including a hearing held under Subchapter G, Chapter 574:

- (1) the county attorney shall represent the state; or
- (2) if the county has no county attorney, the district attorney, the criminal district attorney, or a court-appointed special prosecutor shall represent the state.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 322 (S.B. 96), § 1, effective August 28, 1995; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 1, effective June 16, 1995; am. Acts 2011, 82nd Leg., ch. 832 (H.B. 3342), § 1, effective June 17, 2011.

Sec. 571.0165. Extension of Detention Period.

(a) If extremely hazardous weather conditions exist or a disaster occurs, the judge of a court having jurisdiction of a proceeding under Chapters 572, 573, 574, and 575 or a magistrate appointed by the judge may by written order made each day extend the period during which the person may be detained under those chapters until 4 p.m. on the first succeeding business day.

(b) The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

(c) This section does not apply to a situation for which a specific procedure is prescribed by this subtitle for extending the detention period because of extremely hazardous weather conditions or the occurrence of a disaster.

HISTORY: Enacted by Acts 1991, 73rd Leg., ch. 107 (H.B. 947), § 6.43, effective September 1, 1993.

Sec. 571.0166. Proceedings on Behalf of the State.

All applications under this subtitle shall be filed on behalf of the State of Texas and styled "The State of Texas for the Best Interest and Protection of (NAME) the (patient or proposed patient)."

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 2, effective June 16, 1995.

Sec. 571.0167. Habeas Corpus Proceedings.

(a) A petition for a writ of habeas corpus arising from a commitment order must be filed in the court of appeals for the county in which the order is entered.

(b) The state shall be made a party in a habeas corpus proceeding described in Subsection (a). The appropriate attorney prescribed by Section 571.016 shall represent the state.

(c) In a habeas corpus proceeding in which a department inpatient mental health facility or a physician employed by a department inpatient mental health facility is a party as a result of enforcing a commitment order, the appropriate attorney prescribed by Section 571.016 shall represent the facility or physician, or both the facility and physician if both are parties, unless the attorney determines that representation violates the Texas Disciplinary Rules of Professional Conduct.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 832 (H.B. 3342), § 2, effective June 17, 2011; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1360, effective April 2, 2015.

Sec. 571.017. Compensation of Court-Appointed Personnel.

(a) The court shall order the payment of reasonable compensation to attorneys, physicians, language interpreters, sign interpreters, and associate judges appointed under this subtitle.

(b) The compensation paid shall be taxed as costs in the case.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 16, effective September 1, 1991; am. Acts 2009, 81st Leg., ch. 334 (H.B. 890), § 2, effective September 1, 2009.

Sec. 571.018. Costs.

(a) The costs for a hearing or proceeding under this subtitle shall be paid by:

(1) the county in which emergency detention procedures are initiated under Subchapter A or B, Chapter 573; or

(2) if no emergency detention procedures are initiated, the county that accepts an application for court-ordered mental health services, issues an order for protective custody, or issues an order for temporary mental health services.

(b) The county responsible for the costs of a hearing or proceeding under Subsection (a) shall pay the costs of all subsequent hearings or proceedings for that person under this subtitle until the person is discharged from mental health services. The county may not pay the costs from any fees collected under Section 51.704, Government Code. The costs shall be billed by the clerk of the court conducting the hearings.

(c) Costs under this section include:

(1) attorney's fees;

(2) physician examination fees;

(3) compensation for court-appointed personnel listed under Section 571.017;

(4) expenses of transportation to a mental health facility or to a federal agency not to exceed \$50 if transporting within the same county and not to exceed the reasonable cost of transportation if transporting between counties;

(5) costs and salary supplements authorized under Sections 574.031(i) and (j); and

(6) prosecutor's fees authorized under Section 574.031(k).

(d) A county is entitled to reimbursement for costs actually paid by the county from:

(1) the patient; or

(2) a person or estate liable for the patient's support in a department mental health facility.

(e) The state shall pay the cost of transporting a discharged or furloughed patient to the patient's home or of returning a patient absent without authority unless the patient or someone responsible for the patient is able to pay the costs.

(f) A proposed patient's county of residence shall pay the court-approved expenses incurred under Section 574.010 if ordered by the court under that section.

(g) A judge who holds hearings at locations other than the county courthouse is entitled to additional compensation as provided by Sections 574.031(h) and (i).

(h) The state or a county may not pay any costs for a patient committed to a private mental hospital unless:

(1) a public facility is not available; and

(2) the commissioners court of the county authorizes the payment, if appropriate.

(i) The county may not require a person other than the patient to pay any costs associated with a hearing or proceeding under this subtitle, including a filing fee or other court costs imposed under Chapter 118, Local Gov-

ernment Code, Chapter 51, Government Code, or other law, unless the county first determines that:

(1) the costs relate to services provided or to be provided in a private mental hospital; or

(2) the person charged with the costs is a person or estate liable for the patient's support in a department mental health facility.

(j) When an inpatient mental health facility as defined under Section 571.003(9)(B) or (E) files an affidavit with the clerk of the court certifying that it has received no compensation or reimbursement for the treatment of a person for whom court costs have been paid or advanced, the judge of the probate court shall order the clerk of the court to refund the costs.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.44, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 174 (H.B. 1596), § 1, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 3, effective June 16, 1995; am. Acts 1997, 75th Leg., ch. 1354 (H.B. 591), § 2, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 527 (S.B. 153), § 1, effective June 18, 1999; am. Acts 1999, 76th Leg., ch. 1512 (S.B. 539), § 1, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 723 (H.B. 1329), § 1, effective September 1, 2015.

Sec. 571.019. Limitation of Liability.

(a) A person who participates in the examination, certification, apprehension, custody, transportation, detention, treatment, or discharge of any person or in the performance of any other act required or authorized by this subtitle and who acts in good faith, reasonably, and without negligence is not criminally or civilly liable for that action.

(b) A physician performing a medical examination and providing information to the court in a court proceeding held under this subtitle or providing information to a peace officer to demonstrate the necessity to apprehend a person under Chapter 573 is considered an officer of the court and is not liable for the examination or testimony when acting without malice.

(c) A physician or inpatient mental health facility that discharges a voluntary patient is not liable for the discharge if:

(1) a written request for the patient's release was filed and not withdrawn; and

(2) the person who filed the written request for discharge is notified that the person assumes all responsibility for the patient on discharge.

Sec. 571.020. Criminal Penalties.

(a) A person commits an offense if the person intentionally causes, conspires with another to cause, or assists another to cause the unwarranted commitment of a person to a mental health facility.

(b) A person commits an offense if the person knowingly violates a provision of this subtitle.

(c) An individual who commits an offense under this section is subject on conviction to:

(1) a fine of not less than \$50 or more than \$25,000 for each violation and each day of a continuing violation;

(2) confinement in jail for not more than two years for each violation and each day of a continuing violation; or

(3) both fine and confinement.

(d) A person other than an individual who commits an offense under this section is subject on conviction to a fine of not less than \$500 or more than \$100,000 for each violation and each day of a continuing violation.

(e) If it is shown on the trial of an individual that the individual has previously been convicted of an offense under this section, the offense is punishable by:

(1) a fine of not less than \$100 or more than \$50,000 for each violation and each day of a continuing violation;

(2) confinement in jail for not more than four years for each violation and each day of a continuing violation; or

(3) both fine and confinement.

(f) If it is shown on the trial of a person other than an individual that the person previously has been convicted of an offense under this section, the offense is punishable by a fine of not less than \$1,000 or more than \$200,000 for each violation and each day of a continuing violation.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.45, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 3.10(a), effective September 1, 1993.

Sec. 571.021. Enforcement Officers.

The state attorney general and the district and county attorneys within their respective jurisdictions shall prosecute violations of this subtitle.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 16, effective September 1, 1991.

Sec. 571.022. Injunction.

(a) At the request of the department, the attorney general or the appropriate district or county attorney shall institute and conduct in the name of the state a suit for a violation of this subtitle or a rule adopted under this subtitle.

(b) On his own initiative, the attorney general or district or county attorney may maintain an action for a violation of this subtitle or a rule adopted under this subtitle in the name of the state.

(c) Venue may be maintained in Travis County or in the county in which the violation occurred.

(d) The district court may grant any prohibitory or mandatory injunctive relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 3.11, effective September 1, 1993.

Sec. 571.023. Civil Penalty.

(a) A person is subject to a civil penalty of not more than \$25,000 for each day of violation and for each act of violation of this subtitle or a rule adopted under this subtitle. In determining the amount of the civil penalty, the court shall consider:

(1) the person's or facility's previous violations;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3) whether the health and safety of the public was threatened by the violation;

(4) the demonstrated good faith of the person or facility; and

(5) the amount necessary to deter future violations.

(b) The department or party bringing the suit may:

(1) combine a suit to assess and recover civil penalties with a suit for injunctive relief brought under Section 571.022 or 577.019; or

(2) file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

(c) At the request of the department, the attorney general or the appropriate district or county attorney shall institute and conduct the suit authorized by Subsection (b) in the name of the state.

(d) On his own initiative, the attorney general, district attorney, or county attorney may maintain an action as authorized by Subsection (b) for a violation of this subtitle or a rule adopted under this subtitle in the name of the state.

(e) The department and the party bringing the suit may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including investigation costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

(f) A penalty collected under this section by the attorney general shall be deposited to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

(g) The civil penalty and injunctive relief authorized by this section and Sections 571.022 and 577.019 are in addition to any other civil, administrative, or criminal remedies provided by law.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 3.11, effective September 1, 1993.

Sec. 571.024. Notice of Suit.

Not later than the seventh day before the date on which the attorney general intends to bring suit on his own initiative, the attorney general shall provide to the department notice of the suit. The attorney general is not required to provide notice of a suit if the attorney general determines that waiting to bring suit until the notice is provided will create an immediate threat to the health and safety of a patient. This section does not create a requirement that the attorney general obtain the permission of or a referral from the department before filing suit.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 3.11, effective September 1, 1993.

Sec. 571.025. Administrative Penalty.

(a) The department may impose an administrative penalty against a person licensed or regulated under this subtitle who violates this subtitle or a rule or order adopted under this subtitle.

(b) The penalty for a violation may be in an amount not to exceed \$25,000. Each day a violation continues or occurs 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 pro-

hibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) enforcement costs relating to the violation, including investigation costs, witness fees, and deposition expenses;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If the department determines that a violation has occurred, the department may issue a report that states the facts on which the determination is based and the department's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the department shall give written notice of the report to the person. 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.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of 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.

(g) If the person accepts the determination and recommended penalty of the department, the department by order shall impose the recommended penalty.

(h) 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 administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the department's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the department's order is final as provided by Subchapter F, Chapter 2001, 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.

(k) Within the 30-day period, a person who acts under Subsection (j)(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 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.

(l) The department on receipt of a copy of an affidavit under Subsection (k)(2) 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.

(m) 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.

(n) Judicial review of the order of the department :

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) 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.

(p) 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.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 3.11, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(49), (53), (59), effective September 1, 1995;

am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1361, effective April 2, 2015.

Sec. 571.026. Recovery of Costs.

If the attorney general brings an action to enforce an administrative penalty assessed under this chapter and the court orders the payment of the penalty, the attorney general may recover reasonable expenses incurred in the investigation, initiation, or prosecution of the enforcement suit, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 3.111, effective September 1, 1993.

Sec. 571.027. Advisory Committee on Inpatient Mental Health Services. [Repealed]

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1027 (S.B. 434), § 2, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 745 (S.B. 1085), § 1, effective June 13, 2001; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 14.803, effective September 1, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1362, effective April 2, 2015; Repealed by Acts 2015, 84th Leg., ch. 946 (S.B. 277), § 1.03(b), effective September 1, 2015.

CHAPTER 572

Voluntary Mental Health Services

Section 572.001.	Request for Admission. [Effective upon contingency being met]
572.001.	Request for Admission. [Effective until contingency met]
572.002.	Admission.
572.0022.	Information on Medications.
572.0025.	Intake, Assessment, and Admission.
572.003.	Rights of Patients.
572.004.	Discharge.
572.005.	Application for Court-Ordered Treatment.
572.0051.	Transportation of Patient to Another State.

Sec. 572.001. Request for Admission. [Effective upon contingency being met]

(a) A person 16 years of age or older may request admission to an inpatient mental health facility or for outpatient mental health services by filing a request with the administrator of the facility where admission or outpatient treatment is requested. The parent, managing conservator, or guardian of a person younger than 18 years of age may request the admission of the person to an inpatient mental health facility or for outpatient mental health services by filing a request with the administrator of the facility where admission or outpatient treatment is requested.

(a-1) Except as provided by Subsection (c), an inpatient mental health facility may admit or provide services to a person 16 years of age or older and younger than 18 years of age if the person's parent, managing conservator, or guardian consents to the admission or services, even if the person does not consent to the admission or services.

(b) An admission request must be in writing and signed by the person requesting the admission.

(c) A person or agency appointed as the guardian or a managing conservator of a person younger than 18 years of age and acting as an employee or agent of the state or a

political subdivision of the state may request admission of the person younger than 18 years of age to an inpatient mental health facility only as provided by Subsection (c-2) or pursuant to an application for court-ordered mental health services or emergency detention or an order for protective custody.

(c-1) A person younger than 18 years of age may not be involuntarily committed unless provided by this chapter, other state law, or department rule.

(c-2) The Department of Family and Protective Services may request the admission to an inpatient mental health facility of a minor in the managing conservatorship of that department only if a physician states the physician's opinion, and the detailed reasons for that opinion, that the minor is a person:

- (1) with mental illness or who demonstrates symptoms of a serious emotional disorder; and
- (2) who presents a risk of serious harm to self or others if not immediately restrained or hospitalized.

(c-3) The admission to an inpatient mental health facility under Subsection (c-2) of a minor in the managing conservatorship of the Department of Family and Protective Services is a significant event for purposes of Section 264.018, Family Code, and the Department of Family and Protective Services shall provide notice of the significant event:

- (1) in accordance with that section to all parties entitled to notice under that section; and
- (2) to the court with continuing jurisdiction before the expiration of three business days after the minor's admission.

(c-4) The Department of Family and Protective Services periodically shall review the need for continued inpatient treatment of a minor admitted to an inpatient mental health facility under Subsection (c-2). If following the review that department determines there is no longer a need for continued inpatient treatment, that department shall notify the facility administrator designated to detain the minor that the minor may no longer be detained unless an application for court-ordered mental health services is filed.

(d) The administrator of an inpatient or outpatient mental health facility may admit a minor who is 16 years of age or older to an inpatient or outpatient mental health facility as a voluntary patient without the consent of the parent, managing conservator, or guardian.

(e) A request for admission as a voluntary patient must state that the person for whom admission is requested agrees to voluntarily remain in the facility until the person's discharge and that the person consents to the diagnosis, observation, care, and treatment provided until the earlier of:

- (1) the person's discharge; or
- (2) the period prescribed by Section 572.004.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 4.01, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 393 (H.B. 2094), § 1, effective August 28, 1995; am. Acts 2003, 78th Leg., ch. 1000 (H.B. 21), § 1, effective June 20, 2003; am. Acts 2013, 83rd Leg., ch. 566 (S.B. 718), § 2, effective June 14, 2013; am. Acts 2017, 85th Leg., ch. 317 (H.B. 7), § 41, effective September 1, 2018; am. Acts 2019, 86th Leg., ch. 988 (S.B. 1238), § 2, effective September 1, 2019.

Sec. 572.001. Request for Admission. [Effective until contingency met]

(a) A person 16 years of age or older may request admission to an inpatient mental health facility or for outpatient mental health services by filing a request with the administrator of the facility where admission or outpatient treatment is requested. Subject to Subsection (c-1), the parent, managing conservator, or guardian of a person younger than 18 years of age may request the admission of the person to an inpatient mental health facility or for outpatient mental health services by filing a request with the administrator of the facility where admission or outpatient treatment is requested.

(a-1) A person eligible to consent to treatment for the person under Section 32.001(a)(1), (2), or (3), Family Code, may request temporary authorization for the admission of the person to an inpatient mental health facility by petitioning under Chapter 35A, Family Code, in the district court in the county in which the person resides for an order for temporary authorization to consent to voluntary mental health services under this section. The petitioner for temporary authorization may be represented by the county attorney or district attorney.

(a-2) Except as provided by Subsection (c-1), an inpatient mental health facility may admit or provide services to a person 16 years of age or older and younger than 18 years of age if the person's parent, managing conservator, or guardian consents to the admission or services, even if the person does not consent to the admission or services.

(b) An admission request must be in writing and signed by the person requesting the admission.

(c) A person or agency appointed as the guardian or a managing conservator of a person younger than 18 years of age and acting as an employee or agent of the state or a political subdivision of the state may request admission of the person younger than 18 years of age only with the person's consent. If the person does not consent, the person may be admitted for inpatient services only pursuant to an application for court-ordered mental health services or emergency detention or an order for protective custody.

(c-1) A person younger than 18 years of age may not be involuntarily committed unless provided by this chapter, Chapter 55, Family Code, or department rule.

(d) The administrator of an inpatient or outpatient mental health facility may admit a minor who is 16 years of age or older to an inpatient or outpatient mental health facility as a voluntary patient without the consent of the parent, managing conservator, or guardian.

(e) A request for admission as a voluntary patient must state that the person for whom admission is requested agrees to voluntarily remain in the facility until the person's discharge and that the person consents to the diagnosis, observation, care, and treatment provided until the earlier of:

- (1) the person's discharge; or
- (2) the period prescribed by Section 572.004.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 4.01, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 393 (H.B. 2094), § 1, effective August 28, 1995; am. Acts 2003, 78th Leg., ch. 1000 (H.B. 21), § 1, effective June 20, 2003; am. Acts 2013, 83rd Leg., ch. 566 (S.B. 718), § 2, effective

June 14, 2013; am. Acts 2019, 86th Leg., ch. 988 (S.B. 1238), § 2, effective September 1, 2019.

Sec. 572.002. Admission.

The facility administrator or the administrator's authorized, qualified designee may admit a person for whom a proper request for voluntary inpatient or outpatient services is filed if the administrator or the designee determines:

- (1) from a preliminary examination that the person has symptoms of mental illness and will benefit from the inpatient or outpatient services;
- (2) that the person has been informed of the person's rights as a voluntary patient; and
- (3) that the admission was voluntarily agreed to:
 - (A) by the person, if the person is 16 years of age or older; or
 - (B) by the person's parent, managing conservator, or guardian, if the person is younger than 18 years of age.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 393 (H.B. 2094), § 2, effective August 28, 1995; am. Acts 2003, 78th Leg., ch. 1000 (H.B. 21), § 2, effective June 20, 2003; am. Acts 2013, 83rd Leg., ch. 566 (S.B. 718), § 3, effective June 14, 2013.

Sec. 572.0022. Information on Medications.

(a) A mental health facility shall provide to a patient in the patient's primary language, if possible, and in accordance with department rules information relating to prescription medication ordered by the patient's treating physician.

(b) The facility shall also provide the information to the patient's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.03(a), effective May 1, 1994; am. Acts 1997, 75th Leg., ch. 337 (S.B. 264), § 2, effective May 27, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1363, effective April 2, 2015.

Sec. 572.0025. Intake, Assessment, and Admission.

(a) The executive commissioner shall adopt rules governing the voluntary admission of a patient to an inpatient mental health facility, including rules governing the intake and assessment procedures of the admission process.

(b) The rules governing the intake process shall establish minimum standards for:

- (1) reviewing a prospective patient's finances and insurance benefits;
- (2) explaining to a prospective patient the patient's rights; and
- (3) explaining to a prospective patient the facility's services and treatment process.

(c) The assessment provided for by the rules may be conducted only by a professional who meets the qualifications prescribed by department rules.

(d) The rules governing the assessment process shall prescribe:

- (1) the types of professionals who may conduct an assessment;

(2) the minimum credentials each type of professional must have to conduct an assessment; and

(3) the type of assessment that professional may conduct.

(e) In accordance with department rule, a facility shall provide annually a minimum of eight hours of inservice training regarding intake and assessment for persons who will be conducting an intake or assessment for the facility. A person may not conduct intake or assessments without having completed the initial and applicable annual inservice training.

(f) A prospective voluntary patient may not be formally accepted for treatment in a facility unless:

(1) the facility has a physician's order admitting the prospective patient, which order may be issued orally, electronically, or in writing, signed by the physician, provided that, in the case of an oral order or an electronically transmitted unsigned order, a signed original is presented to the mental health facility within 24 hours of the initial order; the order must be from:

(A) an admitting physician who has, either in person or through the use of audiovisual or other telecommunications technology, conducted a physical and psychiatric examination within:

- (i) 72 hours before admission; or
- (ii) 24 hours after admission; or

(B) an admitting physician who has consulted with a physician who has, either in person or through the use of audiovisual or other telecommunications technology, conducted an examination within:

- (i) 72 hours before admission; or
- (ii) 24 hours after admission; and

(2) the facility administrator or a person designated by the administrator has agreed to accept the prospective patient and has signed a statement to that effect.

(f-1) A person who is admitted to a facility before the performance of the physical and psychiatric examination required by Subsection (f) must be discharged by the physician immediately if the physician conducting the physical and psychiatric examination determines the person does not meet the clinical standards to receive inpatient mental health services.

(f-2) A facility that discharges a patient under the circumstances described by Subsection (f-1) may not bill the patient or the patient's third-party payor for the temporary admission of the patient to the inpatient mental health facility.

(f-3) Section 572.001(c-2) applies to the admission of a minor in the managing conservatorship of the Department of Family and Protective Services to an inpatient mental health facility.

(g) An assessment conducted as required by rules adopted under this section does not satisfy a statutory or regulatory requirement for a personal evaluation of a patient or a prospective patient by a physician.

(h) In this section:

(1) "Admission" means the formal acceptance of a prospective patient to a facility.

(2) "Assessment" means the administrative process a facility uses to gather information from a prospective patient, including a medical history and the problem for which the patient is seeking treatment, to determine

whether a prospective patient should be examined by a physician to determine if admission is clinically justified.

(3) "Intake" means the administrative process for gathering information about a prospective patient and giving a prospective patient information about the facility and the facility's treatment and services.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 4.03, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 422 (S.B. 513), § 1, effective June 9, 1995; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.83, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1364, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 988 (S.B. 1238), § 3, effective September 1, 2019.

Sec. 572.003. Rights of Patients.

(a) A person's voluntary admission to an inpatient mental health facility under this chapter does not affect the person's civil rights or legal capacity or affect the person's right to obtain a writ of habeas corpus.

(b) In addition to the rights provided by this subtitle, a person voluntarily admitted to an inpatient mental health facility under this chapter has the right:

- (1) to be reviewed periodically to determine the person's need for continued inpatient treatment; and
- (2) to have an application for court-ordered mental health services filed only as provided by Section 572.005.

(c) A person admitted to an inpatient mental health facility under this chapter shall be informed of the rights provided under this section and Section 572.004:

- (1) orally in simple, nontechnical terms, within 24 hours after the time the person is admitted, and in writing in the person's primary language, if possible; or
- (2) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable.

(d) The patient's parent, managing conservator, or guardian shall also be informed of the patient's rights as required by this section if the patient is a minor.

(e) In addition to the rights provided by this subtitle, a person voluntarily admitted to an inpatient mental health facility under Section 572.002(3)(B) has the right to be evaluated by a physician at regular intervals to determine the person's need for continued inpatient treatment. The executive commissioner by rule shall establish the intervals at which a physician shall evaluate a person under this subsection.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.02, effective August 30, 1993; am. Acts 2003, 78th Leg., ch. 1000 (H.B. 21), § 3, effective June 20, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1365, effective April 2, 2015.

Sec. 572.004. Discharge.

(a) A voluntary patient is entitled to leave an inpatient mental health facility in accordance with this section after a written request for discharge is filed with the facility administrator or the administrator's designee. The request must be signed, timed, and dated by the patient or a person legally responsible for the patient and must be made a part of the patient's clinical record. If a patient

informs an employee of or person associated with the facility of the patient's desire to leave the facility, the employee or person shall, as soon as possible, assist the patient in creating the written request and present it to the patient for the patient's signature.

(b) The facility shall, within four hours after a request for discharge is filed, notify the physician responsible for the patient's treatment. If that physician is not available during that period, the facility shall notify any available physician of the request.

(c) The notified physician shall discharge the patient before the end of the four-hour period unless the physician has reasonable cause to believe that the patient might meet the criteria for court-ordered mental health services or emergency detention.

(d) A physician who has reasonable cause to believe that a patient might meet the criteria for court-ordered mental health services or emergency detention shall examine the patient as soon as possible within 24 hours after the time the request for discharge is filed. The physician shall discharge the patient on completion of the examination unless the physician determines that the person meets the criteria for court-ordered mental health services or emergency detention. If the physician makes a determination that the patient meets the criteria for court-ordered mental health services or emergency detention, the physician shall, not later than 4 p.m. on the next succeeding business day after the date on which the examination occurs, either discharge the patient or file an application for court-ordered mental health services or emergency detention and obtain a written order for further detention. The physician shall notify the patient if the physician intends to detain the patient under this subsection or intends to file an application for court-ordered mental health services or emergency detention. A decision to detain a patient under this subsection and the reasons for the decision shall be made a part of the patient's clinical record.

(e) If extremely hazardous weather conditions exist or a disaster occurs, the physician may request the judge of a court that has jurisdiction over proceedings brought under Chapter 574 to extend the period during which the patient may be detained. The judge or a magistrate appointed by the judge may by written order made each day extend the period during which the patient may be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

(f) The patient is not entitled to leave the facility if before the end of the period prescribed by this section:

- (1) a written withdrawal of the request for discharge is filed; or
- (2) an application for court-ordered mental health services or emergency detention is filed and the patient is detained in accordance with this subtitle.

(g) A plan for continuing care shall be prepared in accordance with Section 574.081 for each patient discharged. If sufficient time to prepare a continuing care plan before discharge is not available, the plan may be prepared and mailed to the appropriate person within 24 hours after the patient is discharged.

(h) The patient or other person who files a request for discharge of a patient shall be notified that the person

filing the request assumes all responsibility for the patient on discharge.

(i) On receipt of a written request for discharge from a patient admitted under Section 572.002(3)(B) who is younger than 18 years of age, a facility shall consult with the patient's parent, managing conservator, or guardian regarding the discharge. If the parent, managing conservator, or guardian objects in writing to the patient's discharge, the facility shall continue treatment of the patient as a voluntary patient.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.46, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 4.02, effective August 30, 1993; am. Acts 2003, 78th Leg., ch. 1000 (H.B. 21), § 4, effective June 20, 2003; am. Acts 2005, 79th Leg., ch. 48 (H.B. 224), § 1, effective May 17, 2005.

Sec. 572.005. Application for Court-Ordered Treatment.

(a) An application for court-ordered mental health services may not be filed against a patient receiving voluntary inpatient services unless:

(1) a request for release of the patient has been filed with the facility administrator; or

(2) in the opinion of the physician responsible for the patient's treatment, the patient meets the criteria for court-ordered mental health services and:

(A) is absent from the facility without authorization;

(B) is unable to consent to appropriate and necessary psychiatric treatment; or

(C) refuses to consent to necessary and appropriate treatment recommended by the physician responsible for the patient's treatment and that physician completes a certificate of medical examination for mental illness that, in addition to the information required by Section 574.011, includes the opinion of the physician that:

(i) there is no reasonable alternative to the treatment recommended by the physician; and

(ii) the patient will not benefit from continued inpatient care without the recommended treatment.

(b) The physician responsible for the patient's treatment shall notify the patient if the physician intends to file an application for court-ordered mental health services.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.04, effective August 30, 1993.

Sec. 572.0051. Transportation of Patient to Another State.

A person may not transport a patient to a mental health facility in another state for inpatient mental health services under this chapter unless transportation to that facility is authorized by a court order.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 566 (S.B. 718), § 4, effective June 14, 2013.

CHAPTER 573

Emergency Detention

Subchapter A. Apprehension By Peace Officer or Transportation for Emergency Detention By Guardian

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Subchapter A

Apprehension By Peace Officer or Transportation for Emergency Detention By Guardian

Sec. 573.0001. Definitions.

In this chapter:

(1) "Emergency medical services personnel" and "emergency medical services provider" have the meanings assigned by Section 773.003.

(2) "Law enforcement agency" has the meaning assigned by Article 59.01, Code of Criminal Procedure.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 541 (S.B. 344), § 1, effective June 9, 2017.

Sec. 573.001. Apprehension by Peace Officer Without Warrant.

(a) A peace officer, without a warrant, may take a person into custody, regardless of the age of the person, if the officer:

(1) has reason to believe and does believe that:

(A) the person is a person with mental illness; and

(B) because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained; and

(2) believes that there is not sufficient time to obtain a warrant before taking the person into custody.

(b) A substantial risk of serious harm to the person or others under Subsection (a)(1)(B) may be demonstrated by:

- (1) the person’s behavior; or
- (2) evidence of severe emotional distress and deterioration in the person’s mental condition to the extent that the person cannot remain at liberty.

(c) The peace officer may form the belief that the person meets the criteria for apprehension:

- (1) from a representation of a credible person; or
- (2) on the basis of the conduct of the apprehended person or the circumstances under which the apprehended person is found.

(d) A peace officer who takes a person into custody under Subsection (a) shall immediately:

- (1) transport the apprehended person to:
 - (A) the nearest appropriate inpatient mental health facility; or
 - (B) a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available; or
- (2) transfer the apprehended person to emergency medical services personnel of an emergency medical services provider in accordance with a memorandum of understanding executed under Section 573.005 for transport to a facility described by Subdivision (1)(A) or (B).

(e) A jail or similar detention facility may not be deemed suitable except in an extreme emergency.

(f) A person detained in a jail or a nonmedical facility shall be kept separate from any person who is charged with or convicted of a crime.

(g) A peace officer who takes a person into custody under Subsection (a) shall immediately inform the person orally in simple, nontechnical terms:

- (1) of the reason for the detention; and
- (2) that a staff member of the facility will inform the person of the person’s rights within 24 hours after the time the person is admitted to a facility, as provided by Section 573.025(b).

(h) A peace officer who takes a person into custody under Subsection (a) may immediately seize any firearm found in possession of the person. After seizing a firearm under this subsection, the peace officer shall comply with the requirements of Article 18.191, Code of Criminal Procedure.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 5, effective September 1, 2001; am. Acts 2013, 83rd Leg., ch. 318 (H.B. 1738), § 1, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 776 (S.B. 1189), § 1, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1366, effective April 2, 2015; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 21.001(33), effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 541 (S.B. 344), § 2, effective June 9, 2017; am. Acts 2019, 86th Leg., ch. 988 (S.B. 1238), § 4, effective September 1, 2019.

Sec. 573.002. Peace Officer’s Notification of Detention.

(a) A peace officer shall immediately file with a facility a notification of detention after transporting a person to that facility in accordance with Section 573.001. Emergency medical services personnel of an emergency medical

services provider who transport a person to a facility at the request of a peace officer made in accordance with a memorandum of understanding executed under Section 573.005 shall immediately file with the facility the notification of detention completed by the peace officer who made the request.

(b) The notification of detention must contain:

- (1) a statement that the officer has reason to believe and does believe that the person evidences mental illness;
- (2) a statement that the officer has reason to believe and does believe that the person evidences a substantial risk of serious harm to the person or others;
- (3) a specific description of the risk of harm;
- (4) a statement that the officer has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;
- (5) a statement that the officer’s beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by or reliably reported to the officer;
- (6) a detailed description of the specific behavior, acts, attempts, or threats; and
- (7) the name and relationship to the apprehended person of any person who reported or observed the behavior, acts, attempts, or threats.

(c) The facility where the person is detained shall include in the detained person’s clinical file the notification of detention described by this section.

(d) The peace officer shall provide the notification of detention on the following form:

Notification—Emergency Detention NO. ____
DATE: _____ TIME: _____

THE STATE OF TEXAS
FOR THE BEST INTEREST AND PROTECTION OF:

NOTIFICATION OF EMERGENCY DETENTION

Now comes _____, a peace officer with (name of agency) _____, of the State of Texas, and states as follows:

- 1. I have reason to believe and do believe that (name of person to be detained) _____ evidences mental illness.
- 2. I have reason to believe and do believe that the above-named person evidences a substantial risk of serious harm to himself/herself or others based upon the following:

- 3. I have reason to believe and do believe that the above risk of harm is imminent unless the above-named person is immediately restrained.
- 4. My beliefs are based upon the following recent behavior, overt acts, attempts, statements, or threats observed by me or reliably reported to me:

5. The names, addresses, and relationship to the above-named person of those persons who reported or observed recent behavior, acts, attempts, statements, or threats of the above-named person are (if applicable):

For the above reasons, I present this notification to seek temporary admission to the (name of facility) _____ inpatient mental health facility or hospital facility for the detention of (name of person to be detained) _____ on an emergency basis.

6. Was the person restrained in any way? Yes No

BADGE NO. _____

PEACE OFFICER'S SIGNATURE

Address: _____ Zip Code: _____

Telephone: _____

SIGNATURE OF EMERGENCY MEDICAL SERVICES

PERSONNEL (if applicable) Address: _____

Zip Code: _____ Telephone: _____

A mental health facility or hospital emergency department may not require a peace officer or emergency medical services personnel to execute any form other than this form as a predicate to accepting for temporary admission a person detained by a peace officer under Section 573.001, Health and Safety Code, and transported by the officer under that section or by emergency medical services personnel of an emergency medical services provider at the request of the officer made in accordance with a memorandum of understanding executed under Section 573.005, Health and Safety Code.

(e) A mental health facility or hospital emergency department may not require a peace officer or emergency medical services personnel to execute any form other than the form provided by Subsection (d) as a predicate to accepting for temporary admission a person detained by a peace officer under Section 573.001 and transported by the officer under that section or by emergency medical services personnel of an emergency medical services provider at the request of the officer made in accordance with a memorandum of understanding executed under Section 573.005.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2013, 83rd Leg., ch. 318 (H.B. 1738), § 2, effective September 1, 2013; am. Acts 2017, 85th Leg., ch. 541 (S.B. 344), § 3, effective June 9, 2017.

Sec. 573.0021. Duty of Peace Officer to Notify Probate Courts.

As soon as practicable, but not later than the first working day after the date a peace officer takes a person who is a ward into custody, the peace officer shall notify the court having jurisdiction over the ward's guardianship of the ward's detention or transportation to a facility in accordance with Section 573.001.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 313 (S.B. 1096), § 13, effective September 1, 2017.

Sec. 573.003. Transportation for Emergency Detention by Guardian.

(a) A guardian of the person of a ward who is 18 years of age or older, without the assistance of a peace officer,

may transport the ward to an inpatient mental health facility for a preliminary examination in accordance with Section 573.021 if the guardian has reason to believe and does believe that:

- (1) the ward is a person with mental illness; and
- (2) because of that mental illness there is a substantial risk of serious harm to the ward or to others unless the ward is immediately restrained.

(b) A substantial risk of serious harm to the ward or others under Subsection (a)(2) may be demonstrated by:

- (1) the ward's behavior; or
- (2) evidence of severe emotional distress and deterioration in the ward's mental condition to the extent that the ward cannot remain at liberty.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 692 (H.B. 2679), § 6, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1367, effective April 2, 2015.

Sec. 573.004. Guardian's Application for Emergency Detention.

(a) After transporting a ward to a facility under Section 573.003, a guardian shall immediately file an application for detention with the facility.

(b) The application for detention must contain:

- (1) a statement that the guardian has reason to believe and does believe that the ward evidences mental illness;
- (2) a statement that the guardian has reason to believe and does believe that the ward evidences a substantial risk of serious harm to the ward or others;
- (3) a specific description of the risk of harm;
- (4) a statement that the guardian has reason to believe and does believe that the risk of harm is imminent unless the ward is immediately restrained;
- (5) a statement that the guardian's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by the guardian; and
- (6) a detailed description of the specific behavior, acts, attempts, or threats.

(c) The guardian shall immediately provide written notice of the filing of an application under this section to the court that granted the guardianship.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 692 (H.B. 2679), § 6, effective September 1, 2003.

Sec. 573.005. Transportation for Emergency Detention by Emergency Medical Services Provider; Memorandum of Understanding.

(a) A law enforcement agency and an emergency medical services provider may execute a memorandum of understanding under which emergency medical services personnel employed by the provider may transport a person taken into custody under Section 573.001 by a peace officer employed by the law enforcement agency.

(b) A memorandum of understanding must:

- (1) address responsibility for the cost of transporting the person taken into custody; and
- (2) be approved by the county in which the law enforcement agency is located and the local mental health authority that provides services in that county with respect to provisions of the memorandum that

address the responsibility for the cost of transporting the person.

(c) A peace officer may request that emergency medical services personnel transport a person taken into custody by the officer under Section 573.001 only if:

(1) the law enforcement agency that employs the officer and the emergency medical services provider that employs the personnel have executed a memorandum of understanding under this section; and

(2) the officer determines that transferring the person for transport is safe for both the person and the personnel.

(d) Emergency medical services personnel may, at the request of a peace officer, transport a person taken into custody by the officer under Section 573.001 to the appropriate facility, as provided by that section, if the law enforcement agency that employs the officer and the emergency medical services provider that employs the personnel have executed a memorandum of understanding under this section.

(e) A peace officer who transfers a person to emergency medical services personnel under a memorandum of understanding executed under this section for transport to the appropriate facility must provide:

(1) to the person the notice described by Section 573.001(g); and

(2) to the personnel a completed notification of detention about the person on the form provided by Section 573.002(d).

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 541 (S.B. 344), § 4, effective June 9, 2017.

Secs. 573.006 to 573.010. [Reserved for expansion].

Subchapter B

Judge's or Magistrate's Order for Emergency Apprehension and Detention

Sec. 573.011. Application for Emergency Detention.

(a) An adult may file a written application for the emergency detention of another person.

(b) The application must state:

(1) that the applicant has reason to believe and does believe that the person evidences mental illness;

(2) that the applicant has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others;

(3) a specific description of the risk of harm;

(4) that the applicant has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5) that the applicant's beliefs are derived from specific recent behavior, overt acts, attempts, or threats;

(6) a detailed description of the specific behavior, acts, attempts, or threats; and

(7) a detailed description of the applicant's relationship to the person whose detention is sought.

(c) The application may be accompanied by any relevant information.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 573.012. Issuance of Warrant.

(a) Except as provided by Subsection (h), an applicant for emergency detention must present the application personally to a judge or magistrate. The judge or magistrate shall examine the application and may interview the applicant. Except as provided by Subsection (g), the judge of a court with probate jurisdiction by administrative order may provide that the application must be:

(1) presented personally to the court; or

(2) retained by court staff and presented to another judge or magistrate as soon as is practicable if the judge of the court is not available at the time the application is presented.

(b) The magistrate shall deny the application unless the magistrate finds that there is reasonable cause to believe that:

(1) the person evidences mental illness;

(2) the person evidences a substantial risk of serious harm to himself or others;

(3) the risk of harm is imminent unless the person is immediately restrained; and

(4) the necessary restraint cannot be accomplished without emergency detention.

(c) A substantial risk of serious harm to the person or others under Subsection (b)(2) may be demonstrated by:

(1) the person's behavior; or

(2) evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty.

(d) The magistrate shall issue to an on-duty peace officer a warrant for the person's immediate apprehension if the magistrate finds that each criterion under Subsection (b) is satisfied.

(e) A person apprehended under this section shall be transported for a preliminary examination in accordance with Section 573.021 to:

(1) the nearest appropriate inpatient mental health facility; or

(2) a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available.

(f) The warrant serves as an application for detention in the facility. The warrant and a copy of the application for the warrant shall be immediately transmitted to the facility.

(g) If there is more than one court with probate jurisdiction in a county, an administrative order regarding presentation of an application must be jointly issued by all of the judges of those courts.

(h) A judge or magistrate may permit an applicant who is a physician to present an application by:

(1) e-mail with the application attached as a secure document in a portable document format (PDF); or

(2) secure electronic means, including:

(A) satellite transmission;

(B) closed-circuit television transmission; or

(C) any other method of two-way electronic communication that:

(i) is secure;

- (ii) is available to the judge or magistrate; and
- (iii) provides for a simultaneous, compressed full-motion video and interactive communication of image and sound between the judge or magistrate and the applicant.

(h-1) After the presentation of an application under Subsection (h), the judge or magistrate may transmit a warrant to the applicant:

- (1) electronically, if a digital signature, as defined by Article 2.26, Code of Criminal Procedure, is transmitted with the document; or
- (2) by e-mail with the warrant attached as a secure document in a portable document format (PDF), if the identifiable legal signature of the judge or magistrate is transmitted with the document.

(i) The judge or magistrate shall provide for a recording of the presentation of an application under Subsection (h) to be made and preserved until the patient or proposed patient has been released or discharged. The patient or proposed patient may obtain a copy of the recording on payment of a reasonable amount to cover the costs of reproduction or, if the patient or proposed patient is indigent, the court shall provide a copy on the request of the patient or proposed patient without charging a cost for the copy.

HISTORY: am. Acts 1991, 72nd Leg., 1st C.S., ch. 15 (H.B. 7), § 5.19, effective September 1, 1991; Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 243 (H.B. 2093), § 3, effective August 28, 1995; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 6, effective September 1, 2001; am. Acts 2007, 80th Leg., ch. 1145 (S.B. 778), § 1, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 510 (H.B. 1829), § 1, effective September 1, 2011.

Secs. 573.013 to 573.020. [Reserved for expansion].

Subchapter C

Emergency Detention, Release, and Rights

Sec. 573.021. Preliminary Examination.

(a) A facility shall temporarily accept a person for whom an application for detention is filed or for whom a peace officer or emergency medical services personnel of an emergency medical services provider transporting the person in accordance with a memorandum of understanding executed under Section 573.005 files a notification of detention completed by the peace officer under Section 573.002(a).

(b) A person accepted for a preliminary examination may be detained in custody for not longer than 48 hours after the time the person is presented to the facility unless a written order for protective custody is obtained. The 48-hour period allowed by this section includes any time the patient spends waiting in the facility for medical care before the person receives the preliminary examination. If the 48-hour period ends on a Saturday, Sunday, legal holiday, or before 4 p.m. on the first succeeding business day, the person may be detained until 4 p.m. on the first succeeding business day. If the 48-hour period ends at a different time, the person may be detained only until 4 p.m. on the day the 48-hour period ends. If extremely hazardous weather conditions exist or a disaster occurs,

the presiding judge or magistrate may, by written order made each day, extend by an additional 24 hours the period during which the person may be detained. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

(c) A physician shall examine the person as soon as possible within 12 hours after the time the person is apprehended by the peace officer or transported for emergency detention by the person's guardian.

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 623 (S.B. 1588), § 1, effective June 11, 2001; am. Acts 2003, 78th Leg., ch. 692 (H.B. 2679), § 7, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 202 (H.B. 518), § 1, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 333 (H.B. 888), § 1, effective June 19, 2009; am. Acts 2013, 83rd Leg., ch. 318 (H.B. 1738), § 3, effective September 1, 2013; am. Acts 2017, 85th Leg., ch. 541 (S.B. 344), § 5, effective June 9, 2017.

Sec. 573.022. Emergency Admission and Detention.

(a) A person may be admitted to a facility for emergency detention only if the physician who conducted the preliminary examination of the person makes a written statement that:

- (1) is acceptable to the facility;
- (2) states that after a preliminary examination it is the physician's opinion that:
 - (A) the person is a person with mental illness;
 - (B) the person evidences a substantial risk of serious harm to the person or to others;
 - (C) the described risk of harm is imminent unless the person is immediately restrained; and
 - (D) emergency detention is the least restrictive means by which the necessary restraint may be accomplished; and
- (3) includes:
 - (A) a description of the nature of the person's mental illness;
 - (B) a specific description of the risk of harm the person evidences that may be demonstrated either by the person's behavior or by evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty; and
 - (C) the specific detailed information from which the physician formed the opinion in Subdivision (2).

(b) A mental health facility that has admitted a person for emergency detention under this section may transport the person to a mental health facility deemed suitable by the local mental health authority for the area. On the request of the local mental health authority, the judge may order that the proposed patient be detained in a department mental health facility.

(c) A facility that has admitted a person for emergency detention under Subsection (a) or to which a person has been transported under Subsection (b) may transfer the

person to an appropriate mental hospital with the written consent of the hospital administrator.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 842 (H.B. 1797), § 1, effective June 18, 1999; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 7, effective September 1, 2001; am. Acts 2011, 82nd Leg., ch. 510 (H.B. 1829), § 2, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1368, effective April 2, 2015.

Sec. 573.023. Release from Emergency Detention.

(a) A person apprehended by a peace officer or transported for emergency detention under Subchapter A or detained under Subchapter B shall be released on completion of the preliminary examination unless the person is admitted to a facility under Section 573.022.

(b) A person admitted to a facility under Section 573.022 shall be released if the facility administrator determines at any time during the emergency detention period that one of the criteria prescribed by Section 573.022(a)(2) no longer applies.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2003, 78th Leg., ch. 692 (H.B. 2679), § 8, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1369, effective April 2, 2015.

Sec. 573.024. Transportation After Release.

(a) Arrangements shall be made to transport a person who is entitled to release under Section 573.023 to:

- (1) the location of the person's apprehension;
- (2) the person's residence in this state; or
- (3) another suitable location.

(b) Subsection (a) does not apply to a person who is arrested or who objects to the transportation.

(c) If the person was apprehended by a peace officer under Subchapter A, arrangements must be made to immediately transport the person. If the person was transported for emergency detention under Subchapter A or detained under Subchapter B, the person is entitled to reasonably prompt transportation.

(d) The county in which the person was apprehended shall pay the costs of transporting the person.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2003, 78th Leg., ch. 692 (H.B. 2679), § 9, effective September 1, 2003.

Sec. 573.025. Rights of Persons Apprehended, Detained, or Transported for Emergency Detention.

(a) A person apprehended, detained, or transported for emergency detention under this chapter has the right:

- (1) to be advised of the location of detention, the reasons for the detention, and the fact that the detention could result in a longer period of involuntary commitment;
- (2) to a reasonable opportunity to communicate with and retain an attorney;
- (3) to be transported to a location as provided by Section 573.024 if the person is not admitted for emergency detention, unless the person is arrested or objects;
- (4) to be released from a facility as provided by Section 573.023;
- (5) to be advised that communications with a mental health professional may be used in proceedings for further detention;

(6) to be transported in accordance with Sections 573.026 and 574.045, if the person is detained under Section 573.022 or transported under an order of protective custody under Section 574.023; and

(7) to a reasonable opportunity to communicate with a relative or other responsible person who has a proper interest in the person's welfare.

(b) A person apprehended, detained, or transported for emergency detention under this subtitle shall be informed of the rights provided by this section and this subtitle:

(1) orally in simple, nontechnical terms, within 24 hours after the time the person is admitted to a facility, and in writing in the person's primary language if possible; or

(2) through the use of a means reasonably calculated to communicate with a hearing or visually impaired person, if applicable.

(c) The executive commissioner by rule shall prescribe the manner in which the person is informed of the person's rights under this section and this subtitle.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1512 (S.B. 539), § 2, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 692 (H.B. 2679), § 10, effective September 1, 2003; am. Acts 2013, 83rd Leg., ch. 318 (H.B. 1738), § 4, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1370, effective April 2, 2015.

Sec. 573.026. Transportation After Detention.

A person being transported after detention under Section 573.022 shall be transported in accordance with Section 574.045.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1512 (S.B. 539), § 3, effective September 1, 1999.

CHAPTER 574

Court-ordered Mental Health Services

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Subchapter A

Application for Commitment and Prehearing Procedures

Sec. 574.001. Application for Court-Ordered Mental Health Services.

(a) A county or district attorney or other adult may file a sworn written application for court-ordered mental health services. Only the district or county attorney may file an application that is not accompanied by a certificate of medical examination.

(b) Except as provided by Subsection (f), the application must be filed with the county clerk in the county in which the proposed patient:

- (1) resides;
- (2) is found; or
- (3) is receiving mental health services by court order or under Subchapter A, Chapter 573.

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

(d) An application may be transferred to the county in which the person is being detained under Subchapter B if the county to which the application is to be transferred approves such transfer. A transfer under this subsection does not preclude the proposed patient from filing a motion to transfer under Subsection (c).

(e) An order transferring a criminal defendant against whom all charges have been dismissed to the appropriate court for a hearing on court-ordered mental health services in accordance with Subchapter F, Chapter 46B, Code of Criminal Procedure, serves as an application under this section. The order must state that all charges have been dismissed.

(f) An application in which the proposed patient is a child in the custody of the Texas Juvenile Justice Department may be filed in the county in which the child's commitment to the Texas Juvenile Justice Department was ordered.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 4, effective June 16, 1995; am. Acts 1997, 75th Leg., ch. 1086 (H.B. 1550), § 38, effective June 19, 1997; am. Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 10, effective January 1, 2004; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1371, effective April 2, 2015.

Sec. 574.002. Form of Application.

(a) An application for court-ordered mental health services must be styled using the proposed patient's initials and not the proposed patient's full name.

(b) The application must state whether the application is for temporary or extended mental health services. An application for extended inpatient mental health services must state that the person has received court-ordered inpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months. An application for extended outpatient mental health services must state that the person has received:

(1) court-ordered inpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, for a total of at least 60 days during the preceding 12 months; or

(2) court-ordered outpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, during the preceding 60 days.

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

(1) the proposed patient's name and address;

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

(3) a statement that the proposed patient is a person with mental illness and meets the criteria in Section 574.034, 574.0345, 574.035, or 574.0355 for court-ordered mental health services; and

(4) whether the proposed patient is charged with a criminal offense.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 11, effective January 1, 2004; am. Acts 2011, 82nd Leg., ch. 166 (S.B. 118), § 2, effective September 1, 2011; am. Acts

2015, 84th Leg., ch. 1 (S.B. 219), § 3.1372, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 8, effective September 1, 2019.

Sec. 574.003. Appointment of Attorney.

(a) The judge shall appoint an attorney to represent a proposed patient within 24 hours after the time an application for court-ordered mental health services is filed if the proposed patient does not have an attorney. At that time, the judge shall also appoint a language or sign interpreter if necessary to ensure effective communication with the attorney in the proposed patient's primary language.

(b) The court shall inform the attorney in writing of the attorney's duties under Section 574.004.

(c) The proposed patient's attorney shall be furnished with all records and papers in the case and is entitled to have access to all hospital and physicians' records.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.004. Duties of Attorney.

(a) An attorney representing a proposed patient shall interview the proposed patient within a reasonable time before the date of the hearing on the application.

(b) The attorney shall thoroughly discuss with the proposed patient the law and facts of the case, the proposed patient's options, and the grounds on which the court-ordered mental health services are being sought. A court-appointed attorney shall also inform the proposed patient that the proposed patient may obtain personal legal counsel at the proposed patient's expense instead of accepting the court-appointed counsel.

(c) The attorney may advise the proposed patient of the wisdom of agreeing to or resisting efforts to provide mental health services, but the proposed patient shall make the decision to agree to or resist the efforts. Regardless of an attorney's personal opinion, the attorney shall use all reasonable efforts within the bounds of law to advocate the proposed patient's right to avoid court-ordered mental health services if the proposed patient expresses a desire to avoid the services. If the proposed patient desires, the attorney shall advocate for the least restrictive treatment alternatives to court-ordered inpatient mental health services.

(d) Before a hearing, the attorney shall:

(1) review the application, the certificates of medical examination for mental illness, and the proposed patient's relevant medical records;

(2) interview supporting witnesses and other witnesses who will testify at the hearing; and

(3) explore the least restrictive treatment alternatives to court-ordered inpatient mental health services.

(e) The attorney shall advise the proposed patient of the proposed patient's right to attend a hearing or to waive the right to attend a hearing and shall inform the court why a proposed patient is absent from a hearing.

(f) The attorney shall discuss with the proposed patient:

(1) the procedures for appeal, release, and discharge if the court orders participation in mental health services; and

(2) other rights the proposed patient may have during the period of the court's order.

(g) To withdraw from a case after interviewing a proposed patient, an attorney must file a motion to withdraw with the court. The court shall act on the motion as soon as possible. An attorney may not withdraw from a case unless the withdrawal is authorized by court order.

(h) The attorney is responsible for a person's legal representation until:

- (1) the application is dismissed;
- (2) an appeal from an order directing treatment is taken;
- (3) the time for giving notice of appeal expires by operation of law; or
- (4) another attorney assumes responsibility for the case.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.005. Setting on Application.

(a) The judge or a magistrate designated under Section 574.021(e) shall set a date for a hearing to be held within 14 days after the date on which the application is filed.

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

(c) The court may grant one or more continuances of the hearing on the motion by a party and for good cause shown or on agreement of the parties. However, the hearing shall be held not later than the 30th day after the date on which the original application is filed. If extremely hazardous weather conditions exist or a disaster occurs that threatens the safety of the proposed patient or other essential parties to the hearing, the judge or magistrate may, by written order made each day, postpone the hearing for 24 hours. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.006. Notice.

(a) The proposed patient and his attorney are entitled to receive a copy of the application and written notice of the time and place of the hearing immediately after the date for the hearing is set.

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

- (1) parent, if the proposed patient is a minor;
- (2) appointed guardian, if the proposed patient is the subject of a guardianship; or
- (3) each managing and possessory conservator that has been appointed for the proposed patient.

(c) Notice may be given to the proposed patient's next of kin if the relative is the applicant and the parent cannot be located and a guardian or conservator has not been appointed.

(d) Notice of the time and place of any hearing and of the name, telephone number, and address of any attorneys known or believed to represent the state or the proposed patient shall be furnished to any person stating that that

person has evidence to present upon any material issue, without regard to whether such evidence is on behalf of the state or of the proposed patient. The notice shall not include the application, medical records, names or addresses of other potential witnesses, or any other information whatsoever. Any clerk, judge, magistrate, court coordinator, or other officer of the court shall provide such information and shall be entitled to judicial immunity in any civil suit seeking damages as a result of providing such notice. Should such evidence be offered at trial and the adverse party claim surprise, the hearing may be continued under the provisions of Section 574.005, and the person producing such evidence shall be entitled to timely notice of the date and time of such continuance.

(d) Any officer, employee, or agent of the department shall refer any inquiring person to the court authorized to provide the notice if such information is in the possession of the department. The notice shall be provided in the form that is most understandable to the person making such inquiry.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 623 (H.B. 1495), § 1, effective August 28, 1995.

Sec. 574.007. Disclosure of Information.

(a) The proposed patient's attorney may request information from the county or district attorney in accordance with this section if the attorney cannot otherwise obtain the information.

(b) If the proposed patient's attorney requests the information at least 48 hours before the time set for the hearing, the county or district attorney shall, within a reasonable time before the hearing, provide the attorney with a statement that includes:

- (1) the provisions of this subtitle that will be relied on at the hearing to establish that the proposed patient requires court-ordered temporary or extended inpatient mental health services;
- (2) the reasons voluntary outpatient services are not considered appropriate for the proposed patient;
- (3) the name, address, and telephone number of each witness who may testify at the hearing;
- (4) a brief description of the reasons court-ordered temporary or extended inpatient or outpatient, as appropriate, mental health services are required; and
- (5) a list of any acts committed by the proposed patient that the applicant will attempt to prove at the hearing.

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

(d) Except as provided by this subsection, not later than 48 hours before the time set for the hearing on the petition for commitment, the county or district attorney shall inform the proposed patient through the proposed patient's attorney whether the county or district attorney will request that the proposed patient be committed to inpatient services or outpatient services. The proposed patient, the proposed patient's attorney, and the county or district attorney may agree to waive the requirement of

this subsection. The waiver must be made by the proposed patient:

- (1) orally and in the presence of the court; or
- (2) in writing and signed and sworn to under oath by the proposed patient and the proposed patient's attorney.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 744 (H.B. 1039), § 1, effective September 1, 1997.

Sec. 574.008. Court Jurisdiction and Transfer.

(a) A proceeding under Subchapter C or E must be held in the statutory or constitutional county court that has the jurisdiction of a probate court in mental illness matters.

(b) If the hearing is to be held in a county court in which the judge is not a licensed attorney, the proposed patient or the proposed patient's attorney may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The county 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) If a patient is receiving temporary inpatient mental health services in a county other than the county that initiated the court-ordered inpatient mental health services and the patient requires extended inpatient mental health services, the county in which the proceedings originated shall pay the expenses of transporting the patient back to the county for the hearing unless the court that entered the temporary order arranges with the appropriate court in the county in which the patient is receiving services to hold the hearing on court-ordered extended inpatient mental health services before the original order expires.

(d) If an order for outpatient services designates that such services be provided in a county other than the county in which the order was initiated, the court shall transfer the case to the appropriate court in the county in which the services are being provided. That court shall thereafter have exclusive, continuing jurisdiction of the case, including the receipt of the general treatment program required by Section 574.037(b).

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 5, effective June 16, 1995.

Sec. 574.0085. Associate Judges.

(a) The county judge may appoint a full-time or a part-time associate judge to preside over the proceedings for court-ordered mental health services if the commissioners court of a county in which the court has jurisdiction authorizes the employment of an associate judge.

(b) To be eligible for appointment as an associate judge, a person must be a resident of this state and have been licensed to practice law in this state for at least four years or be a retired county judge, statutory or constitutional, with at least 10 years of service.

(c) An associate judge shall be paid as determined by the commissioners court of the county in which the associate judge serves. If an associate judge serves in more than one county, the associate judge shall be paid as determined by agreement of the commissioners courts of

the counties in which the associate judge serves. The associate judge may be paid from county funds available for payment of officers' salaries.

(d) An associate judge who serves a single court serves at the will of the judge of that court. The services of an associate judge who serves more than two courts may be terminated by a majority vote of all the judges of the courts the associate judge serves. The services of an associate judge who serves two courts may be terminated by either of the judges of the courts the associate judge serves.

(e) To refer cases to an associate judge, the referring court must issue an order of referral. The order of referral may limit the power or duties of an associate judge.

(f) Except as limited by an order of referral, an associate judge appointed under this section has all the powers and duties set forth in Section 201.007, Family Code.

(g) A bailiff may attend a hearing held by an associate judge if directed by the referring court.

(h) A witness appearing before an associate judge is subject to the penalties for perjury provided by law. A referring court may issue attachment against and may fine or imprison a witness whose failure to appear before an associate judge after being summoned or whose refusal to answer questions has been certified to the court.

(i) At the conclusion of any hearing conducted by an associate judge and on the preparation of an associate judge's report, the associate judge shall transmit to the referring court all papers relating to the case, with the associate judge's signed and dated report. After the associate judge's report has been signed, the associate judge shall give to the parties participating in the hearing notice of the substance of the report. The associate judge's report may contain the associate judge's findings, conclusions, or recommendations. The associate judge's report must be in writing in a form as the referring court may direct. The form may be a notation on the referring court's docket sheet. After the associate judge's report is filed, the referring court may adopt, approve, or reject the associate judge's report, hear further evidence, or recommit the matter for further proceedings as the referring court considers proper and necessary in the particular circumstances of the case.

(j) If a jury trial is demanded or required, the associate judge shall refer the entire matter back to the referring court for trial.

(k) An associate judge appointed under this section has the judicial immunity of a county judge.

(l) An associate judge appointed in accordance with this section shall comply with the Code of Judicial Conduct in the same manner as the county judge.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.47, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 6, effective June 16, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 7.45, effective September 1, 1997; am. Acts 2009, 81st Leg., ch. 334 (H.B. 890), § 3, effective September 1, 2009.

Sec. 574.009. Requirement of Medical Examination.

(a) A hearing on an application for court-ordered mental health services may not be held unless there are on file with the court at least two certificates of medical exami-

nation for mental illness completed by different physicians each of whom has examined the proposed patient during the preceding 30 days. At least one of the physicians must be a psychiatrist if a psychiatrist is available in the county.

(b) If the certificates are not filed with the application, the judge or magistrate designated under Section 574.021(e) may appoint the necessary physicians to examine the proposed patient and file the certificates.

(c) The judge or designated magistrate may order the proposed patient to submit to the examination and may issue a warrant authorizing a peace officer to take the proposed patient into custody for the examination.

(d) If the certificates required under this section are not on file at the time set for the hearing on the application, the judge shall dismiss the application and order the immediate release of the proposed patient if that person is not at liberty. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may by written order made each day extend the period during which the two certificates of medical examination for mental illness may be filed, and the person may be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.48, effective August 30, 1993.

Sec. 574.010. Independent Psychiatric Evaluation and Expert Testimony.

(a) The court may order an independent evaluation of the proposed patient by a psychiatrist chosen by the proposed patient if the court determines that the evaluation will assist the finder of fact. The psychiatrist may testify on behalf of the proposed patient.

(b) If the court determines that the proposed patient is indigent, the court may authorize reimbursement to the attorney ad litem for court-approved expenses incurred in obtaining expert testimony and may order the proposed patient's county of residence to pay the expenses.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.011. Certificate of Medical Examination for Mental Illness.

(a) A certificate of medical examination for mental illness must be sworn to, dated, and signed by the examining physician. The certificate must include:

- (1) the name and address of the examining physician;
- (2) the name and address of the person examined;
- (3) the date and place of the examination;
- (4) a brief diagnosis of the examined person's physical and mental condition;
- (5) the period, if any, during which the examined person has been under the care of the examining physician;
- (6) an accurate description of the mental health treatment, if any, given by or administered under the direction of the examining physician; and
- (7) the examining physician's opinion that:

(A) the examined person is a person with mental illness; and

(B) as a result of that illness the examined person is likely to cause serious harm to the person or to others or is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

(iii) not able to make a rational and informed decision as to whether to submit to treatment.

(b) The examining physician must specify in the certificate which criterion listed in Subsection (a)(7)(B) forms the basis for the physician's opinion.

(c) If the certificate is offered in support of an application for extended mental health services, the certificate must also include the examining physician's opinion that the examined person's condition is expected to continue for more than 90 days.

(d) If the certificate is offered in support of a motion for a protective custody order, the certificate must also include the examining physician's opinion that the examined person presents a substantial risk of serious harm to himself or others if not immediately restrained. The harm may be demonstrated by the examined person's behavior or by evidence of severe emotional distress and deterioration in the examined person's mental condition to the extent that the examined person cannot remain at liberty.

(e) The certificate must include the detailed reason for each of the examining physician's opinions under this section.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 744 (H.B. 1039), § 2, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1373, effective April 2, 2015.

Sec. 574.012. Recommendation for Treatment.

(a) The local mental health authority in the county in which an application is filed shall file with the court a recommendation for the most appropriate treatment alternative for the proposed patient.

(b) The court shall direct the local mental health authority to file, before the date set for the hearing, its recommendation for the proposed patient's treatment.

(c) If outpatient treatment is recommended, the local mental health authority will also file a statement as to whether the proposed mental health services are available.

(d) The hearing on an application may not be held before the recommendation for treatment is filed unless the court determines that an emergency exists.

(e) This section does not relieve a county of its responsibility under other provisions of this subtitle to diagnose, care for, or treat persons with mental illness.

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch.

744 (H.B. 1039), § 3, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 8, effective September 1, 2001.

Sec. 574.0125. Identification of Person Responsible for Court-Ordered Outpatient Mental Health Services.

Not later than the third day before the date of a hearing that may result in the judge ordering the patient to receive court-ordered outpatient mental health services, the judge shall identify the person the judge intends to designate to be responsible for those services under Section 574.037.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1170 (S.B. 646), § 1, effective September 1, 2013.

Sec. 574.013. Liberty Pending Hearing.

The proposed patient is entitled to remain at liberty pending the hearing on the application unless the person is detained under an appropriate provision of this subtitle.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.014. Compilation of Mental Health Commitment Records.

(a) The clerk of each court with jurisdiction to order commitment under this chapter shall provide the Office of Court Administration each month with a report of the number of applications for commitment orders for involuntary mental health services filed with the court and the disposition of those cases, including the number of commitment orders for inpatient and outpatient mental health services. The Office of Court Administration shall make the reported information available to the Health and Human Services Commission annually.

(b) Subsection (a) does not require the production of confidential information or information protected under Section 571.015.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 744 (H.B. 1039), § 4, effective September 1, 1997; am. Acts 2019, 86th Leg., ch. 573 (S.B. 241), § 1.35, effective September 1, 2019.

Secs. 574.015 to 574.020. [Reserved for expansion].

Subchapter B

Protective Custody

Sec. 574.021. Motion for Order of Protective Custody.

(a) A motion for an order of protective custody may be filed only in the court in which an application for court-ordered mental health services is pending.

(b) The motion may be filed by the county or district attorney or on the court's own motion.

(c) The motion must state that:

(1) the judge or county or district attorney has reason to believe and does believe that the proposed patient meets the criteria authorizing the court to order protective custody; and

(2) the belief is derived from:

- (A) the representations of a credible person;
- (B) the proposed patient's conduct; or

(C) the circumstances under which the proposed patient is found.

(d) The motion must be accompanied by a certificate of medical examination for mental illness prepared by a physician who has examined the proposed patient not earlier than the third day before the day the motion is filed.

(e) The judge of the court in which the application is pending may designate a magistrate to issue protective custody orders, including a magistrate appointed by the judge of another court if the magistrate has at least the qualifications required for a magistrate of the court in which the application is pending. A magistrate's duty under this section is in addition to the magistrate's duties prescribed by other law.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 1278 (S.B. 1767), § 1, effective June 15, 2001; am. Acts 2007, 80th Leg., ch. 202 (H.B. 518), § 2, effective September 1, 2007.

Sec. 574.022. Issuance of Order.

(a) The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines:

(1) that a physician has stated the physician's opinion and the detailed reasons for the physician's opinion that the proposed patient is a person with mental illness; and

(2) the proposed patient presents a substantial risk of serious harm to the proposed patient or others if not immediately restrained pending the hearing.

(b) The determination that the proposed patient presents a substantial risk of serious harm may be demonstrated by the proposed patient's behavior or by evidence of severe emotional distress and deterioration in the proposed patient's mental condition to the extent that the proposed patient cannot remain at liberty.

(c) The judge or magistrate may make a determination that the proposed patient meets the criteria prescribed by Subsection (a) from the application and certificate alone if the judge or magistrate determines that the conclusions of the applicant and certifying physician are adequately supported by the information provided.

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1374, effective April 2, 2015.

Sec. 574.023. Apprehension Under Order.

(a) A protective custody order shall direct a person authorized to transport patients under Section 574.045 to take the proposed patient into protective custody and transport the person immediately to a mental health facility deemed suitable by the local mental health author-

ity for the area. On request of the local mental health authority, the judge may order that the proposed patient be detained in an inpatient mental health facility operated by the department.

(b) The proposed patient shall be detained in the facility until a hearing is held under Section 574.025.

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

(d) A person may not be detained in a private mental health facility without the consent of the facility administrator.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1512 (S.B. 539), § 4, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 9, effective September 1, 2001.

Sec. 574.024. Appointment of Attorney.

(a) When a protective custody order is signed, the judge or designated magistrate shall appoint an attorney to represent a proposed patient who does not have an attorney.

(b) Within a reasonable time before a hearing is held under Section 574.025, the court that ordered the protective custody shall provide to the proposed patient and the proposed patient's attorney a written notice that states:

- (1) that the proposed patient has been placed under a protective custody order;
- (2) the grounds for the order; and
- (3) the time and place of the hearing to determine probable cause.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.025. Probable Cause Hearing.

(a) A hearing must be held to determine if:

- (1) there is probable cause to believe that a proposed patient under a protective custody order presents a substantial risk of serious harm to the proposed patient or others to the extent that the proposed patient cannot be at liberty pending the hearing on court-ordered mental health services; and
- (2) a physician has stated the physician's opinion and the detailed reasons for the physician's opinion that the proposed patient is a person with mental illness.

(b) The hearing must be held not later than 72 hours after the time that the proposed patient was detained under a protective custody order. If the period ends on a Saturday, Sunday, or legal holiday, the hearing must be held on the next day that is not a Saturday, Sunday, or legal holiday. The judge or magistrate may postpone the hearing each day for an additional 24 hours if the judge or magistrate declares that an extreme emergency exists because of extremely hazardous weather conditions or the occurrence of a disaster that threatens the safety of the proposed patient or another essential party to the hearing.

(c) The hearing shall be held before a magistrate or, at the discretion of the presiding judge, before an associate judge appointed by the presiding judge. Notwithstanding any other law or requirement, an associate judge appointed to conduct a hearing under this section may

practice law in the court the associate judge serves. The associate judge is entitled to reasonable compensation.

(d) The proposed patient and the proposed patient's attorney shall have an opportunity at the hearing to appear and present evidence to challenge the allegation that the proposed patient presents a substantial risk of serious harm to himself or others.

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

(f) The state may prove its case on the physician's certificate of medical examination filed in support of the initial motion.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 101 (H.B. 2028), § 1, effective May 16, 1995; am. Acts 2009, 81st Leg., ch. 334 (H.B. 890), § 4, effective September 1, 2009; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1375, effective April 2, 2015.

Sec. 574.026. Order for Continued Detention.

(a) The magistrate or associate judge shall order that a proposed patient remain in protective custody if the magistrate or associate judge determines after the hearing that an adequate factual basis exists for probable cause to believe that the proposed patient presents a substantial risk of serious harm to himself or others to the extent that he cannot remain at liberty pending the hearing on court-ordered mental health services.

(b) The magistrate or associate judge shall arrange for the proposed patient to be returned to the mental health facility or other suitable place, along with copies of the certificate of medical examination, any affidavits or other material submitted as evidence in the hearing, and the notification prepared as prescribed by Subsection (d).

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

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

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the ____ day of _____, 20____, the undersigned hearing officer heard evidence concerning the need for _____ protective custody of _____ (hereinafter referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that the proposed patient presents a substantial risk of serious harm to self or others.

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

I have examined the certificate of medical examination for mental illness and _____ (other evidence considered). Based on this evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to the proposed patient (yes ___ or no ___) or others (yes ___ or no ___) such

that the proposed patient cannot be at liberty pending final hearing because _____ (reasons for finding; type of risk found).

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2009, 81st Leg., ch. 334 (H.B. 890), § 5, effective September 1, 2009; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1376, effective April 2, 2015.

Sec. 574.027. Detention in Protective Custody.

(a) A person under a protective custody order shall be detained in a mental health facility deemed suitable by the local mental health authority for the area. On request of the local mental health authority, the judge may order that the proposed patient be detained in an inpatient mental health facility operated by the department.

(b) The facility administrator or the administrator's designee shall detain a person under a protective custody order in the facility until a final order for court-ordered mental health services is entered or the person is released or discharged under Section 574.028.

(c) A person under a protective custody order may not be detained in a nonmedical facility used to detain persons who are charged with or convicted of a crime except because of and during an extreme emergency and in no case for longer than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for an extreme emergency. The person must be isolated from any person who is charged with or convicted of a crime.

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

(e) [Repealed by Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 19, effective September 1, 2001.]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), §§ 10, 19, effective September 1, 2001.

Sec. 574.028. Release from Detention.

(a) The magistrate or associate judge shall order the release of a person under a protective custody order if the magistrate or associate judge determines after the hearing under Section 574.025 that no probable cause exists to believe that the proposed patient presents a substantial risk of serious harm to himself or others.

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

- (1) the location of the person's apprehension;
- (2) the person's residence in this state; or
- (3) another suitable location.

(c) A facility administrator shall discharge a person held under a protective custody order if:

(1) the facility administrator does not receive notice that the person's continued detention is authorized after a probable cause hearing held within 72 hours after the detention began, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for extreme emergencies;

(2) a final order for court-ordered mental health services has not been entered within the time prescribed by Section 574.005; or

(3) the facility administrator or the administrator's designee determines that the person no longer meets the criteria for protective custody prescribed by Section 574.022.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2009, 81st Leg., ch. 334 (H.B. 890), § 6, effective September 1, 2009.

Secs. 574.029 to 574.030. [Reserved for expansion].

Subchapter C

Proceedings for Court-ordered Mental Health Services

Sec. 574.031. General Provisions Relating to Hearing.

(a) Except as provided by Subsection (b), the judge may hold a hearing on an application for court-ordered mental health services at any suitable location in the county. The hearing should be held in a physical setting that is not likely to have a harmful effect on the proposed patient.

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

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

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

(d-1) In a hearing for temporary inpatient or outpatient mental health services under Section 574.034 or 574.0345, the proposed patient or the proposed patient's attorney, by a written document filed with the court, may waive the right to cross-examine witnesses, and, if that right is waived, the court may admit, as evidence, the certificates of medical examination for mental illness. The certificates admitted under this subsection constitute competent medical or psychiatric testimony, and the court may make its findings solely from the certificates. If the proposed patient or the proposed patient's attorney does not waive in writing the right to cross-examine witnesses, the court shall proceed to hear testimony. The testimony must include competent medical or psychiatric testimony.

(d-2) In a hearing for extended inpatient or outpatient mental health services under Section 574.035 or 574.0355, the court may not make its findings solely from the certificates of medical examination for mental illness but shall hear testimony. The court may not enter an order for extended mental health services unless appropriate findings are made and are supported by testimony taken at the hearing. The testimony must include competent medical or psychiatric testimony.

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

(f) The court may consider the testimony of a nonphysician mental health professional in addition to medical or psychiatric testimony.

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

(h) A judge who holds a hearing under this section in hospitals or locations other than the county courthouse is entitled to be reimbursed for the judge's reasonable and necessary expenses related to holding a hearing at that location. The judge shall furnish the presiding judge of the statutory probate courts or the presiding judge of the administrative region, as appropriate, an accounting of the expenses for certification. The presiding judge shall provide a certification of expenses approved to the county judge responsible for payment of costs under Section 571.018.

(i) A judge who holds hearings at locations other than the county courthouse also may receive a reasonable salary supplement in an amount set by the commissioners court.

(j) Notwithstanding other law, a judge who holds a hearing under this section may assess for the judge's services a fee in an amount not to exceed \$50 as a court cost against the county responsible for the payment of the costs of the hearing under Section 571.018.

(k) Notwithstanding other law, a judge who holds a hearing under this section may assess for the services of a prosecuting attorney a fee in an amount not to exceed \$50 as a court cost against the county responsible for the payment of the costs of the hearing under Section 571.018. For a mental health proceeding, the fee assessed under this subsection includes costs incurred for the preparation of documents related to the proceeding. The court may award as court costs fees for other costs of a mental health proceeding against the county responsible for the payment of the costs of the hearing under Section 571.018.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 1354 (H.B. 591), § 1, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 1252 (S.B. 581), § 1, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 10.006, effective September 1, 2001; am. Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 9, effective September 1, 2019.

Sec. 574.032. Right to Jury.

(a) A hearing for temporary mental health services must be before the court unless the proposed patient or the proposed patient's attorney requests a jury.

(b) A hearing for extended mental health services must be before a jury unless the proposed patient or the proposed patient's attorney waives the right to a jury.

(c) A waiver of the right to a jury must be in writing, under oath, and signed and sworn to by the proposed patient and the proposed patient's attorney unless the proposed patient or the attorney orally waives the right to a jury in the court's presence.

(d) The court may permit an oral or written waiver of the right to a jury to be withdrawn for good cause shown. The withdrawal must be made not later than the eighth day before the date on which the hearing is scheduled.

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

(f) In a hearing before a jury, the jury shall determine if the proposed patient is a person with mental illness and meets the criteria for court-ordered mental health services. The jury may not make a finding about the type of services to be provided to the proposed patient.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1377, effective April 2, 2015.

Sec. 574.033. Release After Hearing.

(a) The court shall enter an order denying an application for court-ordered temporary or extended mental health services if after a hearing the court or jury fails to find, from clear and convincing evidence, that the proposed patient is a person with mental illness and meets the applicable criteria for court-ordered mental health services.

(b) If the court denies the application, the court shall order the immediate release of a proposed patient who is not at liberty.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1378, effective April 2, 2015.

Sec. 574.034. Order for Temporary Inpatient Mental Health Services.

(a) The judge may order a proposed patient to receive court-ordered temporary inpatient mental health services only if the judge or jury finds, from clear and convincing evidence, that:

(1) the proposed patient is a person with mental illness; and

(2) as a result of that mental illness the proposed patient:

(A) is likely to cause serious harm to the proposed patient;

(B) is likely to cause serious harm to others; or

(C) is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

(iii) unable to make a rational and informed decision as to whether or not to submit to treatment.

(b) [Repealed.]

(c) If the judge or jury finds that the proposed patient meets the commitment criteria prescribed by Subsection (a), the judge or jury must specify which criterion listed in Subsection (a)(2) forms the basis for the decision.

(d) To be clear and convincing under Subsection (a), the evidence must include expert testimony and, unless waived, evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the likelihood of serious harm to the proposed patient or others; or

(2) the proposed patient's distress and the deterioration of the proposed patient's ability to function.

(e) [Repealed.]

(f) [Repealed.]

(g) An order for temporary inpatient mental health services shall provide for a period of treatment not to exceed 45 days, except that the order may specify a period not to exceed 90 days if the judge finds that the longer period is necessary.

(h) A judge may not issue an order for temporary inpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

(i) [Repealed by Acts 2013, 83rd Leg., ch. 1170 (S.B. 646), § 11, effective September 1, 2013.]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.49, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 7, effective June 16, 1995; am. Acts 1997, 75th Leg., ch. 744 (H.B. 1039), § 5, effective September 1, 1997; am. Acts 2013, 83rd Leg., ch. 1170 (S.B. 646), § 11, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1379, effective April 2, 2015; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 33, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 582 (S.B. 362), §§ 10, 11, 27(1), effective September 1, 2019.

Sec. 574.0345. Order for Temporary Outpatient Mental Health Services.

(a) The judge may order a proposed patient to receive court-ordered temporary outpatient mental health services only if:

(1) the judge finds that appropriate mental health services are available to the proposed patient; and

(2) the judge or jury finds, from clear and convincing evidence, that:

(A) the proposed patient is a person with severe and persistent mental illness;

(B) as a result of the mental illness, the proposed patient will, if not treated, experience deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community without court-ordered outpatient mental health services;

(C) outpatient mental health services are needed to prevent a relapse that would likely result in serious harm to the proposed patient or others; and

(D) the proposed patient has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by:

(i) any of the proposed patient's actions occurring within the two-year period that immediately precedes the hearing; or

(ii) specific characteristics of the proposed patient's clinical condition that significantly impair the proposed patient's ability to make a rational and informed decision whether to submit to voluntary outpatient treatment.

(b) To be clear and convincing under Subsection (a)(2), the evidence must include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the deterioration of ability to function independently to the extent that the proposed patient will be unable to live safely in the community;

(2) the need for outpatient mental health services to prevent a relapse that would likely result in serious harm to the proposed patient or others; and

(3) the proposed patient's inability to participate in outpatient treatment services effectively and voluntarily.

(c) An order for temporary outpatient mental health services shall state that treatment is authorized for not longer than 45 days, except that the order may specify a period not to exceed 90 days if the judge finds that the longer period is necessary.

(d) A judge may not issue an order for temporary outpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 12, effective September 1, 2019.

Sec. 574.035. Order for Extended Inpatient Mental Health Services.

(a) The judge may order a proposed patient to receive court-ordered extended inpatient mental health services only if the jury, or the judge if the right to a jury is waived, finds, from clear and convincing evidence, that:

(1) the proposed patient is a person with mental illness;

(2) as a result of that mental illness the proposed patient:

(A) is likely to cause serious harm to the proposed patient;

(B) is likely to cause serious harm to others; or

(C) is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

(iii) unable to make a rational and informed decision as to whether or not to submit to treatment;

(3) the proposed patient's condition is expected to continue for more than 90 days; and

(4) the proposed patient has received court-ordered inpatient mental health services under this subtitle or under Chapter 46B, Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months.

(b) [Repealed.]

(c) If the jury or judge finds that the proposed patient meets the commitment criteria prescribed by Subsection (a), the jury or judge must specify which criterion listed in Subsection (a)(2) forms the basis for the decision.

(d) The jury or judge is not required to make the finding under Subsection (a)(4) if the proposed patient has already been subject to an order for extended mental health services.

(e) To be clear and convincing under Subsection (a), the evidence must include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the likelihood of serious harm to the proposed patient or others; or

(2) the proposed patient's distress and the deterioration of the proposed patient's ability to function.

(f) [Repealed.]

(g) [Repealed.]

(h) An order for extended inpatient mental health services must provide for a period of treatment not to exceed 12 months.

(i) A judge may not issue an order for extended inpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

(j) [Repealed by Acts 2013, 83rd Leg., ch. 1170 (S.B. 646), § 11, effective September 1, 2013.]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 8, effective June 16, 1995; am. Acts 1997, 75th Leg., ch. 312 (H.B. 1747), § 5, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 744 (H.B. 1039), § 6, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 238 (H.B. 330), § 1, effective May 28, 1999; am. Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 12, effective January 1, 2004; am. Acts 2011, 82nd Leg., ch. 166 (S.B. 118), § 1, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 1170 (S.B. 646), § 11, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1380, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 582 (S.B. 362), §§ 13, 14, 27(2), effective September 1, 2019.

Sec. 574.0355. Order for Extended Outpatient Mental Health Services.

(a) The judge may order a proposed patient to receive court-ordered extended outpatient mental health services only if:

(1) the judge finds that appropriate mental health services are available to the proposed patient; and

(2) the judge or jury finds, from clear and convincing evidence, that:

(A) the proposed patient is a person with severe and persistent mental illness;

(B) as a result of the mental illness, the proposed patient will, if not treated, experience deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community without court-ordered outpatient mental health services;

(C) outpatient mental health services are needed to prevent a relapse that would likely result in serious harm to the proposed patient or others;

(D) the proposed patient has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by:

(i) any of the proposed patient's actions occurring within the two-year period that immediately precedes the hearing; or

(ii) specific characteristics of the proposed patient's clinical condition that significantly impair the proposed patient's ability to make a rational and informed decision whether to submit to voluntary outpatient treatment;

(E) the proposed patient's condition is expected to continue for more than 90 days; and

(F) the proposed patient has received:

(i) court-ordered inpatient mental health services under this subtitle or under Subchapter D or

E, Chapter 46B, Code of Criminal Procedure, for a total of at least 60 days during the preceding 12 months; or

(ii) court-ordered outpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, during the preceding 60 days.

(b) The jury or judge is not required to make the finding under Subsection (a)(2)(F) if the proposed patient has already been subject to an order for extended mental health services.

(c) To be clear and convincing under Subsection (a)(2), the evidence must include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community;

(2) the need for outpatient mental health services to prevent a relapse that would likely result in serious harm to the proposed patient or others; and

(3) the proposed patient's inability to participate in outpatient treatment services effectively and voluntarily.

(d) An order for extended outpatient mental health services must provide for a period of treatment not to exceed 12 months.

(e) A judge may not issue an order for extended outpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 15, effective September 1, 2019.

Sec. 574.036. Order of Care or Commitment.

(a) The judge shall dismiss the jury, if any, after a hearing in which a person is found to be a person with mental illness and to meet the criteria for court-ordered temporary or extended mental health services.

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

(c) The judge shall consider in determining the setting for care the recommendation for the most appropriate treatment alternative filed under Section 574.012.

(d) The judge shall order the mental health services provided in the least restrictive appropriate setting available.

(e) The judge may enter an order:

(1) committing the person to a mental health facility for inpatient care if the trier of fact finds that the person meets the commitment criteria prescribed by Section 574.034(a) or 574.035(a); or

(2) committing the person to outpatient mental health services if the trier of fact finds that the person meets the commitment criteria prescribed by Section 574.0345(a) or 574.0355(a).

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 744 (H.B. 1039), § 7, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1381, effective April 2, 2015; am.

Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 16, effective September 1, 2019.

Sec. 574.037. Court-Ordered Outpatient Services.

(a) The court, in an order that directs a patient to participate in outpatient mental health services, shall designate the person identified under Section 574.0125 as responsible for those services or may designate a different person if necessary. The person designated must be the facility administrator or an individual involved in providing court-ordered outpatient services. A person may not be designated as responsible for the ordered services without the person's consent unless the person is the facility administrator of a department facility or the facility administrator of a community center that provides mental health services:

(1) in the region in which the committing court is located; or

(2) in a county where a patient has previously received mental health services.

(b) The person responsible for the services shall submit to the court a general program of the treatment to be provided as required by this subsection and Subsection (b-2). The program must be incorporated into the court order. The program must include:

(1) services to provide care coordination; and

(2) any other treatment or services, including medication and supported housing, that are available and considered clinically necessary by a treating physician or the person responsible for the services to assist the patient in functioning safely in the community.

(b-1) If the patient is receiving inpatient mental health services at the time the program is being prepared, the person responsible for the services under this section shall seek input from the patient's inpatient treatment providers in preparing the program.

(b-2) The person responsible for the services shall submit the program to the court before the hearing under Section 574.0345 or 574.0355 or before the court modifies an order under Section 574.061, as appropriate.

(c) The person responsible for the services shall inform the court of:

(1) the patient's failure to comply with the court order; and

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

(c-1) A patient subject to court-ordered outpatient services may petition the court for specific enforcement of the court order.

(c-2) A court may set a status conference in accordance with Section 574.0665.

(c-3) The court shall order the patient to participate in the program but may not compel performance. If a court receives information under Subsection (c)(1) that a patient is not complying with the court's order, the court may:

(1) set a modification hearing under Section 574.062; and

(2) issue an order for temporary detention if an application is filed under Section 574.063.

(c-4) The failure of a patient to comply with the program incorporated into a court order is not grounds for punishment for contempt of court under Section 21.002, Government Code.

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

(e) A patient may not be detained in a private mental health facility without the consent of the facility administrator.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2013, 83rd Leg., ch. 1170 (S.B. 646), § 2, effective September 1, 2013; am. Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 17, effective September 1, 2019.

Secs. 574.038 to 574.040. [Reserved for expansion].

Subchapter D

Designation of Facility and Transportation of Patient

Sec. 574.041. Designation of Facility.

(a) In an order for temporary or extended mental health services specifying inpatient care, the court shall commit the patient to a designated inpatient mental health facility. The court shall commit the patient to:

(1) a mental health facility deemed suitable by the local mental health authority for the area;

(2) a private mental hospital under Section 574.042;

(3) a hospital operated by a federal agency under Section 574.043; or

(4) an inpatient mental health facility of the Texas Department of Criminal Justice under Section 574.044.

(b) On request of the local mental health authority, the judge may commit the patient directly to an inpatient mental health facility operated by the department.

(c) A court may not commit a patient to an inpatient mental health facility operated by a community center or other entity designated by the department to provide mental health services unless the facility is licensed under Chapter 577 and the court notifies the local mental health authority serving the region in which the commitment is made.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 543 (S.B. 261), § 3, effective June 18, 1999; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 11, effective September 1, 2001; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.108, effective September 1, 2009.

Sec. 574.0415. Information on Medications.

(a) A mental health facility shall provide to a patient in the patient's primary language, if possible, and in accordance with department rules information relating to prescription medication ordered by the patient's treating physician.

(b) The facility shall also provide the information to the patient's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.05(a), effective May 1, 1994; am. Acts 1997, 75th Leg., ch. 337 (S.B. 264), § 3, effective May 27, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1382, effective April 2, 2015.

Sec. 574.042. Commitment to Private Facility.

The court may order a patient committed to a private mental hospital at no expense to the state if the court receives:

- (1) an application signed by the patient or the patient's guardian or next friend requesting that the patient be placed in a designated private mental hospital at the patient's or applicant's expense; and
- (2) written agreement from the hospital administrator of the private mental hospital to admit the patient and to accept responsibility for the patient in accordance with this subtitle.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.043. Commitment to Federal Facility.

(a) A court may order a patient committed to a federal agency that operates a mental hospital if the court receives written notice from the agency that facilities are available and that the patient is eligible for care or treatment in a facility. The court may place the patient in the agency's custody for transportation to the mental hospital.

(b) A patient admitted under court order to a hospital operated by a federal agency, regardless of location, is subject to the agency's rules.

(c) The hospital administrator has the same authority and responsibility with respect to the patient as the facility administrator of an inpatient mental health facility operated by the department.

(d) The appropriate courts of this state retain jurisdiction to inquire at any time into the patient's mental condition and the necessity of the patient's continued hospitalization.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 12, effective September 1, 2001.

Sec. 574.044. Commitment to Facility of Texas Department of Criminal Justice.

The court shall commit an inmate patient to an inpatient mental health facility of the Texas Department of Criminal Justice if the court enters an order requiring temporary mental health services for the inmate patient under an application filed by a psychiatrist under Section 501.057, Government Code.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.45, effective August 30, 1993; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.109, effective September 1, 2009.

Sec. 574.045. Transportation of Patient.

(a) The court may authorize, in the following order of priority, the transportation of a committed patient or a patient detained under Section 573.022 or 574.023 to the designated mental health facility by:

- (1) a special officer for mental health assignment certified under Section 1701.404, Occupations Code;
- (2) the facility administrator of the designated mental health facility, unless the administrator notifies the

court that facility personnel are not available to transport the patient;

(3) a representative of the local mental health authority, who shall be reimbursed by the county, unless the representative notifies the court that local mental health authority personnel are not qualified to ensure the safety of the patient during transport;

(4) a qualified transportation service provider selected from the list established and maintained as required by Section 574.0455 by the commissioners court of the county in which the court authorizing the transportation is located;

(5) the sheriff or constable; or

(6) a relative or other responsible person who has a proper interest in the patient's welfare and who receives no remuneration, except for actual and necessary expenses.

(a-1) A person who under Subsection (a)(1), (2), or (5) is authorized by the court to transport a person to a mental health facility may contract with a qualified transportation service provider that is included on the list established and maintained as required by Section 574.0455 by the commissioners court of the county in which the court is located to provide the transportation authorized by the court.

(b) The court shall require appropriate medical personnel to accompany the person transporting the patient if there is reasonable cause to believe that the patient will require medical assistance or the administration of medication during the transportation. The payment of an expense incurred under this subsection is governed by Section 571.018.

(c) The patient's friends and relatives may accompany the patient at their own expense.

(d) A female patient must be accompanied by a female attendant unless the patient is accompanied by her father, husband, or adult brother or son.

(e) The patient may not be transported in a marked police or sheriff's car or accompanied by a uniformed officer unless other means are not available.

(f) The patient may not be transported with a state prisoner.

(g) The patient may not be physically restrained unless necessary to protect the health and safety of the patient or of a person traveling with the patient. If the treating physician or the person transporting a patient determines that physical restraint of the patient is necessary, that person shall document the reasons for that determination and the duration for which the restraints are needed. The person transporting the patient shall deliver the document to the facility at the time the patient is delivered. The facility shall include the document in the patient's clinical record.

(h) The patient must be transported directly to the facility within a reasonable amount of time and without undue delay.

(i) All vehicles used to transport patients under this section must be adequately heated in cold weather and adequately ventilated in warm weather.

(j) Special diets or other medical precautions recommended by the patient's physician must be followed.

(k) The person transporting the patient shall give the patient reasonable opportunities to get food and water and to use a bathroom.

(l) A patient restrained under Subsection (g) may be restrained only during the apprehension, detention, or transportation of the patient. The method of restraint must permit the patient to sit in an upright position without undue difficulty unless the patient is being transported by ambulance.

HISTORY: am. Acts 1991, 72nd Leg., 1st C.S., ch. 15 (H.B. 7), § 5.20, effective September 1, 1991; Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B. 771), § 20, effective September 1, 1993; am. Acts 1999, 76th Leg., ch. 1512 (S.B. 539), § 5, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 14.804, effective September 1, 2001; am. Acts 2011, 82nd Leg., ch. 1122 (H.B. 167), § 1, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 889 (H.B. 978), § 1, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 1129), § 1, effective June 17, 2015.

Sec. 574.0455. List of Qualified Transportation Service Providers.

(a) The commissioners court of a county may:

(1) establish and maintain a list of qualified transportation service providers that a court may authorize or with whom a person may contract to transport a person to a mental health facility in accordance with Section 574.045;

(2) establish an application procedure for a person to be included on the list, including an appropriate application fee to be deposited in the county general fund;

(3) contract with qualified transportation service providers on terms acceptable to the county;

(4) allow officers and employees of the county to utilize persons on the list on a rotating basis if the officer or employee is authorized to provide transportation under Section 574.045 and chooses to utilize a qualified transportation service provider in accordance with the terms of the contract approved by the commissioners court; and

(5) ensure that the list is made available to any person authorized to provide transportation under Section 574.045.

(b) The executive commissioner shall prescribe uniform standards:

(1) that a person must meet to be listed as a qualified transportation service provider under Subsection (a); and

(2) prescribing requirements relating to how the transportation of a person to a mental health facility by a qualified transportation service provider is provided.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1122 (H.B. 167), § 2, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1383, effective April 2, 2015.

Sec. 574.0456. Transportation of Patient to Another State.

A person may not transport a patient to a mental health facility in another state for court-ordered inpatient mental health services under this chapter unless transportation to that facility is authorized by a court order.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 889 (H.B. 978), § 2, effective September 1, 2013.

Sec. 574.046. Writ of Commitment.

The court shall direct the court clerk to issue to the person authorized to transport the patient two writs of

commitment requiring the person to take custody of and transport the patient to the designated mental health facility.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.047. Transcript.

(a) The court clerk shall prepare a certified transcript of the proceedings in the hearing on court-ordered mental health services.

(b) The clerk shall send the transcript and any available information relating to the medical, social, and economic status and history of the patient and the patient's family to the designated mental health facility with the patient. The person authorized to transport the patient shall deliver the transcript and information to the facility personnel in charge of admissions.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.048. Acknowledgment of Patient Delivery.

The facility administrator, after receiving a copy of the writ of commitment and after admitting the patient, shall:

(1) give the person transporting the patient a written statement acknowledging acceptance of the patient and of any personal property belonging to the patient; and

(2) file a copy of the statement with the clerk of the committing court.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Secs. 574.049 to 574.060. [Reserved for expansion].

Subchapter E

Post-commitment Proceedings

Sec. 574.061. Modification of Order for Inpatient Treatment.

(a) The facility administrator of a facility to which a patient is committed for inpatient mental health services, not later than the 30th day after the date the patient is committed to the facility, shall assess the appropriateness of transferring the patient to outpatient mental health services. The facility administrator may recommend that the court that entered the commitment order modify the order to require the patient to participate in outpatient mental health services.

(b) A facility administrator's recommendation under Subsection (a) must explain in detail the reason for the recommendation. The recommendation must be accompanied by a supporting certificate of medical examination for mental illness signed by a physician who examined the patient during the seven days preceding the recommendation.

(c) The patient shall be given notice of a facility administrator's recommendation under Subsection (a).

(d) On request of the patient or any other interested person, the court shall hold a hearing on a facility administrator's recommendation that the court modify the commitment order. The court shall appoint an attorney to

represent the patient at the hearing and shall consult with the local mental health authority before issuing a decision. The hearing shall be held before the court without a jury and as prescribed by Section 574.031. The patient shall be represented by an attorney and receive proper notice.

(e) If a hearing is not requested, the court may make a decision regarding a facility administrator's recommendation based on:

- (1) the recommendation;
- (2) the supporting certificate; and
- (3) consultation with the local mental health authority concerning available resources to treat the patient.

(f) If the court modifies the order, the court shall designate a person to be responsible for the outpatient services as prescribed by Section 574.037.

(g) The person responsible for the services must comply with Section 574.037(b).

(h) A modified order may extend beyond the term of the original order, but may not exceed the term of the original order by more than 60 days.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2013, 83rd Leg., ch. 1170 (S.B. 646), § 3, effective September 1, 2013; am. Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 18, effective September 1, 2019.

Sec. 574.062. Motion for Modification of Order for Outpatient Treatment.

(a) The court that entered an order directing a patient to participate in outpatient mental health services may set a hearing to determine if the order should be modified in a way that is a substantial deviation from the original program of treatment incorporated in the court's order. The court may set the hearing on its own motion, at the request of the person responsible for the treatment, or at the request of any other interested person.

(b) The court shall appoint an attorney to represent the patient if a hearing is scheduled. The patient shall be given notice of the matters to be considered at the hearing. The notice must comply with the requirements of Section 574.006 for notice before a hearing on court-ordered mental health services.

(c) The hearing shall be held before the court, without a jury, and as prescribed by Section 574.031. The patient shall be represented by an attorney and receive proper notice.

(d) The court shall set a date for a hearing on the motion to be held not later than the seventh day after the date the motion is filed. The court may grant one or more continuances of the hearing on the motion by a party and for good cause shown or on agreement of the parties. Except as provided by Subsection (e), the court shall hold the hearing not later than the 14th day after the date the motion is filed.

(e) If extremely hazardous weather conditions exist or a disaster occurs that threatens the safety of the proposed patient or other essential parties to the hearing, the court, by written order made each day, may postpone the hearing for not more than 24 hours. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 191 (H.B. 1312), § 1, effective September 1, 1997.

Sec. 574.063. Order for Temporary Detention.

(a) The person responsible for a patient's court-ordered outpatient treatment or the facility administrator of the outpatient facility in which a patient receives treatment may file a sworn application for the patient's temporary detention pending the modification hearing under Section 574.062.

(b) The application must state the applicant's opinion and detail the reasons for the applicant's opinion that:

- (1) the patient meets the criteria described by Section 574.064(a-1); and
- (2) detention in an inpatient mental health facility is necessary to evaluate the appropriate setting for continued court-ordered services.

(c) The court may issue an order for temporary detention if a modification hearing is set and the court finds from the information in the application that there is probable cause to believe that the opinions stated in the application are valid.

(d) At the time the temporary detention order is signed, the judge shall appoint an attorney to represent a patient who does not have an attorney.

(e) Within 24 hours after the time detention begins, the court that issued the temporary detention order shall provide to the patient and the patient's attorney a written notice that states:

- (1) that the patient has been placed under a temporary detention order;
- (2) the grounds for the order; and
- (3) the time and place of the modification hearing.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2013, 83rd Leg., ch. 1170 (S.B. 646), § 4, effective September 1, 2013.

Sec. 574.064. Apprehension and Release Under Temporary Detention Order.

(a) A temporary detention order shall direct a peace officer or other designated person to take the patient into custody and transport the patient immediately to:

- (1) the nearest appropriate inpatient mental health facility; or
- (2) a mental health facility deemed suitable by the local mental health authority for the area, if an appropriate inpatient mental health facility is not available.

(a-1) A physician shall evaluate the patient as soon as possible within 24 hours after the time detention begins to determine whether the patient, due to mental illness, presents a substantial risk of serious harm to the patient or others so that the patient cannot be at liberty pending the probable cause hearing under Subsection (b). The determination that the patient presents a substantial risk of serious harm to the patient or others may be demonstrated by:

- (1) the patient's behavior; or
- (2) evidence of severe emotional distress and deterioration in the patient's mental condition to the extent that the patient cannot live safely in the community.

(a-2) If the physician who conducted the evaluation determines that the patient does not present a substantial risk of serious harm to the patient or others, the facility shall:

- (1) notify:

(A) the person designated under Section 574.037 as responsible for providing outpatient mental health services or the facility administrator of the outpatient facility treating the patient; and

(B) the court that entered the order directing the patient to receive court-ordered outpatient mental health services; and

(2) release the patient.

(b) A patient who is not released under Subsection (a-2) may be detained under a temporary detention order for more than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for an extreme emergency only if, after a hearing held before the expiration of that period, the court, a magistrate, or a designated associate judge finds that there is probable cause to believe that:

(1) the patient, due to mental illness, presents a substantial risk of serious harm to the patient or others, using the criteria prescribed by Subsection (a-1), to the extent that the patient cannot be at liberty pending the final hearing under Section 574.062; and

(2) detention in an inpatient mental health facility is necessary to evaluate the appropriate setting for continued court-ordered services.

(c) If probable cause is found under Subsection (b), the patient may be detained under the temporary detention until the hearing set under Section 574.062 is completed.

(d) A facility administrator shall immediately release a patient held under a temporary detention order if the facility administrator does not receive notice that the patient's continued detention is authorized:

(1) after a probable cause hearing held within 72 hours after the patient's detention begins; or

(2) after a modification hearing held within the period prescribed by Section 574.062.

(e) A patient released from an inpatient mental health facility under Subsection (a-2) or (d) continues to be subject to the order for court-ordered outpatient services, if the order has not expired.

(f) A person detained under this section may not be detained in a nonmedical facility used to detain persons charged with or convicted of a crime.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 191 (H.B. 1312), § 2, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 13, effective September 1, 2001; am. Acts 2009, 81st Leg., ch. 334 (H.B. 890), § 7, effective September 1, 2009; am. Acts 2013, 83rd Leg., ch. 1170 (S.B. 646), § 5, effective September 1, 2013.

Sec. 574.065. Order of Modification of Order for Outpatient Services.

(a) The court may modify an order for outpatient services at the modification hearing if the court determines that the patient meets the applicable criteria for court-ordered inpatient mental health services prescribed by Section 574.034(a) or 574.035(a).

(b) The court may refuse to modify the order and may direct the patient to continue to participate in outpatient mental health services in accordance with the original order even if the criteria prescribed by Subsection (a) have been met.

(c) The court's decision to modify an order must be supported by at least one certificate of medical examination for mental illness signed by a physician who examined the patient not earlier than the seventh day before the date on which the hearing is held.

(d) A modification may include:

(1) incorporating in the order a revised treatment program and providing for continued outpatient mental health services under the modified order, if a revised general program of treatment was submitted to and accepted by the court; or

(2) providing for commitment to an inpatient mental health facility.

(e) A court may not extend the provision of mental health services beyond the period prescribed in the original order.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 744 (H.B. 1039), § 8, effective September 1, 1997; am. Acts 2013, 83rd Leg., ch. 1170 (S.B. 646), § 6, effective September 1, 2013.

Sec. 574.066. Renewal of Order for Extended Mental Health Services.

(a) A county or district attorney or other adult may file an application to renew an order for extended mental health services.

(b) The application must explain in detail why the person requests renewal. An application to renew an order committing the patient to extended inpatient mental health services must also explain in detail why a less restrictive setting is not appropriate.

(c) The application must be accompanied by two certificates of medical examination for mental illness signed by physicians who examined the patient during the 30 days preceding the date on which the application is filed.

(d) The court shall appoint an attorney to represent the patient when an application is filed.

(e) The patient, the patient's attorney, or other individual may request a hearing on the application. The court may set a hearing on its own motion. An application for which a hearing is requested or set is considered an original application for court-ordered extended mental health services.

(f) A court may not renew an order unless the court finds that the patient meets the criteria for extended mental health services prescribed by Sections 574.035(a)(1), (2), and (3). The court must make the findings prescribed by this subsection to renew an order, regardless of whether a hearing is requested or set. A renewed order authorizes treatment for not more than 12 months.

(g) If a hearing is not requested or set, the court may admit into evidence the certificates of medical examination for mental illness. The certificates constitute competent medical or psychiatric testimony and the court may make its findings solely from the certificates and the detailed request for renewal.

(h) The court, after renewing an order for extended inpatient mental health services, may modify the order to provide for outpatient mental health services in accordance with Section 574.037.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.0665. Status Conference.

A court on its own motion may set a status conference with the patient, the patient's attorney, and the person designated to be responsible for the patient's court-ordered outpatient services under Section 574.037.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 19, effective September 1, 2019.

Sec. 574.067. Motion for Rehearing.

(a) The court may set aside an order requiring court-ordered mental health services and grant a motion for rehearing for good cause shown.

(b) Pending the hearing, the court may:

(1) stay the court-ordered mental health services and release the proposed patient from custody before the hearing if the court is satisfied that the proposed patient does not meet the criteria for protective custody under Section 574.022; and

(2) if the proposed patient is at liberty, require an appearance bond in an amount set by the court.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.068. Request for Reexamination.

(a) A patient receiving court-ordered extended mental health services, or any interested person on the patient's behalf and with the patient's consent, may file a request with a court for a reexamination and a hearing to determine if the patient continues to meet the criteria for the services.

(b) The request must be filed in the county in which the patient is receiving the services.

(c) The court may, for good cause shown:

(1) require that the patient be reexamined;

(2) schedule a hearing on the request; and

(3) notify the facility administrator of the facility providing mental health services to the patient.

(d) A court is not required to order a reexamination or hearing if the request is filed within six months after an order for extended mental health services is entered or after a similar request is filed.

(e) After receiving the court's notice, the facility administrator shall arrange for the patient to be reexamined.

(f) The facility administrator or the administrator's qualified authorized designee shall immediately discharge the patient if the facility administrator or designee determines that the patient no longer meets the criteria for court-ordered extended mental health services.

(g) If the facility administrator or the administrator's designee determines that the patient continues to meet the criteria for court-ordered extended mental health services, the facility administrator or designee shall file a certificate of medical examination for mental illness with the court within 10 days after the date on which the request for reexamination and hearing is filed.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.069. Hearing on Request for Reexamination.

(a) A court that required a patient's reexamination under Section 574.068 may set a date and place for a

hearing on the request if, not later than the 10th day after the date on which the request is filed:

(1) a certificate of medical examination for mental illness stating that the patient continues to meet the criteria for court-ordered extended mental health services has been filed; or

(2) a certificate has not been filed and the patient has not been discharged.

(b) At the time the hearing is set, the judge shall:

(1) appoint an attorney to represent a patient who does not have an attorney; and

(2) give notice of the hearing to the patient, the patient's attorney, and the facility administrator.

(c) The judge shall appoint a physician to examine the patient and file a certificate of medical examination for mental illness with the court. The judge shall appoint a physician who is not on the staff of the mental health facility in which the patient is receiving services and who is a psychiatrist if a psychiatrist is available in the county. The court shall ensure that the patient may be examined by a physician of the patient's choice and at the patient's own expense if requested by the patient.

(d) The hearing is held before the court and without a jury. The hearing must be held in accordance with the requirements for a hearing on an application for court-ordered mental health services.

(e) The court shall dismiss the request if the court finds from clear and convincing evidence that the patient continues to meet the criteria for court-ordered extended mental health services prescribed by Section 574.035 or 574.0355.

(f) The judge shall order the facility administrator to discharge the patient if the court fails to find from clear and convincing evidence that the patient continues to meet the criteria.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 20, effective September 1, 2019.

Sec. 574.070. Appeal.

(a) An appeal from an order requiring court-ordered mental health services, or from a renewal or modification of an order, must be filed in the court of appeals for the county in which the order is entered.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order is signed.

(c) When an appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) Pending the appeal, the trial judge in whose court the cause is pending may:

(1) stay the order and release the patient from custody before the appeal if the judge is satisfied that the patient does not meet the criteria for protective custody under Section 574.022; and

(2) if the proposed patient is at liberty, require an appearance bond in an amount set by the court.

(e) The court of appeals and supreme court shall give an appeal under this section preference over all other cases and shall advance the appeal on the docket. The courts may suspend all rules relating to the time for filing briefs and docketing cases.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Secs. 574.071 to 574.080. [Reserved for expansion].

Subchapter F

Furlough, Discharge, and Termination of Court-ordered Mental Health Services

Sec. 574.081. Continuing Care Plan Before Furlough or Discharge.

(a) The physician responsible for the patient's treatment shall prepare a continuing care plan for a patient who is scheduled to be furloughed or discharged unless the patient does not require continuing care.

(a-1) Subject to available resources, Subsections (a), (b), (c), (c-1), and (c-2) apply to a patient scheduled to be furloughed or discharged from:

(1) a state hospital; or

(2) any psychiatric inpatient bed funded under a contract with the Health and Human Services Commission or operated by or funded under a contract with a local mental health authority or a behavioral mental health authority.

(b) The physician shall prepare the plan as prescribed by Health and Human Services Commission rules and shall consult the patient and the local mental health authority in the area in which the patient will reside before preparing the plan. The local mental health authority shall be informed of and must participate in planning the discharge of a patient.

(c) The plan must address the patient's mental health and physical needs, including, if appropriate:

(1) the need for outpatient mental health services following furlough or discharge; and

(2) the need for sufficient psychoactive medication on furlough or discharge to last until the patient can see a physician.

(c-1) Except as otherwise specified in the plan and subject to available funding provided to the Health and Human Services Commission and paid to a private mental health facility for this purpose, a private mental health facility is responsible for providing or paying for psychoactive medication and any other medication prescribed to the patient to counteract adverse side effects of psychoactive medication on furlough or discharge sufficient to last until the patient can see a physician.

(c-2) The Health and Human Services Commission shall adopt rules to determine the quantity and manner of providing psychoactive medication, as required by this section. The executive commissioner may not adopt rules requiring a mental health facility to provide or pay for psychoactive medication for more than seven days after furlough or discharge.

(d) The physician shall deliver the plan and other appropriate information to the community center or other provider that will deliver the services if:

(1) the services are provided by:

(A) a community center or other provider that serves the county in which the patient will reside and that has been designated by the commissioner to perform continuing care services; or

(B) any other provider that agrees to accept the referral; and

(2) the provision of care by the center or provider is appropriate.

(e) The facility administrator or the administrator's designee shall have the right of access to discharged patients and records of patients who request continuing care services.

(f) A patient who is to be discharged may refuse the continuing care services.

(g) A physician who believes that a patient does not require continuing care and who does not prepare a continuing care plan under this section shall document in the patient's treatment record the reasons for that belief.

(h) Subsection (c) does not create a mandate that a facility described by Section 571.003(9)(B) or (E) provide or pay for a medication for a patient.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 646 (S.B. 160), § 12, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 705 (S.B. 205), §§ 4.04, 4.05, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 17.01(33), effective September 1, 1995; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 14, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1066 (H.B. 2004), § 1, effective June 15, 2001; am. Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 21, effective September 1, 2019.

Sec. 574.082. Pass or Furlough from Inpatient Care.

(a) The facility administrator may permit a patient admitted to the facility under an order for temporary or extended inpatient mental health services to leave the facility under a pass or furlough.

(b) A pass authorizes the patient to leave the facility for not more than 72 hours. A furlough authorizes the patient to leave for a longer period.

(c) The pass or furlough may be subject to specified conditions.

(d) When a patient is furloughed, the facility administrator shall notify the court that issued the commitment order.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

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

(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 issued 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1016 (H.B. 2892), § 1, effective June 18, 1999; am. Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 19, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 15, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1006 (H.B. 1072), § 1, effective September 1, 2001.

Sec. 574.084. Revocation of Furlough.

(a) A furlough may be revoked only after an administrative hearing held in accordance with department rules. The hearing must be held within 72 hours after the patient is returned to the facility.

(b) A hearing officer shall conduct the hearing. The hearing officer may be a mental health professional if the person is not directly involved in treating the patient.

(c) The hearing is informal and the patient is entitled to present information and argument.

(d) The hearing officer may revoke the furlough if the officer determines that the revocation is justified under Section 574.083(c).

(e) A hearing officer who revokes a furlough shall place in the patient's file:

- (1) a written notation of the decision; and
- (2) a written explanation of the reasons for the decision and the information on which the hearing officer relied.

(f) The patient shall be permitted to leave the facility under the furlough if the hearing officer determines that the furlough should not be revoked.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.085. Discharge on Expiration of Court Order.

The facility administrator of a facility to which a patient was committed or from which a patient was required to receive temporary or extended inpatient or outpatient mental health services shall discharge the patient when the court order expires.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.086. Discharge Before Expiration of Court Order.

(a) The facility administrator of a facility to which a patient was committed for inpatient mental health services or the person responsible for providing outpatient mental health services may discharge the patient at any time before the court order expires if the facility administrator or person determines that the patient no longer meets the criteria for court-ordered mental health services.

(b) The facility administrator of a facility to which the patient was committed for inpatient mental health services shall consider before discharging the patient whether the patient should receive outpatient court-ordered mental health services in accordance with:

- (1) a furlough under Section 574.082; or
- (2) a modified order under Section 574.061 that directs the patient to participate in outpatient mental health services.

(c) A discharge under Subsection (a) terminates the court order, and the person discharged may not be required to submit to involuntary mental health services unless a new court order is entered in accordance with this subtitle.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.087. Certificate of Discharge.

The facility administrator or the person responsible for outpatient care who discharges a patient under Section 574.085 or 574.086 shall prepare a discharge certificate and file it with the court that entered the order requiring mental health services.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.088. Relief from Disabilities in Mental Health Cases.

(a) A person who is furloughed or discharged from court-ordered mental health services may petition the court that entered the commitment order for an order stating that the person qualifies for relief from a firearms disability.

(b) In determining whether to grant relief, the court must hear and consider evidence about:

- (1) the circumstances that led to imposition of the firearms disability under 18 U.S.C. Section 922(g)(4);
- (2) the person's mental history;
- (3) the person's criminal history; and
- (4) the person's reputation.

(c) A court may not grant relief unless it makes and enters in the record the following affirmative findings:

- (1) the person is no longer likely to act in a manner dangerous to public safety; and
- (2) removing the person's disability to purchase a firearm is in the public interest.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 950 (H.B. 3352), § 2, effective September 1, 2009.

Sec. 574.089. Transportation Plan for Furlough or Discharge.

(a) The facility administrator of a mental health facility, in conjunction with the local mental health authority, shall create a transportation plan for a person scheduled to be furloughed or discharged from the facility.

(b) The transportation plan must account for the capacity of the person, must be in writing, and must specify:

- (1) who is responsible for transporting the person;
- (2) when the person will be transported; and
- (3) where the person will arrive.

(c) If the person consents, the facility administrator shall forward the transportation plan to a family member of the person before the person is transported.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1020 (H.B. 4276), § 1, effective September 1, 2009.

Secs. 574.090 to 574.100. [Reserved for expansion].

Subchapter G

Administration of Medication to Patient Under Court Order for Mental Health Services

Sec. 574.101. Definitions.

In this subchapter:

- (1) "Capacity" means a patient's ability to:

(A) understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment; and

(B) make a decision whether to undergo the proposed treatment.

(2) "Medication-related emergency" means a situation in which it is immediately necessary to administer medication to a patient to prevent:

(A) imminent probable death or substantial bodily harm to the patient because the patient:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the patient is unable to satisfy the patient's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts the patient overtly or continually makes or commits.

(3) "Psychoactive medication" means a medication 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. "Psychoactive medication" includes the following categories when used as described in 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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.08, effective August 30, 1993.

Sec. 574.102. Application of Subchapter.

This subchapter applies to the application of medication to a patient subject to a court order for mental health services under this chapter or other law.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.08, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 9, effective June 16, 1995; am. Acts 2005, 79th Leg., ch. 717 (S.B. 465), § 1, effective June 17, 2005; am. Acts 2013, 83rd Leg., ch. 1170 (S.B. 646), § 8, effective September 1, 2013.

Sec. 574.103. Administration of Medication to Patient Under Court-Ordered Mental Health Services.

(a) In this section, "ward" has the meaning assigned by Section 1002.030, Estates Code.

(b) A person may not administer a psychoactive medication to a patient under court-ordered inpatient mental health services who refuses to take the medication voluntarily unless:

(1) the patient is having a medication-related emergency;

(2) the patient is under an order issued under Section 574.106 authorizing the administration of the medication regardless of the patient's refusal; or

(3) the patient is a ward who is 18 years of age or older and the guardian of the person of the ward consents to the administration of psychoactive medication regardless of the ward's expressed preferences regarding treatment with psychoactive medication.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.08, effective August 30, 1993; am. Acts 2003, 78th Leg., ch. 692 (H.B. 2679), § 11, effective September 1, 2003; am. Acts 2013, 83rd Leg., ch. 1170 (S.B. 646), § 9, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1384, effective April 2, 2015.

Sec. 574.104. Physician's Application for Order to Authorize Psychoactive Medication; Date of Hearing.

(a) A physician who is treating a patient may, on behalf of the state, file an application in a probate court or a court with probate jurisdiction for an order to authorize the administration of a psychoactive medication regardless of the patient's refusal if:

- (1) the physician believes that the patient lacks the capacity to make a decision regarding the administration of the psychoactive medication;
- (2) the physician determines that the medication is the proper course of treatment for the patient;
- (3) the patient is under an order for inpatient mental health services under this chapter or other law or an application for court-ordered mental health services under Section 574.034, 574.0345, 574.035, or 574.0355 has been filed for the patient; and
- (4) the patient, verbally or by other indication, refuses to take the medication voluntarily.

(b) An application filed under this section must state:

- (1) that the physician believes that the patient lacks the capacity to make a decision regarding administration of the psychoactive medication and the reasons for that belief;
- (2) each medication the physician wants the court to compel the patient to take;
- (3) whether an application for court-ordered mental health services under Section 574.034, 574.0345, 574.035, or 574.0355 has been filed;
- (4) whether a court order for inpatient mental health services for the patient has been issued and, if so, under what authority it was issued;
- (5) the physician's diagnosis of the patient; and
- (6) the proposed method for administering the medication and, if the method is not customary, an explanation justifying the departure from the customary methods.

(c) An application filed under this section is separate from an application for court-ordered mental health services.

(d) The hearing on the application may be held on the date of a hearing on an application for court-ordered mental health services under Section 574.034, 574.0345, 574.035, or 574.0355 but shall be held not later than 30 days after the filing of the application for the order to authorize psychoactive medication. If the hearing is not held on the same day as the application for court-ordered mental health services under those sections and the patient is transferred to a mental health facility in another county, the court may transfer the application for an order to authorize psychoactive medication to the county where the patient has been transferred.

(e) Subject to the requirement in Subsection (d) that the hearing shall be held not later than 30 days after the filing of the application, the court may grant one continu-

ance on a party's motion and for good cause shown. The court may grant more than one continuance only with the agreement of the parties.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.08, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 322 (S.B. 96), § 2, effective August 28, 1995; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 10, effective June 16, 1995; am. Acts 2005, 79th Leg., ch. 717 (S.B. 465), § 2, effective June 17, 2005; am. Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 22, effective September 1, 2019.

Sec. 574.105. Rights of Patient.

A patient for whom an application for an order to authorize the administration of a psychoactive medication is filed is entitled to:

- (1) representation by a court-appointed attorney who is knowledgeable about issues to be adjudicated at the hearing;
- (2) meet with that attorney as soon as is practicable to prepare for the hearing and to discuss any of the patient's questions or concerns;
- (3) receive, immediately after the time of the hearing is set, a copy of the application and written notice of the time, place, and date of the hearing;
- (4) be told, at the time personal notice of the hearing is given, of the patient's right to a hearing and right to the assistance of an attorney to prepare for the hearing and to answer any questions or concerns;
- (5) be present at the hearing;
- (6) request from the court an independent expert; and
- (7) oral notification, at the conclusion of the hearing, of the court's determinations of the patient's capacity and best interests.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.08, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 11, effective June 16, 1995.

Sec. 574.106. Hearing and Order Authorizing Psychoactive Medication.

(a) The court may issue an order authorizing the administration of one or more classes of psychoactive medication to a patient who:

- (1) is under a court order to receive inpatient mental health services; or
- (2) is in custody awaiting trial in a criminal proceeding and was ordered to receive inpatient mental health services in the six months preceding a hearing under this section.

(a-1) The court may issue an order under this section only if the court finds by clear and convincing evidence after the hearing:

- (1) that the patient lacks the capacity to make a decision regarding the administration of the proposed medication and treatment with the proposed medication is in the best interest of the patient; or
- (2) if the patient was ordered to receive inpatient mental health services by a criminal court with jurisdiction over the patient, that treatment with the proposed medication is in the best interest of the patient and either:

- (A) the patient presents a danger to the patient or others in the inpatient mental health facility in which

the patient is being treated as a result of a mental disorder or mental defect as determined under Section 574.1065; or

(B) the patient:

(i) has remained confined in a correctional facility, as defined by Section 1.07, Penal Code, for a period exceeding 72 hours while awaiting transfer for competency restoration treatment; and

(ii) presents a danger to the patient or others in the correctional facility as a result of a mental disorder or mental defect as determined under Section 574.1065.

(b) In making the finding that treatment with the proposed medication is in the best interest of the patient, the court shall consider:

(1) the patient's expressed preferences regarding treatment with psychoactive medication;

(2) the patient's religious beliefs;

(3) the risks and benefits, from the perspective of the patient, of taking psychoactive medication;

(4) the consequences to the patient if the psychoactive medication is not administered;

(5) the prognosis for the patient if the patient is treated with psychoactive medication;

(6) alternative, less intrusive treatments that are likely to produce the same results as treatment with psychoactive medication; and

(7) less intrusive treatments likely to secure the patient's agreement to take the psychoactive medication.

(c) A hearing under this subchapter shall be conducted on the record by the probate judge or judge with probate jurisdiction, except as provided by Subsection (d).

(d) A judge may refer a hearing to a magistrate or court-appointed associate judge who has training regarding psychoactive medications. The magistrate or associate judge may effectuate the notice, set hearing dates, and appoint attorneys as required in this subchapter. A record is not required if the hearing is held by a magistrate or court-appointed associate judge.

(e) A party is entitled to a hearing de novo by the judge if an appeal of the magistrate's or associate judge's report is filed with the court within three days after the report is issued. The hearing de novo shall be held within 30 days of the filing of the application for an order to authorize psychoactive medication.

(f) If a hearing or an appeal of an associate judge's or magistrate's report is to be held in a county court in which the judge is not a licensed attorney, the proposed patient or the proposed patient's attorney may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The county 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.

(g) As soon as practicable after the conclusion of the hearing, the patient is entitled to have provided to the patient and the patient's attorney written notification of the court's determinations under this section. The notification shall include a statement of the evidence on which the court relied and the reasons for the court's determinations.

(h) An order entered under this section shall authorize the administration to a patient, regardless of the patient's refusal, of one or more classes of psychoactive medications specified in the application and consistent with the patient's diagnosis. The order shall permit an increase or decrease in a medication's dosage, restitution of medication authorized but discontinued during the period the order is valid, or the substitution of a medication within the same class.

(i) The classes of psychoactive medications in the order must conform to classes determined by the department.

(j) An order issued under this section may be reauthorized or modified on the petition of a party. The order remains in effect pending action on a petition for reauthorization or modification. For the purpose of this subsection, "modification" means a change of a class of medication authorized in the order.

(k) This section does not apply to a patient who receives services under an order of protective custody under Section 574.021.

(l) For a patient described by Subsection (a-1)(2)(B), an order issued under this section:

(1) authorizes the initiation of any appropriate mental health treatment for the patient awaiting transfer; and

(2) does not constitute authorization to retain the patient in a correctional facility for competency restoration treatment.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.08, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 12, effective June 16, 1995; am. Acts 2005, 79th Leg., ch. 717 (S.B. 465), §§ 3, 4, effective June 17, 2005; am. Acts 2009, 81st Leg., ch. 334 (H.B. 890), § 8, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 624 (H.B. 1233), § 1, effective June 19, 2009.

Sec. 574.1065. Finding That Patient Presents a Danger.

In making a finding under Section 574.106(a-1)(2) that, as a result of a mental disorder or mental defect, the patient presents a danger to the patient or others in the inpatient mental health facility in which the patient is being treated or in the correctional facility, as applicable, the court shall consider:

(1) an assessment of the patient's present mental condition;

(2) whether the patient has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm to the patient's self or to another while in the facility; and

(3) whether the patient, in the six months preceding the date the patient was placed in the facility, has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm to another that resulted in the patient being placed in the facility.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 717 (S.B. 465), § 5, effective June 17, 2005; am. Acts 2009, 81st Leg., ch. 624 (H.B. 1233), § 2, effective June 19, 2009.

Sec. 574.107. Costs.

(a) The costs for a hearing under this subchapter shall be paid in accordance with Sections 571.017 and 571.018.

(b) The county in which the applicable criminal charges are pending or were adjudicated shall pay as provided by Subsection (a) the costs of a hearing that is held under Section 574.106 to evaluate the court-ordered administration of psychoactive medication to:

- (1) a patient ordered to receive mental health services as described by Section 574.106(a)(1) after having been determined to be incompetent to stand trial or having been acquitted of an offense by reason of insanity; or
- (2) a patient who:
 - (A) is awaiting trial after having been determined to be competent to stand trial; and
 - (B) was ordered to receive mental health services as described by Section 574.106(a)(2).

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.08, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 13, effective June 16, 1995; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 20, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 624 (H.B. 1233), § 3, effective June 19, 2009.

Sec. 574.108. Appeal.

(a) A patient may appeal an order under this subchapter in the manner provided by Section 574.070 for an appeal of an order requiring court-ordered mental health services.

(b) An order authorizing the administration of medication regardless of the refusal of the patient is effective pending an appeal of the order.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.08, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 13, effective June 16, 1995 (renumbered from Sec. 574.107).

Sec. 574.109. Effect of Order.

(a) A person's consent to take a psychoactive medication is not valid and may not be relied on if the person is subject to an order issued under Section 574.106.

(b) The issuance of an order under Section 574.106 is not a determination or adjudication of mental incompetency and does not limit in any other respect that person's rights as a citizen or the person's property rights or legal capacity.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.08, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 13, effective June 16, 1995 (renumbered from Sec. 574.108).

Sec. 574.110. Expiration of Order.

(a) Except as provided by Subsection (b), an order issued under Section 574.106 expires on the expiration or termination date of the order for temporary or extended mental health services in effect when the order for psychoactive medication is issued.

(b) An order issued under Section 574.106 for a patient who is returned to a correctional facility, as defined by Section 1.07, Penal Code, to await trial in a criminal proceeding continues to be in effect until the earlier of the following dates, as applicable:

- (1) the 180th day after the date the defendant was returned to the correctional facility;

(2) the date the defendant is acquitted, is convicted, or enters a plea of guilty; or

(3) the date on which charges in the case are dismissed.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.08, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 13, effective June 16, 1995 (renumbered from Sec. 574.109); am. Acts 2005, 79th Leg., ch. 717 (S.B. 465), § 6, effective June 17, 2005; am. Acts 2011, 82nd Leg., ch. 718 (H.B. 748), § 5, effective September 1, 2011.

Secs. 574.111 to 574.150. [Reserved for expansion].

Subchapter H

Voluntary Admission for Certain Persons for Whom Motion for Court-ordered Services Has Been Filed

Sec. 574.151. Applicability.

This subchapter applies only to a person for whom a motion for court-ordered mental health services is filed under Section 574.001, for whom a final order on that motion has not been entered under Section 574.034, 574.0345, 574.035, or 574.0355 and who requests voluntary admission to an inpatient mental health facility:

- (1) while the person is receiving at that facility involuntary inpatient services under Subchapter B or under Chapter 573; or
- (2) before the 31st day after the date the person was released from that facility under Section 573.023 or 574.028.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1309 (H.B. 1887), § 1, effective June 16, 2001; am. Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 23, effective September 1, 2019.

Sec. 574.152. Capacity to Consent to Voluntary Admission.

A person described by Section 574.151 is rebuttably presumed to have the capacity to consent to admission to the inpatient mental health facility for voluntary inpatient mental health services.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1309 (H.B. 1887), § 1, effective June 16, 2001.

Sec. 574.153. Rights of Person Admitted to Voluntary Inpatient Treatment.

(a) A person described by Section 574.151 who is admitted to the inpatient mental health facility for voluntary inpatient mental health services has all of the rights provided by Chapter 576 for a person receiving voluntary or involuntary inpatient mental health services.

(b) A right assured by Section 576.021 may not be waived by the patient, the patient's attorney or guardian, or any other person acting on behalf of the patient.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1309 (H.B. 1887), § 1, effective June 16, 2001.

Sec. 574.154. Participation in Research Program.

Notwithstanding any other law, a person described by Section 574.151 may not participate in a research program in the inpatient mental health facility unless:

(1) the patient provides written consent to participate in the research program under a protocol that has been approved by the facility’s institutional review board; and

(2) the institutional review board specifically reviews the patient’s consent under the approved protocol.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1309 (H.B. 1887), § 1, effective June 16, 2001.

Secs. 574.155 to 574.200. [Reserved for expansion].

Subchapter I

Use of Video Technology at Proceedings

Sec. 574.201. Application of Subchapter.

This subchapter applies only to a hearing or proceeding related to court-ordered mental health services under this chapter.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 358 (S.B. 1182), § 3, effective June 18, 2003.

Sec. 574.202. Certain Testimony by Closed-Circuit Video Teleconferencing Permitted.

(a) A judge or magistrate may permit a physician or a nonphysician mental health professional to testify at a hearing or proceeding by closed-circuit video teleconferencing if:

(1) closed-circuit video teleconferencing is available to the judge or magistrate for that purpose;

(2) the proposed patient and the attorney representing the proposed patient do not file with the court a written objection to the use of closed-circuit video teleconferencing;

(3) the closed-circuit video teleconferencing system provides for a simultaneous, compressed full-motion video and interactive communication of image and sound between all persons involved in the hearing; and

(4) on request of the proposed patient, the proposed patient and the proposed patient’s attorney can communicate privately without being recorded or heard by the judge or magistrate or by the attorney representing the state.

(b) The judge or magistrate must provide written notice of the use of closed-circuit video teleconferencing to the proposed patient, the proposed patient’s attorney, and the attorney representing the state not later than the third day before the date of the hearing.

(c) On motion of the proposed patient or of the attorney representing the state the court shall, or on the court’s discretion the court may, terminate testimony by closed-circuit video teleconferencing under this section at any time during the testimony and require the physician or nonphysician mental health professional to testify in person.

(d) A recording of the testimony under Subsection (a) shall be made and preserved with the court’s record of the hearing.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 358 (S.B. 1182), § 3, effective June 18, 2003.

Sec. 574.203. Use of Secure Electronic Communication Method in Certain Proceedings Under This Chapter.

(a) A hearing may be conducted in accordance with this chapter but conducted by secure electronic means, including satellite transmission, closed-circuit television transmission, or any other method of two-way electronic communication that is secure, available to the parties, approved by the court, and capable of visually and audibly recording the proceedings, if:

(1) written consent to the use of a secure electronic communication method for the hearing is filed with the court by:

(A) the proposed patient or the attorney representing the proposed patient; and

(B) the county or district attorney, as appropriate;

(2) the secure electronic communication method provides for a simultaneous, compressed full-motion video, and interactive communication of image and sound among the judge or associate judge, the county or district attorney, the attorney representing the proposed patient, and the proposed patient; and

(3) on request of the proposed patient or the attorney representing the proposed patient, the proposed patient and the attorney can communicate privately without being recorded or heard by the judge or associate judge or by the county or district attorney.

(b) On the motion of the patient or proposed patient, the attorney representing the patient or proposed patient, or the county or district attorney or on the court’s own motion, the court may terminate an appearance made through a secure electronic communication method at any time during the appearance and require an appearance by the patient or proposed patient in open court.

(c) The court shall provide for a recording of the communication to be made and preserved until any appellate proceedings have been concluded. The patient or proposed patient may obtain a copy of the recording on payment of a reasonable amount to cover the costs of reproduction or, if the patient or proposed patient is indigent, the court shall provide a copy on the request of the patient or proposed patient without charging a cost for the copy.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1145 (S.B. 778), § 3, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 334 (H.B. 890), § 9, effective September 1, 2009.

CHAPTER 575

Admission and Transfer Procedures for Inpatient Services

Subchapter A. Admission Procedures

Section 575.001.	Authorization for Admission.
575.002.	Admission of Voluntary Patient to Private Mental Hospital.
575.003.	Admission of Persons with Chemical Dependency and Persons Charged with Criminal Offense.
575.004 to 575.010.	[Reserved].

Subchapter B. Transfer Procedures

575.011.	Transfer to Department Mental Health Facility or Local Mental Health Authority.
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Section 575.012.	Transfer of Person with an Intellectual Disability to an Inpatient Mental Health Facility Operated by the Department.
575.013.	Transfer of Person with an Intellectual Disability to State Supported Living Center.
575.014.	Transfer to Private Mental Hospital.
575.015.	Transfer to Federal Facility.
575.016.	Transfer from Facility of Texas Department of Criminal Justice.
575.017.	Transfer of Records.

Subchapter A

Admission Procedures

Sec. 575.001. Authorization for Admission.

(a) The facility administrator of an inpatient mental health facility may admit and detain a patient under the procedures prescribed by this subtitle.

(b) The facility administrator of an inpatient mental health facility operated by a community center or other entity the department designates to provide mental health services may not admit or detain a patient under an order for temporary or extended court-ordered mental health services unless the facility is licensed under Chapter 577.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 575.002. Admission of Voluntary Patient to Private Mental Hospital.

This subtitle does not prohibit the voluntary admission of a patient to a private mental hospital in any lawful manner.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 575.003. Admission of Persons with Chemical Dependency and Persons Charged with Criminal Offense.

This subtitle does not affect the admission to a state mental health facility of:

- (1) a person with a chemical dependency admitted under Chapter 462; or
- (2) a person charged with a criminal offense admitted under Subchapter D or E, Chapter 46B, Code of Criminal Procedure.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 13, effective January 1, 2004; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1385, effective April 2, 2015.

Secs. 575.004 to 575.010. [Reserved for expansion].

Subchapter B

Transfer Procedures

Sec. 575.011. Transfer to Department Mental Health Facility or Local Mental Health Authority.

(a) The department may transfer a patient, if the transfer is considered advisable, from an inpatient mental health facility operated by the department to:

(1) another inpatient mental health facility operated by the department; or

(2) a mental health facility deemed suitable by the local mental health authority if the authority consents.

(b) A local mental health authority may transfer a patient from one authority facility to another if the transfer is considered advisable.

(c) A voluntary patient may not be transferred under Subsection (a) or (b) without the patient's consent.

(d) The facility administrator of an inpatient mental health facility may, for any reason, transfer an involuntary patient to a mental health facility deemed suitable by the local mental health authority for the area.

(e) The facility administrator shall notify the committing court and the local mental health authority before transferring a patient under Subsection (d).

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 16, effective September 1, 2001.

Sec. 575.012. Transfer of Person with an Intellectual Disability to an Inpatient Mental Health Facility Operated by the Department.

(a) An inpatient mental health facility may not transfer a patient who is also a person with an intellectual disability 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 an intellectual disability 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 17, effective September 1, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1386, effective April 2, 2015.

Sec. 575.013. Transfer of Person with an Intellectual Disability to State Supported Living Center.

(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 supported living center for persons with an intellectual disability if:

(1) an examination of the patient indicates that the patient has symptoms of an intellectual disability to the extent that training, education, rehabilitation, care, treatment, and supervision in a state supported living center are in the patient's best interest;

(2) the director of the state supported living center to which the patient is to be transferred agrees to the transfer; and

(3) the facility administrator coordinates the transfer with the director of that state supported living center.

(b) A certificate containing the diagnosis and the facility administrator's recommendation of transfer to a spe-

cific state supported living center 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 18, effective September 1, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1387, 3.1388, effective April 2, 2015.

Sec. 575.014. Transfer to Private Mental Hospital.

The hospital administrator of a private mental hospital may transfer a patient to another private mental hospital, or the department may transfer a patient to a private mental hospital, at no expense to the state if:

- (1) the patient or the patient’s guardian or next friend signs an application requesting the transfer at the patient’s or applicant’s expense;
- (2) the hospital administrator of the private mental hospital to which the person is to be transferred agrees in writing to admit the patient and to accept responsibility for the patient as prescribed by this subtitle; and
- (3) written notice of the transfer is sent to the committing court.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 575.015. Transfer to Federal Facility.

The department or the hospital administrator of a private mental hospital may transfer an involuntary patient to a federal agency if:

- (1) the federal agency sends notice that facilities are available and that the patient is eligible for care or treatment in a facility;
- (2) notice of the transfer is sent to the committing court; and
- (3) the committing court enters an order approving the transfer.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 575.016. Transfer from Facility of Texas Department of Criminal Justice.

(a) The Texas Department of Criminal Justice shall transfer a patient committed to an inpatient mental health facility under Section 574.044 to a noncorrectional mental health facility on the day the inmate is released on parole or mandatory supervision.

(b) A patient transferred to a department mental health facility shall be transferred as prescribed by Section 575.011 or 575.012 to the facility that serves the location to which the patient is released on parole or mandatory supervision.

(c) The mental health facility to which a patient is transferred under this section is solely responsible for the patient’s treatment.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), §§ 25.110, 25.111, effective September 1, 2009.

Sec. 575.017. Transfer of Records.

The facility administrator of the transferring inpatient

mental health facility shall send the patient’s appropriate hospital records, or a copy of the records, to the hospital or facility administrator of the mental hospital or state supported living center to which the patient is transferred.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1389, effective April 2, 2015.

CHAPTER 576

Rights of Patients

Subchapter A. General Rights

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576.002.	Writ of Habeas Corpus.
576.003.	Effect on Guardianship.
576.004.	Confidentiality of Records.
576.005.	Disclosure of Name and Birth and Death Dates for Certain Purposes.
576.006.	Rights Subject to Limitation.
576.007.	Notification of Release.
576.008.	Notification of Protection and Advocacy System.
576.009.	Notification of Rights.
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Subchapter B. Rights Relating to Treatment

576.021.	General Rights Relating to Treatment.
576.022.	Adequacy of Treatment.
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576.027.	List of Medications.

Subchapter A

General Rights

Sec. 576.001. Rights Under Constitution and Law.

(a) A person with mental illness in this state has the rights, benefits, responsibilities, and privileges guaranteed by the constitution and laws of the United States and this state.

(b) Unless a specific law limits a right under a special procedure, a patient has:

- (1) the right to register and vote at an election;
- (2) the right to acquire, use, and dispose of property, including contractual rights;
- (3) the right to sue and be sued;
- (4) all rights relating to the grant, use, and revocation of a license, permit, privilege, or benefit under law;
- (5) the right to religious freedom; and
- (6) all rights relating to domestic relations.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 576.002. Presumption of Competency.

(a) The provision of court-ordered, emergency, or voluntary mental health services to a person is not a determination or adjudication of mental incompetency and does

not limit the person's rights as a citizen, or the person's property rights or legal capacity.

(b) There is a rebuttable presumption that a person is mentally competent unless a judicial finding to the contrary is made under the Estates Code.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 1309 (H.B. 1887), § 2, effective June 16, 2001; am. Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 22.047, effective September 1, 2017.

Sec. 576.003. Writ of Habeas Corpus.

A petition for a writ of habeas corpus must be filed in the court of appeals for the county in which the order is entered.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2011, 82nd Leg., ch. 994 (H.B. 2096), § 1, effective June 17, 2011.

Sec. 576.004. Effect on Guardianship.

This subtitle, or an action taken or a determination made under this subtitle, does not affect a guardianship established under law.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 576.005. Confidentiality of Records.

Records of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 1007 (H.B. 1462), § 1, effective June 19, 1993; am. Acts 1997, 75th Leg., ch. 481 (S.B. 208), § 1, effective September 1, 1997.

Sec. 576.0055. Disclosure of Name and Birth and Death Dates for Certain Purposes.

(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 administrator of a mental health facility shall release to the representative the name, date of birth, or date of death of a person who was a patient 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.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 174 (S.B. 1764), § 1, effective May 27, 2003.

Sec. 576.006. Rights Subject to Limitation.

(a) A patient in an inpatient mental health facility has the right to:

- (1) receive visitors;
- (2) communicate with a person outside the facility by telephone and by uncensored and sealed mail; and

(3) communicate by telephone and by uncensored and sealed mail with legal counsel, the department, the courts, and the state attorney general.

(b) The rights provided in Subsection (a) are subject to the general rules of the facility. The physician ultimately responsible for the patient's treatment may also restrict a right only to the extent that the restriction is necessary to the patient's welfare or to protect another person but may not restrict the right to communicate with legal counsel, the department, the courts, or the state attorney general.

(c) If a restriction is imposed under this section, the physician ultimately responsible for the patient's treatment shall document the clinical reasons for the restriction and the duration of the restriction in the patient's clinical record. That physician shall inform the patient and, if appropriate, the patient's parent, managing conservator, or guardian of the clinical reasons for the restriction and the duration of the restriction.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.06, effective August 30, 1993.

Sec. 576.007. Notification of Release.

(a) The department or facility shall make a reasonable effort to notify an adult patient's family before the patient is discharged or released from a facility providing voluntary or involuntary mental health services if the patient grants permission for the notification.

(b) The department shall notify each adult patient of the patient's right to have his family notified under this section.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 576.008. Notification of Protection and Advocacy System.

A patient shall be informed in writing, at the time of admission and discharge, of the existence, purpose, telephone number, and address of 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.).

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.51, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 3.10(a), effective September 1, 1993.

Sec. 576.009. Notification of Rights.

A patient receiving involuntary inpatient mental health services shall be informed of the rights provided by this subtitle:

- (1) orally, in simple, nontechnical terms, and in writing that, if possible, is in the person's primary language; or
- (2) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.07, effective August 30, 1993.

Sec. 576.010. Notification of Trust Exemption.

(a) At the time a patient is admitted to an inpatient mental health facility for voluntary or involuntary inpatient mental health services, the facility shall provide to the patient, and the parent if the patient is a minor or the guardian of the person of the patient, written notice, in the person's primary language, that a trust that qualifies under Section 552.018 is not liable for the patient's support. In addition, the facility shall ensure that, within 24 hours after the patient is admitted to the facility, the notification is explained to the patient:

(1) orally, in simple, nontechnical terms in the patient's primary language, if possible; or

(2) through a means reasonably calculated to communicate with a patient who has an impairment of vision or hearing, if applicable.

(b) Notice required under Subsection (a) must also be attached to any request for payment for the patient's support.

(c) This section applies only to state-operated mental health facilities.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 481 (S.B. 584), § 1, effective June 19, 2009.

Secs. 576.011 to 576.020. [Reserved for expansion].*Subchapter B**Rights Relating to Treatment***Sec. 576.021. General Rights Relating to Treatment.**

(a) A patient receiving mental health services under this subtitle has the right to:

(1) appropriate treatment for the patient's mental illness in the least restrictive appropriate setting available;

(2) not receive unnecessary or excessive medication;

(3) refuse to participate in a research program;

(4) an individualized treatment plan and to participate in developing the plan; and

(5) a humane treatment environment that provides reasonable protection from harm and appropriate privacy for personal needs.

(b) Participation in a research program does not affect a right provided by this chapter.

(c) A right provided by this section may not be waived by the patient, the patient's attorney or guardian, or any other person acting on behalf of the patient.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 1309 (H.B. 1887), § 3, effective June 16, 2001.

Sec. 576.022. Adequacy of Treatment.

(a) The facility administrator of an inpatient mental health facility shall provide adequate medical and psychiatric care and treatment to every patient in accordance with the highest standards accepted in medical practice.

(b) The facility administrator of an inpatient mental health facility may give the patient accepted psychiatric treatment and therapy.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 576.023. Periodic Examination.

The facility administrator is responsible for the examination of each patient of the facility at least once every six months and more frequently as practicable.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 576.024. Use of Physical Restraint.

(a) A physical restraint may not be applied to a patient unless a physician prescribes the restraint.

(b) A physical restraint shall be removed as soon as possible.

(c) Each use of a physical restraint and the reason for the use shall be made a part of the patient's clinical record. The physician who prescribed the restraint shall sign the record.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 576.025. Administration of Psychoactive Medication.

(a) A person may not administer a psychoactive medication to a patient receiving voluntary or involuntary mental health services who refuses the administration unless:

(1) the patient is having a medication-related emergency;

(2) the patient is younger than 16 years of age, or the patient is younger than 18 years of age and is a patient admitted for voluntary mental health services under Section 572.002(3)(B), and the patient's parent, managing conservator, or guardian consents to the administration on behalf of the patient;

(3) the refusing patient's representative authorized by law to consent on behalf of the patient has consented to the administration;

(4) the administration of the medication regardless of the patient's refusal is authorized by an order issued under Section 574.106; or

(5) the administration of the medication regardless of the patient's refusal is authorized by an order issued under Article 46B.086, Code of Criminal Procedure.

(b) Consent to the administration of psychoactive medication given by a patient or by a person authorized by law to consent on behalf of the patient is valid only if:

(1) the consent is given voluntarily and without coercive or undue influence;

(2) the treating physician or a person designated by the physician provided the following information, in a standard format approved by the department, to the patient and, if applicable, to the patient's representative authorized by law to consent on behalf of the patient:

(A) the specific condition to be treated;

(B) the beneficial effects on that condition expected from the medication;

(C) the probable health and mental health consequences of not consenting to the medication;

(D) the probable clinically significant side effects and risks associated with the medication;

(E) the generally accepted alternatives to the medication, if any, and why the physician recommends that they be rejected; and

(F) the proposed course of the medication;

(3) the patient and, if appropriate, the patient's representative authorized by law to consent on behalf of the patient is informed in writing that consent may be revoked; and

(4) the consent is evidenced in the patient's clinical record by a signed form prescribed by the facility or by a statement of the treating physician or a person designated by the physician that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

(c) If the treating physician designates another person to provide the information under Subsection (b), then, not later than two working days after that person provides the information, excluding weekends and legal holidays, the physician shall meet with the patient and, if appropriate, the patient's representative who provided the consent, to review the information and answer any questions.

(d) A patient's refusal or attempt to refuse to receive psychoactive medication, whether given verbally or by other indications or means, shall be documented in the patient's clinical record.

(e) In prescribing psychoactive medication, a treating physician shall:

(1) prescribe, consistent with clinically appropriate medical care, the medication that has the fewest side effects or the least potential for adverse side effects, unless the class of medication has been demonstrated or justified not to be effective clinically; and

(2) administer the smallest therapeutically acceptable dosages of medication for the patient's condition.

(f) If a physician issues an order to administer psychoactive medication to a patient without the patient's consent because the patient is having a medication-related emergency:

(1) the physician shall document in the patient's clinical record in specific medical or behavioral terms the necessity of the order and that the physician has evaluated but rejected other generally accepted, less intrusive forms of treatment, if any; and

(2) treatment of the patient with the psychoactive medication shall be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the patient's personal liberty.

(g) In this section, "medication-related emergency" and "psychoactive medication" have the meanings assigned by Section 574.101.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.09, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 322 (S.B. 96), § 3, effective August 28, 1995; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 31, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 14, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 48 (H.B. 224), § 2, effective May 17, 2005; am. Acts 2005, 79th Leg., ch. 717 (S.B. 465), § 7, effective June 17, 2005; am. Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 4, effective September 1, 2005.

Sec. 576.026. Independent Evaluation.

(a) A patient receiving inpatient mental health services under this subtitle is entitled to obtain at the patient's cost

an independent psychiatric, psychological, or medical examination or evaluation by a psychiatrist, physician, or nonphysician mental health professional chosen by the patient. The facility administrator shall allow the patient to obtain the examination or evaluation at any reasonable time.

(b) If the patient is a minor, the minor and the minor's parent, legal guardian, or managing or possessory conservator is entitled to obtain the examination or evaluation. The cost of the examination or evaluation shall be billed by the professional who performed the examination or evaluation to the person responsible for payment of the minor's treatment as a cost of treatment.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.09, effective August 30, 1993.

Sec. 576.027. List of Medications.

(a) The facility administrator of an inpatient mental health facility shall provide to a patient, a person designated by the patient, and the patient's legal guardian or managing conservator, if any, a list of the medications prescribed for administration to the patient while the patient is in the facility. The list must include for each medication:

(1) the name of the medication;

(2) the dosage and schedule prescribed for the administration of the medication; and

(3) the name of the physician who prescribed the medication.

(b) The list must be provided within four hours after the facility administrator receives a written request for the list from the patient, a person designated by the patient, or the patient's legal guardian or managing conservator and on the discharge of the patient. If sufficient time to prepare the list before discharge is not available, the list may be mailed within 24 hours after discharge to the patient, a person designated by the patient, and the patient's legal guardian or managing conservator.

(c) A patient or the patient's legal guardian or managing conservator, if any, may waive the right of any person to receive the list of medications while the patient is participating in a research project if release of the list would jeopardize the results of the project.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.10, effective August 30, 1993.

CHAPTER 577

Private Mental Hospitals and Other Mental Health Facilities

Subchapter A. General Provisions; Licensing and Penalties

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Subchapter A

General Provisions; Licensing and Penalties

Sec. 577.001. License Required.

(a) A person or political subdivision may not operate a mental hospital without a license issued by the department under this chapter.

(b) A community center or other entity designated by the department to provide mental health services may not operate a mental health facility that provides court-ordered mental health services without a license issued by the department under this chapter.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 573 (S.B. 210), § 4.02, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1390, effective April 2, 2015.

Sec. 577.0011. Definitions. [Repealed]

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 573 (S.B. 210), § 4.03, effective September 1, 1993; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(109), effective April 2, 2015.

Sec. 577.002. Exemptions From Licensing Requirement.

A mental health facility operated by the department or a federal agency need not be licensed under this chapter.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 573 (S.B. 210), § 4.04, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1391, effective April 2, 2015.

Sec. 577.003. Additional License Not Required.

A mental hospital licensed under this chapter that the department designates to provide mental health services is not required to obtain an additional license to provide court-ordered mental health services.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 573 (S.B. 210), § 4.04, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1392, effective April 2, 2015.

Sec. 577.004. License Application.

(a) An applicant for a license under this chapter must submit a sworn application to the department on a form prescribed by the department.

(b) The department shall prepare the application form and make the form available on request.

(c) The application must be accompanied by a nonrefundable application fee and by a license fee. The department shall return the license fee if the application is denied.

(d) The application must contain:

(1) the name and location of the mental hospital or mental health facility;

(2) the name and address of the physician to be in charge of the hospital care and treatment of the patients;

(3) the names and addresses of the mental hospital owners, including the officers, directors, and principal stockholders if the owner is a corporation or other association, or the names and addresses of the members of the board of trustees of the community center or the directors of the entity designated by the department to provide mental health services;

(4) the bed capacity to be authorized by the license;

(5) the number, duties, and qualifications of the professional staff;

(6) a description of the equipment and facilities of the mental hospital or mental health facility; and

(7) other information required by the department, including affirmative evidence of ability to comply with the department's rules and standards.

(e) The applicant must submit a plan of the mental hospital or mental health facility premises that describes the buildings and grounds and the manner in which the various parts of the premises are intended to be used.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 577.005. Investigation and License Issuance.

(a) The department shall conduct an investigation as considered necessary after receiving the proper license application and the required fees.

(b) The department shall issue a license if it finds that the premises are suitable and that the applicant is qualified to operate a mental hospital or a mental health facility that provides court-ordered inpatient mental health services, in accordance with the requirements and standards prescribed by law and the department.

(c) A license is issued to the applicant for the premises described and for the bed capacity specified by the license.

(d) The license is not transferable or assignable.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 577.006. Fees.

(a) The department shall charge each hospital every two years a license fee for an initial license or a license renewal.

(b) The executive commissioner by rule shall adopt the fees authorized by Subsection (a) in accordance with Section 12.0111 and according to a schedule under which the number of beds in the hospital determines the amount of the fee. A minimum license fee may be established.

(c) The executive commissioner by rule shall adopt fees for hospital plan reviews according to a schedule under which the amounts of the fees are based on the estimated construction costs.

(d) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(109), effective April 2, 2015.]

(e) The department shall charge a fee for field surveys of construction plans reviewed under this section. The executive commissioner by rule shall adopt a fee schedule for the surveys that provides a minimum fee and a maximum fee for each survey conducted.

(f) The department annually shall review the fee schedules to ensure that the fees charged are based on the estimated costs to and level of effort expended by the department.

(g) The executive commissioner may establish staggered license renewal dates and dates on which fees are due.

(h) A fee adopted under this chapter must be based on the estimated cost to and level of effort expended by the department to conduct the activity for which the fee is imposed.

(i) All license fees collected shall be deposited to the credit of the general revenue fund.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1411 (H.B. 2085), § 8.01, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1393, 3.1639(109), effective April 2, 2015.

Sec. 577.007. Change in Bed Capacity.

A mental hospital or mental health facility may increase the bed capacity authorized by the license at any time with the department's approval and may decrease the capacity at any time by notifying the department.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 577.008. Requirement of Physician in Charge.

Each licensed private mental hospital shall be in the charge of a physician who has at least three years experience as a physician in psychiatry in a mental hospital or who is certified by the American Board of Psychiatry and Neurology or by the American Osteopathic Board of Psychiatry and Neurology.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 577.009. Limitation on Certain Contracts.

A community center or other entity the department designates to provide mental health services may not

contract with a mental health facility to provide court-ordered mental health services unless the facility is licensed by the department.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 573 (S.B. 210), § 4.04, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1394, effective April 2, 2015.

Sec. 577.010. Rules and Standards.

(a) The executive commissioner shall adopt rules and standards the executive commissioner considers necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility required to obtain a license under this chapter.

(b) The rules must encourage mental health facilities licensed under this chapter to provide inpatient mental health services in ways that are appropriate for the diversity of the state.

(c) The standards for community-based crisis stabilization and crisis residential services must be less restrictive than the standards for mental hospitals.

(d) The department shall send a copy of the rules to each mental hospital or mental health facility licensed under this chapter.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 573 (S.B. 210), § 4.05, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1395, effective April 2, 2015.

Sec. 577.0101. Notification of Transfer or Referral.

(a) The executive commissioner shall adopt rules governing the transfer or referral of a patient from a private mental hospital to an inpatient mental health facility.

(b) The rules must provide that before a private mental hospital may transfer or refer a patient, the hospital must:

(1) provide to the receiving inpatient mental health facility notice of the hospital's intent to transfer a patient;

(2) provide to the receiving inpatient mental health facility information relating to the patient's diagnosis and condition; and

(3) obtain verification from the receiving inpatient mental health facility that the facility has the space, personnel, and services necessary to provide appropriate care to the patient.

(c) The rules must also require that the private mental hospital send the patient's appropriate records, or a copy of the records, if any, to the receiving inpatient mental health facility.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 4.07, effective August 30, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1396, effective April 2, 2015.

Sec. 577.011. Records and Reports.

The department may require a license holder to make annual, periodical, or special reports to the department and to keep the records the department considers necessary to ensure compliance with this subtitle and the department's rules and standards.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 577.012. Destruction of Records.

(a) A private mental hospital licensed under this chapter may authorize the disposal of any medical record on or after the 10th anniversary of the date on which the patient who is the subject of the record was last treated in the hospital.

(b) If a patient was younger than 18 years of age when last treated, the hospital may authorize the disposal of records relating to the patient on or after the later of the patient's 20th birthday or the 10th anniversary of the date on which the patient was last treated.

(c) The hospital may not destroy medical records that relate to any matter that is involved in litigation if the hospital knows that the litigation has not been finally resolved.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 577.013. Investigations.

(a) The department may make investigations it considers necessary and proper to obtain compliance with this subtitle and the department's rules and standards.

(b) An agent of the department may at any reasonable time enter the premises of a private mental hospital or mental health facility licensed under this chapter to:

- (1) inspect the facilities and conditions;
- (2) observe the hospital's or facility's care and treatment program; and
- (3) question the employees of the hospital or facility.

(c) An agent of the department may examine or transcribe any records or documents relevant to the investigation.

(d) All information and materials obtained or compiled by the department in connection with a complaint and investigation concerning a mental hospital licensed under this chapter are confidential and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the department or its employees or agents involved in the enforcement action except that this information may be disclosed to:

- (1) persons involved with the department in the enforcement action against the licensed mental hospital;
- (2) the licensed mental hospital that is the subject of the enforcement action, or the licensed mental hospital's authorized representative;
- (3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate licensed mental hospital services;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying information and information identifying the licensed mental hospital has been deleted.

(e) The following information is subject to disclosure in accordance with Section 552.001 et seq., Government Code:

- (1) a notice of alleged violation against the licensed mental hospital, which notice shall include the provisions of law which the licensed mental hospital is alleged to have violated, and the nature of the alleged violation;

(2) the pleadings in the administrative proceeding; and

(3) a final decision or order by the department.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1444 (H.B. 2824), § 16, effective August 30, 1999.

Sec. 577.014. Oaths.

The department or its agent may administer oaths, receive evidence, and examine witnesses in conducting an investigation or other proceeding under this chapter.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 577.015. Subpoenas.

(a) The department or its agent, in conducting an investigation or other proceeding under this chapter, may issue subpoenas to compel the attendance and testimony of witnesses and the production of documents or records anywhere in this state that are related to the matter under inquiry.

(b) If a person refuses to obey a subpoena, the department may apply to the district court of Travis County for an order requiring obedience to the subpoena.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 577.016. Denial, Suspension, Probation, or Revocation of License.

(a) The department may deny, suspend, or revoke a license if the department finds that the applicant or licensee has substantially failed to comply with:

- (1) department rules;
- (2) this subtitle; or
- (3) Chapters 104 and 225.

(b) The department must give the applicant or license holder notice of the proposed action, an opportunity to demonstrate or achieve compliance, and an opportunity for a hearing before taking the action.

(c) The department may suspend a license for 10 days pending a hearing if after an investigation the department finds that there is an immediate threat to the health or safety of the patients or employees of a private mental hospital or mental health facility licensed under this chapter. The department may issue necessary orders for the patients' welfare.

(d) The department shall send the license holder or applicant a copy of the department's decision by registered mail. If the department denies, suspends, or revokes a license, the department shall include the findings and conclusions on which the department based its decision.

(e) A license holder whose license is suspended or revoked may not admit new patients until the license is reissued.

(f) If the department finds that a private mental hospital or mental health facility is in repeated noncompliance under Subsection (a) but that the noncompliance does not endanger public health and safety, the department may schedule the hospital or facility for probation rather than suspending or revoking the license of the hospital or facility. The department shall provide notice to the hospital or facility of the probation and of the items of noncom-

pliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the hospital or facility will remain under probation. During the probation period, the hospital or facility must correct the items that were in noncompliance and report the corrections to the department for approval.

(g) The department may suspend or revoke the license of a private mental hospital or mental health facility that does not comply with the applicable requirements within the applicable probation period.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 3.12, effective September 1, 1993; am. Acts 2003, 78th Leg., ch. 802 (S.B. 162), §§ 14, 15, effective June 20, 2003.

Sec. 577.017. Hearings.

(a) The department's legal staff may participate in a hearing under this chapter.

(b) The hearing proceedings shall be recorded in a form that can be transcribed if notice of appeal is filed.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 577.018. Judicial Review of Department Decision.

(a) An applicant or license holder may appeal from a department decision by filing notice of appeal in the district court of Travis County and with the department not later than the 30th day after receiving a copy of the department's decision.

(b) The department shall certify and file with the court a transcript of the case proceedings on receiving notice of appeal. The transcript may be limited by stipulation.

(c) The court shall hear the case on the record and may consider other evidence the court determines necessary to determine properly the issues involved. The substantial evidence rule does not apply.

(d) The court may affirm or set aside the department decision or may remand the case to the department for further proceedings.

(e) The department shall pay the cost of the appeal unless the court affirms the department's decision, in which case the applicant or license holder shall pay the cost of the appeal.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 577.019. Injunction.

(a) The department, in the name of the state, may maintain an action in a district court of Travis County or in the county in which the violation occurs for an injunction or other process against any person to restrain the person from operating a mental hospital or mental health facility that is not licensed as required by this chapter.

(b) The district court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

(c) At the request of the department or on the initiative of the attorney general or district or county attorney, the attorney general or the appropriate district or county

attorney shall institute and conduct a suit authorized by this section in the name of the state. The attorney general may recover reasonable expenses incurred in instituting and conducting a suit authorized by this section, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 3.13, effective September 1, 1993.

Secs. 577.020 to 577.050. [Reserved for expansion].

Subchapter B

Patient Safety Program

[Expired]

Sec. 577.051. Duties of Department [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective September 1, 2007.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective June 20, 2003.

Sec. 577.052. Annual Report [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective September 1, 2007.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective June 20, 2003.

Sec. 577.053. Root Cause Analysis and Action Plan [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective September 1, 2007.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective June 20, 2003.

Sec. 577.054. Confidentiality; Absolute Privilege [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective September 1, 2007.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective June 20, 2003.

Sec. 577.055. Annual Department Summary [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective September 1, 2007.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective June 20, 2003.

Sec. 577.056. Best Practices Report and Department Summary [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective September 1, 2007.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective June 20, 2003.

Sec. 577.057. Prohibition [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective September 1, 2007.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective June 20, 2003.

Sec. 577.058. Report to Legislature [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective September 1, 2007.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective June 20, 2003.

Sec. 577.059. Gifts, Grants, and Donations [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective September 1, 2007.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective June 20, 2003.

Sec. 577.060. Administrative Penalty [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective September 1, 2007.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective June 20, 2003.

Sec. 577.061. Notice; Request for Hearing [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective September 1, 2007.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective June 20, 2003.

Sec. 577.062. Hearing; Order [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective September 1, 2007.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective June 20, 2003.

Sec. 577.063. Notice and Payment of Administrative Penalty; Judicial Review; Refund [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective September 1, 2007.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective June 20, 2003.

Sec. 577.064. Expiration [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective September 1, 2007.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 569 (H.B. 1614), § 6, effective June 20, 2003.

CHAPTER 578

Electroconvulsive and Other Therapies

Section	
578.001.	Application.
578.002.	Use of Electroconvulsive Therapy.
578.003.	Consent to Therapy.
578.004.	Withdrawal of Consent.
578.005.	Physician Requirement.
578.006.	Registration of Equipment.
578.007.	Reports.
578.008.	Use of Information; Report.

Sec. 578.001. Application.

This chapter applies to the use of electroconvulsive therapy by any person, including a private physician who uses the therapy on an outpatient basis.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 5.01, effective September 1, 1993.

Sec. 578.002. Use of Electroconvulsive Therapy.

(a) Electroconvulsive therapy may not be used on a person who is younger than 16 years of age.

(b) Unless the person consents to the use of the therapy in accordance with Section 578.003, electroconvulsive therapy may not be used on:

- (1) a person who is 16 years of age or older and who is voluntarily receiving mental health services; or
- (2) an involuntary patient who is 16 years of age or older and who has not been adjudicated by an appropriate court of law as incompetent to manage the patient's personal affairs.

(c) Electroconvulsive therapy may not be used on an involuntary patient who is 16 years of age or older and who has been adjudicated incompetent to manage the patient's personal affairs unless the patient's guardian of the person consents to the treatment in accordance with Section 578.003. The decision of the guardian must be based on knowledge of what the patient would desire, if known.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 5.01, effective August 30, 1993.

Sec. 578.003. Consent to Therapy.

(a) The executive commissioner by rule shall adopt a standard written consent form to be used when electroconvulsive therapy is considered. The executive commissioner by rule shall also prescribe the information that must be contained in the written supplement required under Subsection (c). In addition to the information required under this section, the form must include the information required by the Texas Medical Disclosure Panel for electroconvulsive therapy. In developing the form, the executive commissioner shall consider recommendations of the panel. Use of the consent form prescribed by the executive commissioner in the manner prescribed by this section creates a rebuttable presumption that the disclosure requirements of Sections 74.104 and 74.105, Civil Practice and Remedies Code, have been met.

(b) The written consent form must clearly and explicitly state:

- (1) the nature and purpose of the procedure;
- (2) the nature, degree, duration, and probability of the side effects and significant risks of the treatment commonly known by the medical profession, especially noting the possible degree and duration of memory loss, the possibility of permanent irrevocable memory loss, and the possibility of death;
- (3) that there is a division of opinion as to the efficacy of the procedure; and
- (4) the probable degree and duration of improvement or remission expected with or without the procedure.

(c) Before a patient receives each electroconvulsive treatment, the hospital, facility, or physician administering the therapy shall ensure that:

(1) the patient and the patient's guardian of the person, if any, receives a written copy of the consent form that is in the person's primary language, if possible;

(2) the patient and the patient's guardian of the person, if any, receives a written supplement that contains related information that pertains to the particular patient being treated;

(3) the contents of the consent form and the written supplement are explained to the patient and the patient's guardian of the person, if any:

(A) orally, in simple, nontechnical terms in the person's primary language, if possible; or

(B) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable;

(4) the patient or the patient's guardian of the person, as appropriate, signs a copy of the consent form stating that the person has read the consent form and the written supplement and understands the information included in the documents; and

(5) the signed copy of the consent form is made a part of the patient's clinical record.

(d) Consent given under this section is not valid unless the person giving the consent understands the information presented and consents voluntarily and without coercion or undue influence.

(e) For a patient 65 years of age or older, before each treatment series begins, the hospital, facility, or physician administering the procedure shall:

(1) ensure that two physicians have signed an appropriate form that states the procedure is medically necessary;

(2) make the form described by Subdivision (1) available to the patient or the patient's guardian of the person; and

(3) inform the patient or the patient's guardian of the person of any known current medical condition that may increase the possibility of injury or death as a result of the treatment.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 5.01, effective September 1, 1993; am. Acts 1997, 75th Leg., ch. 1323 (S.B. 1309), § 1, effective September 1, 1997; am. Acts 2005, 79th Leg., ch. 137 (H.B. 740), § 1, effective September 1, 2005; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1397, effective April 2, 2015.

Sec. 578.004. Withdrawal of Consent.

(a) A patient or guardian who consents to the administration of electroconvulsive therapy may revoke the consent for any reason and at any time.

(b) Revocation of consent is effective immediately.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 5.01, effective September 1, 1993.

Sec. 578.005. Physician Requirement.

(a) Only a physician may administer electroconvulsive therapy.

(b) A physician may not delegate the act of administering the therapy. A nonphysician who administers electroconvulsive therapy is considered to be practicing medicine in violation of Subtitle B, Title 3, Occupations Code.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 5.01, effective August 30, 1993; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 14.805, effective September 1, 2001.

Sec. 578.006. Registration of Equipment.

(a) A person may not administer electroconvulsive therapy unless the equipment used to administer the therapy is registered with the department.

(b) A mental hospital or facility administering electroconvulsive therapy or a private physician administering the therapy on an outpatient basis must file an application for registration under this section. The applicant must submit the application to the department on a form prescribed by department rule.

(c) The application must be accompanied by a nonrefundable application fee. The executive commissioner by rule shall set the fee in a reasonable amount not to exceed the cost to the department to administer this section.

(d) The application must contain:

(1) the model, manufacturer, and age of each piece of equipment used to administer the therapy; and

(2) any other information required by department rule.

(e) The department may conduct an investigation as considered necessary after receiving the proper application and the required fee.

(f) The executive commissioner by rule may prohibit the registration and use of equipment of a type, model, or age the executive commissioner determines is dangerous.

(g) The department may deny, suspend, or revoke a registration if the department determines that the equipment is dangerous. The denial, suspension, or revocation of a registration is a contested case under Chapter 2001, Government Code.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 5.01, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(49), effective September 1, 1995; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1398, effective April 2, 2015.

Sec. 578.007. Reports.

(a) A mental hospital or facility administering electroconvulsive therapy, psychosurgery, pre-frontal sonic sound treatment, or any other convulsive or coma-producing therapy administered to treat mental illness or a physician administering the therapy on an outpatient basis shall submit to the department quarterly reports relating to the administration of the therapy in the hospital or facility or by the physician.

(b) A report must state for each quarter:

(1) the number of patients who received the therapy, including:

(A) the number of persons voluntarily receiving mental health services who consented to the therapy;

(B) the number of involuntary patients who consented to the therapy; and

(C) the number of involuntary patients for whom a guardian of the person consented to the therapy;

(2) the age, sex, and race of the persons receiving the therapy;

(3) the source of the treatment payment;

(4) the average number of nonelectroconvulsive treatments;

(5) the average number of electroconvulsive treatments administered for each complete series of treatments, but not including maintenance treatments;

(6) the average number of maintenance electroconvulsive treatments administered per month;

(7) the number of fractures, reported memory losses, incidents of apnea, and cardiac arrests without death;

(8) autopsy findings if death followed within 14 days after the date of the administration of the therapy; and

(9) any other information required by department rule.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 5.01, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1399, effective April 2, 2015.

Sec. 578.008. Use of Information; Report.

(a) The department shall use the information received under Sections 578.006 and 578.007 to analyze, audit, and monitor the use of electroconvulsive therapy, psychosurgery, pre-frontal sonic sound treatment, or any other convulsive or coma-producing therapy administered to treat mental illness.

(b) The department shall file annually with the governor and the presiding officer of each house of the legislature a written report summarizing by facility the information received under Sections 578.006 and 578.007. If the therapy is administered by a private physician on an outpatient basis, the report must include that information but may not identify the physician. The department may not directly or indirectly identify in a report issued under this section a patient who received the therapy.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 5.01, effective September 1, 1993.

CHAPTER 579

**Mental Health Jail Diversion Pilot Program;
Harris County
[Expired September 1, 2017] [Reserved.]**

Section	
579.001.	[Expired September 1, 2017] Definitions.
579.002.	[Expired September 1, 2017] Mental Health Jail Diversion Pilot Program.
579.003.	[Expired September 1, 2017] Criminal Justice Mental Health Service Model.
579.004.	[Expired September 1, 2017] Critical Time Intervention.
579.005.	[Expired September 1, 2017] Local Services Coordination.
579.006.	[Expired September 1, 2017] Program Capacity.
579.007.	[Expired September 1, 2017] Financing the Program.
579.008.	[Expired September 1, 2017] Inspections.
579.009.	[Expired September 1, 2017] Report.
579.010.	[Expires September 1, 2017] Conclusion; Expiration.

Sec. 579.001. [Expired September 1, 2017] Definitions.

HISTORY: 2013, 775 (), § 1, effective September 1, 2015; Enacted by Acts 2013, 83rd Leg., ch. 775 (S.B. 1185), § 1, effective June 14, 2013.

Sec. 579.002. [Expired September 1, 2017] Mental Health Jail Diversion Pilot Program.

HISTORY: § 1; Enacted by Acts 2013, 83rd Leg., ch. 775 (S.B. 1185), § 1, effective June 14, 2013.

Sec. 579.003. [Expired September 1, 2017] Criminal Justice Mental Health Service Model.

HISTORY: 2013, 775 (), § 1, effective September 1, 2017; Enacted by Acts 2013, 83rd Leg., ch. 775 (S.B. 1185), § 1, effective June 14, 2013.

Sec. 579.004. [Expired September 1, 2017] Critical Time Intervention.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 775 (S.B. 1185), § 1, effective June 14, 2013.

Sec. 579.005. [Expired September 1, 2017] Local Services Coordination.

HISTORY: 2013, 775 (), § 1, effective September 1, 2017; Enacted by Acts 2013, 83rd Leg., ch. 775 (S.B. 1185), § 1, effective June 14, 2013.

Sec. 579.006. [Expired September 1, 2017] Program Capacity.

HISTORY: 2013, 775 (), § 1, effective September 1, 2017; Enacted by Acts 2013, 83rd Leg., ch. 775 (S.B. 1185), § 1, effective June 14, 2013.

Sec. 579.007. [Expired September 1, 2017] Financing the Program.

HISTORY: 2013, 775 (), § 1, effective September 1, 2017; Enacted by Acts 2013, 83rd Leg., ch. 775 (S.B. 1185), § 1, effective June 14, 2013.

Sec. 579.008. [Expired September 1, 2017] Inspections.

HISTORY: 2013, 775 (), § 1, effective September 1, 2017; Enacted by Acts 2013, 83rd Leg., ch. 775 (S.B. 1185), § 1, effective June 14, 2013.

Sec. 579.009. [Expired September 1, 2017] Report.

HISTORY: Enacted by Acts 2013, 775 (), § 1, effective June 14, 2013; Enacted by Acts 2013, 83rd Leg., ch. 775 (S.B. 1185), § 1, effective June 14, 2013.

Sec. 579.010. [Expires September 1, 2017] Conclusion; Expiration.

The pilot program established under this chapter concludes and this chapter expires September 1, 2017.

HISTORY: 2013, 775 (), § 1, effective September 1, 2017; Enacted by Acts 2013, 83rd Leg., ch. 775 (S.B. 1185), § 1, effective June 14, 2013.

**CHAPTERS 580 TO 590
[Reserved for expansion]**

SUBTITLE D

**PERSONS WITH AN INTELLECTUAL
DISABILITY ACT**

Chapter
591.

General Provisions

Chapter	
592.	Rights of Persons with an Intellectual Disability
593.	Admission and Commitment to Intellectual Disability Services
594.	Transfer and Discharge
595.	Records
596.	Public Responsibility Committees [Repealed]
597.	Capacity of Clients to Consent to Treatment
598 to 610.	[Reserved for expansion] [Reserved.]

CHAPTER 591

General Provisions

Subchapter A. General Provisions

Section	Short Title.
591.001.	Purpose.
591.002.	Definitions.
591.003.	Rules.
591.004.	Least Restrictive Alternative.
591.005.	Consent.
591.006.	[Reserved].
591.007 to 591.010.	[Reserved].

Subchapter B. Duties of Department

591.011.	Department Responsibilities.
591.012.	Cooperation with Other Agencies. [Repealed]
591.013.	Long-Range Plan.
591.014 to 591.020.	[Reserved].

Subchapter C. Penalties and Remedies

591.021.	Criminal Penalty.
591.022.	Civil Penalty.
591.023.	Injunctive Relief; Civil Penalty.
591.024.	Civil Action Against Department Employee.
591.025.	Liability.

Subchapter A

General Provisions

Sec. 591.001. Short Title.

This subtitle may be cited as the Persons with an Intellectual Disability Act.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1401, effective April 2, 2015.

Sec. 591.002. Purpose.

(a) It is the public policy of this state that persons with an intellectual disability 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 an intellectual disability in this state.

(c) The state's responsibility to persons with an intellectual disability 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 an intellectual disability.

(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 care facility 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 an intellectual disability have been denied rights solely because they are persons with an intellectual disability, the general public should be educated to the fact that persons with an intellectual disability 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 an intellectual disability in acquiring and maintaining rights and in participating in community life as fully as possible.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1402, effective April 2, 2015.

Sec. 591.003. Definitions.

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) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(110), effective April 2, 2015.]

(3) "Care" means the life support and maintenance services or other aid provided to a person with an intellectual disability, including dental, medical, and nursing care and similar services.

(4) "Client" means a person receiving intellectual disability services from the department or a community center. The term includes a resident.

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

(5) "Commissioner" means the commissioner of aging and disability services.

(6) "Community center" means an entity organized under Subchapter A, Chapter 534, that provides intellectual disability services.

(7) "Department" means the Department of Aging and Disability Services.

(7-a) "Intellectual disability" means significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.

(8) "Interdisciplinary team" means a group of intellectual disability professionals and paraprofessionals who assess the treatment, training, and habilitation needs of a person with an intellectual disability and make recommendations for services for that person.

(9) "Director" means the director or superintendent of a residential care facility.

(9-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(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 an intellectual disability 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.

(13) “Mental retardation” means intellectual disability.

(14) “Intellectual disability services” means programs and assistance for persons with an intellectual disability that may include a determination of an intellectual disability, 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.

(15) “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.

(15-a) “Person with an intellectual disability” 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.

(16) “Person with mental retardation” means a person with an intellectual disability.

(17) “Resident” means a person living in and receiving services from a residential care facility.

(18) “Residential care facility” means a state supported living center or the ICF-IID component of the Rio Grande Center.

(19) “Service provider” means a person who provides intellectual disability services.

(20) “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.

(21) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(110), effective April 2, 2015.]

(22) “Training” means the process by which a person with an intellectual disability is habilitated and may include the teaching of life and work skills.

(23) “Treatment” means the process by which a service provider attempts to ameliorate the condition of a person with an intellectual disability.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B. 771), § 1, effective September 1, 1993; am. Acts 2011, 82nd Leg., ch. 272 (H.B. 1481), § 5, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1403, 3.1639(110), effective April 2, 2015.

Sec. 591.004. Rules.

The executive commissioner by rule shall ensure the implementation of this subtitle.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1404, effective April 2, 2015.

Sec. 591.005. Least Restrictive Alternative.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 591.006. Consent.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Secs. 591.007 to 591.010. [Reserved for expansion].

Subchapter B

Duties of Department

Sec. 591.011. Department Responsibilities.

(a) Subject to the executive commissioner’s authority to adopt rules and policies, the department shall make all reasonable efforts consistent with available resources to:

(1) assure that each identified person with an intellectual disability who needs intellectual disability 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 an intellectual disability 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 533A.034, a continuum of services to persons with an intellectual disability; and

(5) provide, either directly or by contract with other agencies, a continuum of services to children, juveniles, or adults with an intellectual disability 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 an intellectual disability 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 an intellectual disability to which the department has assigned persons with an intellectual disability.

(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 clients and records of clients 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 646 (S.B.160), § 13, effective August 30, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1405, effective April 2, 2015.

Sec. 591.012. Cooperation with Other Agencies.
[Repealed]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(110), effective April 2, 2015.

Sec. 591.013. Long-Range Plan.

(a) The commission shall develop a long-range plan for services to persons with intellectual and developmental disabilities.

(b) The executive commissioner 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 intellectual and developmental disabilities.

(c) In developing the plan, the commission shall consider existing plans or studies made by the commission or department.

(d) The plan must address at least the following topics:

(1) the needs of persons with intellectual and developmental disabilities;

(2) how state services should be structured to meet those needs;

(3) how the ICF-IID 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 intellectual and developmental disabilities;

(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-IID 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 commission and the department shall, if necessary, modify their respective long-range plans and other existing plans relating to the provision of services to persons with intellectual and developmental disabilities to incorporate the provisions of the plan.

(f) The commission shall review and revise the plan biennially. The commission and the department shall consider the most recent revision of the plan in any modifications of the commission's or department's long-range plans and in each future budget request.

(g) This section does not affect the authority of the commission and the department to carry out their separate functions as established by state and federal law.

(h) In this section, "ICF-IID program" means the medical assistance program serving persons with intellectual and developmental disabilities who receive care in intermediate care facilities.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1406, effective April 2, 2015.

Secs. 591.014 to 591.020. [Reserved for expansion].

Subchapter C

Penalties and Remedies

Sec. 591.021. Criminal Penalty.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 591.022. Civil Penalty.

(a) A person who intentionally violates the rights guaranteed by this subtitle to a person with an intellectual disability 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 an intellectual disability 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 an intellectual disability 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1407, effective April 2, 2015.

Sec. 591.023. Injunctive Relief; Civil Penalty.

(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 executive commissioner under this subtitle; or
- (2) enforce compliance with this subtitle or a rule adopted by the executive commissioner 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 intellectual disability 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 in law.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1408, effective April 2, 2015.

Sec. 591.024. Civil Action Against Department Employee.

(a) The state attorney general shall provide legal coun-

sel 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 591.025. Liability.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

CHAPTER 592

Rights of Persons with an Intellectual Disability

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Subchapter F. Administration of Psychoactive Medications

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592.158.	Appeal.
592.159.	Effect of Order.
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*Subchapter A**General Provisions***Sec. 592.001. Purpose.**

The purpose of this chapter is to recognize and protect the individual dignity and worth of each person with an intellectual disability.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1410, effective April 2, 2015.

Sec. 592.002. Rules.

The executive commissioner by rule shall ensure the implementation of the rights guaranteed in this chapter.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1411, effective April 2, 2015.

Secs. 592.003 to 592.010. [Reserved for expansion].

*Subchapter B**Basic Bill of Rights***Sec. 592.011. Rights Guaranteed.**

(a) Each person with an intellectual disability 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 an intellectual disability have and are not exclusive or intended to limit the rights guaranteed by the constitution and laws of the United States and this state.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1412, effective April 2, 2015.

Sec. 592.012. Protection From Exploitation and Abuse.

Each person with an intellectual disability has the right to protection from exploitation and abuse because of the person's intellectual disability.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1412, effective April 2, 2015.

Sec. 592.013. Least Restrictive Living Environment.

Each person with an intellectual disability 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1412, effective April 2, 2015.

Sec. 592.014. Education.

Each person with an intellectual disability 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:

- (1) the person's chronological age;
- (2) the degree of the person's intellectual disability;
- (3) the person's accompanying disabilities or handicaps; or
- (4) the person's admission or commitment to intellectual disability services.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1412, effective April 2, 2015.

Sec. 592.015. Employment.

An employer, employment agency, or labor organization may not deny a person equal opportunities in employment because of the person's intellectual disability, unless:

(1) the person's intellectual disability 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1412, effective April 2, 2015.

Sec. 592.016. Housing.

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 an intellectual disability or a group that includes one or more persons with an intellectual disability.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1412, effective April 2, 2015.

Sec. 592.017. Treatment and Services.

Each person with an intellectual disability has the right to receive for the person's intellectual disability 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1412, effective April 2, 2015.

Sec. 592.018. Determination of an Intellectual Disability.

A person thought to be a person with an intellectual disability has the right promptly to receive a determination of an intellectual disability 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 intellectual disability services as provided by Subchapter A, Chapter 593.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 2, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1412, effective April 2, 2015.

Sec. 592.019. Administrative Hearing.

A person who files an application for a determination of an intellectual disability has the right to request and promptly receive an administrative hearing under Subchapter A, Chapter 593, to contest the findings of the determination of an intellectual disability.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 2, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1412, effective April 2, 2015.

Sec. 592.020. Independent Determination of an Intellectual Disability.

A person for whom a determination of an intellectual disability is performed or a person who files an application for a determination of an intellectual disability under Section 593.004 and who questions the validity or results of the determination of an intellectual disability has the right to an additional, independent determination of an intellectual disability performed at the person's own expense.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 2, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1412, effective April 2, 2015.

Sec. 592.021. Additional Rights.

Each person with an intellectual disability 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1412, effective April 2, 2015.

Secs. 592.022 to 592.030. [Reserved for expansion].

Subchapter C

Rights of Clients

Sec. 592.031. Rights in General.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 592.032. Least Restrictive Alternative.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 592.033. Individualized Plan.

(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 intellectual disability services.

(d) The content of an individualized habilitation plan is as required by department rule and as may be required by the department by contract.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B. 771), § 3, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1413, effective April 2, 2015.

Sec. 592.034. Review and Reevaluation.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B. 771), § 4, effective September 1, 1993.

Sec. 592.035. Participation in Planning.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 592.036. Withdrawal from Voluntary Services.

(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 intellectual disability 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1414, effective April 2, 2015.

Sec. 592.037. Freedom from Mistreatment.

Each client has the right not to be mistreated, neglected, or abused by a service provider.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 592.038. Freedom from Unnecessary Medication.

(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.

(d) Each client has the right to refuse psychoactive medication, as provided by Subchapter F.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 1, effective September 1, 2013.

Sec. 592.039. Grievances.

A client, or a person acting on behalf of a person with an intellectual disability or a group of persons with an intellectual disability, has the right to submit complaints or grievances regarding the infringement of the rights of a person with an intellectual disability or the delivery of intellectual disability services against a person, group of persons, organization, or business to the department's Office of Consumer Rights and Services for investigation and appropriate action.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1415, effective April 2, 2015.

Sec. 592.040. Information About Rights.

(a) On admission for intellectual disability 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1416, effective April 2, 2015.

Secs. 592.041 to 592.050. [Reserved for expansion].

Subchapter D

Rights of Residents

Sec. 592.051. General Rights of Residents.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 592.052. Medical and Dental Care and Treatment.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 592.053. Standards of Care.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 592.054. Duties of Director.

(a) Except as limited by this subtitle, the 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:

- (1) all surgical procedures; and
- (2) as provided by Section 592.153, the administration of psychoactive medications.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 2, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1417, 3.1418, effective April 2, 2015.

Sec. 592.055. Unusual or Hazardous Treatment.

This subtitle does not permit the department to perform unusual or hazardous treatment procedures, experimental research, organ transplantation, or nontherapeutic surgery for experimental research.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 592.056. Notification of Trust Exemption.

(a) At the time a resident is admitted to a residential care facility, the facility shall provide to the resident, and the parent if the resident is a minor or the guardian of the person of the resident, written notice, in the person's primary language, that a trust that qualifies under Section 593.081 is not liable for the resident's support. In addition, the facility shall ensure that, within 24 hours after the resident is admitted to the facility, the notification is explained to the resident, and the parent if the resident is a minor or the guardian of the person of the resident:

- (1) orally, in simple, nontechnical terms in the person's primary language, if possible; or
- (2) through a means reasonably calculated to communicate with a person who has an impairment of vision or hearing, if applicable.

(b) Notice required under Subsection (a) must also be attached to any request for payment for the resident's support.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 481 (S.B. 584), § 2, effective June 19, 2009.

Subchapter E

Use of Restraints in State Supported Living Centers

Sec. 592.101. Definition. [Repealed]

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 361 (S.B. 41), § 1, effective June 17, 2011; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(111), effective April 2, 2015.

Sec. 592.102. Use of Restraints.

(a) The executive commissioner shall adopt rules to ensure that:

(1) a mechanical or physical restraint is not administered to a resident of a state supported living center unless the restraint is:

(A) necessary to prevent imminent physical injury to the resident or another; and

(B) the least restrictive restraint effective to prevent imminent physical injury;

(2) the administration of a mechanical or physical restraint to a resident of a state supported living center ends immediately once the imminent risk of physical injury abates; and

(3) a mechanical or physical restraint is not administered to a resident of a state supported living center as punishment or as part of a behavior plan.

(b) The executive commissioner shall adopt rules to prohibit the use of prone and supine holds on a resident of a state supported living center except as transitional holds.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 361 (S.B. 41), § 1, effective June 17, 2011.

Sec. 592.103. Standing Orders for Restraints Prohibited.

(a) A person may not issue a standing order to administer on an as-needed basis mechanical or physical restraints to a resident of a state supported living center.

(b) A person may not administer mechanical or physical restraints to a resident of a state supported living center pursuant to a standing order to administer restraints on an as-needed basis.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 361 (S.B. 41), § 1, effective June 17, 2011.

Sec. 592.104. Straitjackets Prohibited.

A person may not use a straitjacket to restrain a resident of a state supported living center.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 361 (S.B. 41), § 1, effective June 17, 2011.

Sec. 592.105. Duty to Report.

A state supported living center shall report to the executive commissioner each incident in which a physical or mechanical restraint is administered to a resident of a state supported living center. The report must contain information and be in the form required by rules of the executive commissioner.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 361 (S.B. 41), § 1, effective June 17, 2011.

Sec. 592.106. Conflict with Other Law.

To the extent of a conflict between this subchapter and Chapter 322, this subchapter controls.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 361 (S.B. 41), § 1, effective June 17, 2011.

*Subchapter F**Administration of Psychoactive Medications***Sec. 592.151. Definitions.**

In this subchapter:

(1) "Capacity" means a client's ability to:

(A) understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment; and

(B) make a decision whether to undergo the proposed treatment.

(2) "Medication-related emergency" means a situation in which it is immediately necessary to administer medication to a client to prevent:

(A) imminent probable death or substantial bodily harm to the client because the client:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the client is unable to satisfy the client's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts the client overtly or continually makes or commits.

(3) "Psychoactive medication" means a medication 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. "Psychoactive medication" includes the following categories when used as described in 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.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 3, effective September 1, 2013.

Sec. 592.152. Administration of Psychoactive Medication.

(a) A person may not administer a psychoactive medication to a client receiving voluntary or involuntary residential care services who refuses the administration unless:

(1) the client is having a medication-related emergency;

(2) the refusing client's representative authorized by law to consent on behalf of the client has consented to the administration;

(3) the administration of the medication regardless of the client's refusal is authorized by an order issued under Section 592.156; or

(4) the administration of the medication regardless of the client's refusal is authorized by an order issued under Article 46B.086, Code of Criminal Procedure.

(b) Consent to the administration of psychoactive medication given by a client or by a person authorized by law to consent on behalf of the client is valid only if:

(1) the consent is given voluntarily and without coercive or undue influence;

(2) the treating physician or a person designated by the physician provides the following information, in a standard format approved by the department, to the client and, if applicable, to the client's representative authorized by law to consent on behalf of the client:

(A) the specific condition to be treated;

(B) the beneficial effects on that condition expected from the medication;

(C) the probable health care consequences of not consenting to the medication;

(D) the probable clinically significant side effects and risks associated with the medication;

(E) the generally accepted alternatives to the medication, if any, and why the physician recommends that they be rejected; and

(F) the proposed course of the medication;

(3) the client and, if appropriate, the client's representative authorized by law to consent on behalf of the client are informed in writing that consent may be revoked; and

(4) the consent is evidenced in the client's clinical record by a signed form prescribed by the residential care facility or by a statement of the treating physician or a person designated by the physician that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

(c) If the treating physician designates another person to provide the information under Subsection (b), then, not later than two working days after that person provides the information, excluding weekends and legal holidays, the physician shall meet with the client and, if appropriate, the client's representative who provided the consent, to review the information and answer any questions.

(d) A client's refusal or attempt to refuse to receive psychoactive medication, whether given verbally or by other indications or means, shall be documented in the client's clinical record.

(e) In prescribing psychoactive medication, a treating physician shall:

(1) prescribe, consistent with clinically appropriate medical care, the medication that has the fewest side effects or the least potential for adverse side effects, unless the class of medication has been demonstrated or justified not to be effective clinically; and

(2) administer the smallest therapeutically acceptable dosages of medication for the client's condition.

(f) If a physician issues an order to administer psychoactive medication to a client without the client's consent because the client is having a medication-related emergency:

(1) the physician shall document in the client's clinical record in specific medical or behavioral terms the necessity of the order and that the physician has evaluated but rejected other generally accepted, less intrusive forms of treatment, if any; and

(2) treatment of the client with the psychoactive medication shall be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the client's personal liberty.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 3, effective September 1, 2013.

Sec. 592.153. Administration of Medication to Client Committed to Residential Care Facility.

(a) In this section, "ward" has the meaning assigned by Section 1002.030, Estates Code.

(b) A person may not administer a psychoactive medication to a client who refuses to take the medication voluntarily unless:

(1) the client is having a medication-related emergency;

(2) the client is under an order issued under Section 592.156 authorizing the administration of the medication regardless of the client's refusal; or

(3) the client is a ward who is 18 years of age or older and the guardian of the person of the ward consents to the administration of psychoactive medication regardless of the ward's expressed preferences regarding treatment with psychoactive medication.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 3, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1419, effective April 2, 2015.

Sec. 592.154. Physician's Application for Order to Authorize Psychoactive Medication; Date of Hearing.

(a) A physician who is treating a client may file an application in a probate court or a court with probate jurisdiction on behalf of the state for an order to authorize the administration of a psychoactive medication regardless of the client's refusal if:

(1) the physician believes that the client lacks the capacity to make a decision regarding the administration of the psychoactive medication;

(2) the physician determines that the medication is the proper course of treatment for the client; and

(3) the client has been committed to a residential care facility under Subchapter C, Chapter 593, or other law or an application for commitment to a residential care facility under Subchapter C, Chapter 593, has been filed for the client.

(b) An application filed under this section must state:

(1) that the physician believes that the client lacks the capacity to make a decision regarding administration of the psychoactive medication and the reasons for that belief;

(2) each medication the physician wants the court to compel the client to take;

(3) whether an application for commitment to a residential care facility under Subchapter C, Chapter 593, has been filed;

(4) whether an order committing the client to a residential care facility has been issued and, if so, under what authority it was issued;

(5) the physician's diagnosis of the client; and

(6) the proposed method for administering the medication and, if the method is not customary, an explanation justifying the departure from the customary methods.

(c) An application filed under this section must be filed separately from an application for commitment to a residential care facility.

(d) The hearing on the application may be held on the same date as a hearing on an application for commitment to a residential care facility under Subchapter C, Chapter 593, but the hearing must be held not later than 30 days after the filing of the application for the order to authorize psychoactive medication. If the hearing is not held on the same date as the application for commitment to a residential care facility under Subchapter C, Chapter 593, and the client is transferred to a residential care facility in another county, the court may transfer the application for an order to authorize psychoactive medication to the county where the client has been transferred.

(e) Subject to the requirement in Subsection (d) that the hearing shall be held not later than 30 days after the filing of the application, the court may grant one continuance on a party's motion and for good cause shown. The court may grant more than one continuance only with the agreement of the parties.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 3, effective September 1, 2013.

Sec. 592.155. Rights of Client.

A client for whom an application for an order to authorize the administration of a psychoactive medication is filed is entitled:

(1) to be represented by a court-appointed attorney who is knowledgeable about issues to be adjudicated at the hearing;

(2) to meet with that attorney as soon as is practicable to prepare for the hearing and to discuss any of the client's questions or concerns;

(3) to receive, immediately after the time of the hearing is set, a copy of the application and written notice of the time, place, and date of the hearing;

(4) to be informed, at the time personal notice of the hearing is given, of the client's right to a hearing and right to the assistance of an attorney to prepare for the hearing and to answer any questions or concerns;

(5) to be present at the hearing;

(6) to request from the court an independent expert; and

(7) to be notified orally, at the conclusion of the hearing, of the court's determinations of the client's capacity and best interest.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 3, effective September 1, 2013.

Sec. 592.156. Hearing and Order Authorizing Psychoactive Medication.

(a) The court may issue an order authorizing the administration of one or more classes of psychoactive medication to a client who:

(1) has been committed to a residential care facility;
or

(2) is in custody awaiting trial in a criminal proceeding and was committed to a residential care facility in the six months preceding a hearing under this section.

(b) The court may issue an order under this section only if the court finds by clear and convincing evidence after the hearing:

(1) that the client lacks the capacity to make a decision regarding the administration of the proposed medication and that treatment with the proposed medication is in the best interest of the client; or

(2) if the client was committed to a residential care facility by a criminal court with jurisdiction over the client, that treatment with the proposed medication is in the best interest of the client, and either:

(A) the client presents a danger to the client or others in the residential care facility in which the client is being treated as a result of a mental disorder or mental defect as determined under Section 592.157; or

(B) the client:

(i) has remained confined in a correctional facility, as defined by Section 1.07, Penal Code, for a period exceeding 72 hours while awaiting transfer for competency restoration treatment; and

(ii) presents a danger to the client or others in the correctional facility as a result of a mental disorder or mental defect as determined under Section 592.157.

(c) In making the finding that treatment with the proposed medication is in the best interest of the client, the court shall consider:

(1) the client's expressed preferences regarding treatment with psychoactive medication;

(2) the client's religious beliefs;

(3) the risks and benefits, from the perspective of the client, of taking psychoactive medication;

(4) the consequences to the client if the psychoactive medication is not administered;

(5) the prognosis for the client if the client is treated with psychoactive medication;

(6) alternative, less intrusive treatments that are likely to produce the same results as treatment with psychoactive medication; and

(7) less intrusive treatments likely to secure the client's consent to take the psychoactive medication.

(d) A hearing under this subchapter shall be conducted on the record by the probate judge or judge with probate jurisdiction, except as provided by Subsection (e).

(e) A judge may refer a hearing to a magistrate or court-appointed associate judge who has training regarding psychoactive medications. The magistrate or associate judge may effectuate the notice, set hearing dates, and appoint attorneys as required by this subchapter. A record is not required if the hearing is held by a magistrate or court-appointed associate judge.

(f) A party is entitled to a hearing de novo by the judge if an appeal of the magistrate's or associate judge's report is filed with the court before the fourth day after the date the report is issued. The hearing de novo shall be held not later than the 30th day after the date the application for an order to authorize psychoactive medication was filed.

(g) If a hearing or an appeal of an associate judge's or magistrate's report is to be held in a county court in which the judge is not a licensed attorney, the proposed client or the proposed client's attorney may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The county 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.

(h) As soon as practicable after the conclusion of the hearing, the client is entitled to have provided to the client and the client's attorney written notification of the court's determinations under this section. The notification shall include a statement of the evidence on which the court relied and the reasons for the court's determinations.

(i) An order entered under this section shall authorize the administration to a client, regardless of the client's refusal, of one or more classes of psychoactive medications specified in the application and consistent with the client's diagnosis. The order shall permit an increase or decrease in a medication's dosage, restitution of medication authorized but discontinued during the period the order is valid, or the substitution of a medication within the same class.

(j) The classes of psychoactive medications in the order must conform to classes determined by the department.

(k) An order issued under this section may be reauthorized or modified on the petition of a party. The order remains in effect pending action on a petition for reauthorization or modification. For the purpose of this subsection, "modification" means a change of a class of medication authorized in the order.

(l) For a client described by Subsection (b)(2)(B), an order issued under this section:

(1) authorizes the initiation of any appropriate mental health treatment for the patient awaiting transfer; and

(2) does not constitute authorization to retain the client in a correctional facility for competency restoration treatment.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 3, effective September 1, 2013.

Sec. 592.157. Finding That Client Presents a Danger.

In making a finding under Section 592.156(b)(2) that, as a result of a mental disorder or mental defect, the client presents a danger to the client or others in the residential care facility in which the client is being treated or in the correctional facility, as applicable, the court shall consider:

(1) an assessment of the client's present mental condition; and

(2) whether the client has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm to the client's self or to another while in the facility.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 3, effective September 1, 2013.

Sec. 592.158. Appeal.

(a) A client may appeal an order under this subchapter in the manner provided by Section 593.056 for an appeal

of an order committing the client to a residential care facility.

(b) An order authorizing the administration of medication regardless of the refusal of the client is effective pending an appeal of the order.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 3, effective September 1, 2013.

Sec. 592.159. Effect of Order.

(a) A person’s consent to take a psychoactive medication is not valid and may not be relied on if the person is subject to an order issued under Section 592.156.

(b) The issuance of an order under Section 592.156 is not a determination or adjudication of mental incompetency and does not limit in any other respect that person’s rights as a citizen or the person’s property rights or legal capacity.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 3, effective September 1, 2013.

Sec. 592.160. Expiration of Order.

(a) Except as provided by Subsection (b), an order issued under Section 592.156 expires on the anniversary of the date the order was issued.

(b) An order issued under Section 592.156 for a client awaiting trial in a criminal proceeding expires on the date the defendant is acquitted, is convicted, or enters a plea of guilty or the date on which charges in the case are dismissed. An order continued under this subsection shall be reviewed by the issuing court every six months.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 3, effective September 1, 2013.

CHAPTER 593

Admission and Commitment to Intellectual Disability Services

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Subchapter A

General Provisions

Sec. 593.001. Admission.

A person may be admitted for intellectual disability 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1421, effective April 2, 2015.

Sec. 593.002. Consent Required.

(a) Except as provided by Subsection (b), the department or a community center may not provide intellectual

disability services to a client without the client's legally adequate consent.

(b) The department or community center may provide nonresidential intellectual disability services, including a determination of an intellectual disability, 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 executive commissioner by rule shall prescribe the efforts to obtain consent that are reasonable and the documentation for those efforts.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 5, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1422, effective April 2, 2015.

Sec. 593.003. Requirement of Determination of an Intellectual Disability.

Except as provided by Sections 593.027, 593.0275, and 593.028, a person is not eligible to receive intellectual disability services unless the person first is determined to be a person with an intellectual disability.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 6, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1423, effective April 2, 2015.

Sec. 593.004. Application for Determination of an Intellectual Disability.

(a) In this section, "authorized provider" means:

- (1) a physician licensed to practice in this state;
- (2) a psychologist licensed to practice in this state;
- (3) a professional licensed to practice in this state and certified by the department; or
- (4) a provider certified by the department before September 1, 2013.

(b) A person believed to be a person with an intellectual disability, the parent if the person is a minor, or the guardian of the person may make written application to an authorized provider for a determination of an intellectual disability using forms provided by the department.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 6, effective September 1, 1993; am. Acts 2013, 83rd Leg., ch. 883 (H.B. 807), § 1, effective June 14, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1424, 3.1425, effective April 2, 2015.

Sec. 593.005. Determination of an Intellectual Disability.

(a) In this section, "authorized provider" has the meaning assigned by Section 593.004.

(a-1) An authorized provider shall perform the determination of an intellectual disability. The department may charge a reasonable fee for certifying an authorized provider.

(b) The authorized provider 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 authorized provider may use a previous assessment, social history, or relevant record from a school district, a public or private agency, or a physician or psychologist if the authorized provider determines that the assessment, social history, or record is valid.

(d) If the person is indigent, the determination of an intellectual disability shall be performed at the department's expense by an authorized provider.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 6, effective September 1, 1993; am. Acts 2013, 83rd Leg., ch. 883 (H.B. 807), § 1, effective June 14, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1426, 3.1427, effective April 2, 2015.

Sec. 593.006. Report.

A person who files an application for a determination of an intellectual disability under Section 593.004 shall be promptly notified in writing of the findings.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 6, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1428, effective April 2, 2015.

Sec. 593.007. Notification of Certain Rights.

The department shall inform the person who filed an application for a determination of an intellectual disability of the person's right to:

- (1) an independent determination of an intellectual disability under Section 592.020; and
- (2) an administrative hearing under Section 593.008 by the agency that conducted the determination of an intellectual disability to contest the findings.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 6, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1429, effective April 2, 2015.

Sec. 593.008. Administrative Hearing.

(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 an intellectual disability; 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 executive commissioner by rule shall implement the hearing procedures.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 7, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1430, effective April 2, 2015.

Sec. 593.009. Hearing Report; Final Decision.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.010. Appeal.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.011. Fees for Services.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.012. Absent Without Authority.

(a) The director 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1016 (H.B. 2892), § 2, effective June 18, 1999; am. Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 20, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1006 (H.B. 1072), § 2, effective September 1, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1431, effective April 2, 2015.

Sec. 593.013. Requirement of Interdisciplinary Team Recommendation.

(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 an intellectual disability, 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 an intellectual disability or the person's legal representative, the person's parent if the person is a minor, and the person's guardian.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1432, effective April 2, 2015.

Sec. 593.014. Epilepsy.

A person may not be denied admission to a residential care facility because the person suffers from epilepsy.

HISTORY: Amended by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1343, effective April 2, 2015 (Renumbered from Tex. Health & Safety Code Sec. 553.001).

Secs. 593.015 to 593.020. [Reserved for expansion].

Subchapter B

Application and Admission to Voluntary Intellectual Disability Services

Sec. 593.021. Application for Voluntary Services.

(a) The proposed client or the parent if the proposed client is a minor may apply for voluntary intellectual disability 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B. 771), § 9, effective September 1, 1993; am. Acts 1997, 75th Leg., ch. 809 (H.B. 3135), § 1, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1434, effective April 2, 2015.

Sec. 593.022. Admission to Voluntary Intellectual Disability Services.

(a) An eligible person who applies for intellectual disability 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1435, 3.1436, effective April 2, 2015.

Sec. 593.023. Rules Relating to Planning of Services or Treatment.

(a) The executive commissioner 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1437, effective April 2, 2015.

Sec. 593.024. Application for Voluntary Residential Care Services.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.025. Placement Preference.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.026. Regular Voluntary Admission.

A regular voluntary admission is permitted if:

- (1) space is available at the facility for which placement is requested; and
- (2) the facility director determines that the facility provides services that meet the needs of the proposed resident.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1438, effective April 2, 2015.

Sec. 593.027. Emergency Admission.

(a) An emergency admission to a residential care facility is permitted without a determination of an intellectual disability and an interdisciplinary team recommendation if:

- (1) there is persuasive evidence that the proposed resident is a person with an intellectual disability;
- (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 director determines the facility provides; and
- (4) the facility can provide relief for the urgent need within a year after admission.

(b) A determination of an intellectual disability and an interdisciplinary team recommendation for the person admitted under this section shall be performed within 30 days after the date of admission.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B. 771), § 9, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1439, effective April 2, 2015.

Sec. 593.0275. Emergency Services.

(a) A person may receive emergency services without a determination of an intellectual disability if:

- (1) there is persuasive evidence that the person is a person with an intellectual disability;
- (2) emergency services are available; and
- (3) the person has an urgent need for emergency services.

(b) A determination of an intellectual disability for the person served under this section shall be performed within 30 days after the date the services begin.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 60 (H.B. 771), § 10, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1440, effective April 2, 2015.

Sec. 593.028. Respite Care.

(a) A person may be admitted to a residential care facility for respite care without a determination of an intellectual disability and interdisciplinary team recommendation if:

- (1) there is persuasive evidence that the proposed resident is a person with an intellectual disability;

(2) space is available at the facility for which respite care is requested;

(3) the facility director 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 director 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 11, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1441, effective April 2, 2015.

Sec. 593.029. Treatment of Minor Who Reaches Majority.

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 facility director 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1442, effective April 2, 2015.

Sec. 593.030. Withdrawal From Services.

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 director 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 facility director 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1443, effective April 2, 2015.

Secs. 593.031 to 593.040. [Reserved for expansion].

Subchapter C

Commitment to Residential Care Facility

Sec. 593.041. Application for Placement; Jurisdiction.

(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 an intellectual disability 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 director 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 an intellectual disability 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 Juvenile Justice Department may be filed in the county in which the child's commitment to the Texas Juvenile Justice Department was ordered.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B. 771), § 12, effective September 1, 1993; am. Acts 1997, 75th Leg., ch. 1086 (H.B. 1550), § 39, effective June 19, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1444, effective April 2, 2015.

Sec. 593.042. Form of Application.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 13, effective September 1, 1993.

Sec. 593.043. Representation by Counsel; Appointment of Attorney.

(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.

Sec. 593.044. Order for Protective Custody.

(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 an intellectual disability; and

(2) likely to cause injury to the proposed resident 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).

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1445, effective April 2, 2015.

Sec. 593.045. Detention in Protective Custody.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.046. Release from Protective Custody.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.047. Setting on Application.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.048. Hearing Notice.

(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 an intellectual disability 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 an intellectual disability under Section 593.007; and

(2) the provisions of Sections 593.043, 593.047, 593.049, 593.050, and 593.053.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B. 771), § 14, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1446, effective April 2, 2015.

Sec. 593.049. Hearing Before Jury; Procedure.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.050. Conduct of Hearing.

(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 an intellectual disability 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B. 771), § 15, effective September 1, 1993; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 10.007, effective September 1, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1447, effective April 2, 2015.

Sec. 593.051. Dismissal After Hearing.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.052. Order for Commitment.

(a) A proposed resident may not be committed to a residential care facility unless:

- (1) the proposed resident is a person with an intellectual disability;
- (2) evidence is presented showing that because of the proposed resident's intellectual disability, the proposed resident:

(A) represents a substantial risk of physical impairment or injury to the proposed resident 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1448, effective April 2, 2015.

Sec. 593.053. Decision.

The court in each case shall promptly report in writing the decision and findings of fact.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.054. Not a Judgment of Incompetence.

An order for commitment is not an adjudication of mental incompetency.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.055. Designation of Facility.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.056. Appeal.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Secs. 593.057 to 593.070. [Reserved for expansion].

Subchapter D

Fees

Sec. 593.071. Application of Subchapter.

This subchapter applies only to a resident admitted to a residential care facility operated by the department.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.072. Inability to Pay.

A resident may not be denied residential care because of an inability to pay for the care.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.073. Determination of Residential Costs.

The executive commissioner by rule may determine the cost of support, maintenance, and treatment of a resident.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1449, effective April 2, 2015.

Sec. 593.074. Maximum Fees.

(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 executive commissioner may use the projected cost of providing residential services to establish by rule the maximum fee that may be charged to a payer.

(c) The executive commissioner by rule 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 executive commissioner by rule 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1450, effective April 2, 2015.

Sec. 593.075. Sliding Fee Schedule.

(a) The executive commissioner 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 executive commissioner by rule 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, in accordance with rules adopted by the executive commissioner, 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 executive commissioner shall evaluate and, if necessary, revise the fee schedule at least once every five years.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 278 (S.B. 605), § 2, effective June 5, 1995; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1451, effective April 2, 2015.

Sec. 593.076. Fee Schedule for Divorced Parents.

(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).

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.077. Child Support Payments for Benefit of Resident.

(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:

(1) department may be reimbursed for the costs of a resident's support, maintenance, and treatment from those amounts; and

(2) executive commissioner by rule may 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1452, effective April 2, 2015.

Sec. 593.078. Payment for Adult Residents.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.079. Previous Fee Agreements. [Repealed]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(112), effective April 2, 2015.

Sec. 593.080. State Claims for Unpaid Fees.

(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 prop-

erty 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.081. Trust Exemption.

(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 administered under the Estates 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 498 (S.B. 1623), § 1, effective June 18, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1453, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 846 (H.B. 2780), § 9, effective September 1, 2019.

Sec. 593.082. Filing of Claims.

- (a) In this section:

(1) "Person responsible for a resident" means the resident, a person liable for the support of the resident, or both.

(2) "Resident" means a person admitted to a residential care facility operated by the department for persons with an intellectual disability.

(b) A county or district attorney shall, on the written request of the department, represent the state in filing a claim in probate court or a petition in a court of competent jurisdiction to require a person responsible for a resident to appear in court and show cause why the state should not have judgment against the person for the resident's support and maintenance in a residential care facility operated by the department.

(c) On a sufficient showing, the court may enter judgment against the person responsible for the resident for the costs of the resident's support and maintenance.

(d) Sufficient evidence to authorize the court to enter judgment is a verified account, sworn to by the director of the residential care facility in which the person with an intellectual disability resided or has resided, as to the amount due.

(e) The judgment may be enforced as in other cases.

(f) The county or district attorney representing the state is entitled to a commission of 10 percent of the amount collected.

(g) The attorney general shall represent the state if the county and district attorney refuse or are unable to act on the department's request.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1454, effective April 2, 2015.

Secs. 593.083 to 593.090. [Reserved for expansion].

Subchapter E

Admission and Commitment Under Prior Law

Sec. 593.091. Admission and Commitment.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.092. Discharge of Person Voluntarily Admitted to Residential Care Facility.

(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 facility director receives written request from the person on whose application the resident was admitted, or on the resident's own request.

(b) The facility director may detain the resident for more than 96 hours in accordance with Section 593.030.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1455, effective April 2, 2015.

Sec. 593.093. Reimbursement to County.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

CHAPTER 594

Transfer and Discharge

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Subchapter A

General Provisions

Sec. 594.001. Applicability of Chapter.

(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 intellectual disability services; or

(3) discharge of a client by a director because the person is not a person with an intellectual disability according to the results of the determination of an intellectual disability .

(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 an intellectual disability is requested.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 16, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1456, effective April 2, 2015.

Sec. 594.002. Leave; Furlough.

The director may grant or deny a resident a leave of absence or furlough.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), 3.1457, effective April 2, 2015.

Sec. 594.003. Habeas Corpus.

This chapter does not alter or limit a resident's right to obtain a writ of habeas corpus.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Secs. 594.004 to 594.010. [Reserved for expansion].

Subchapter B

Transfer or Discharge

Sec. 594.011. Service Provider.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.012. Request by Client, Parent, or Guardian.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.013. Notice of Transfer or Discharge; Approval.

(a) A client and the parent or guardian 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.014. Right to Administrative Hearing.

(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 intellectual disability services unless the client is given the opportunity to request and receive an administrative hearing to contest the proposed transfer or discharge.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1458, effective April 2, 2015.

Sec. 594.015. Administrative Hearing.

(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 director 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1459, effective April 2, 2015.

Sec. 594.016. Decision.

(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 director 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1460, effective April 2, 2015.

Sec. 594.017. Appeal.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.018. Notice to Committing Court.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.019. Alternative Services.

(a) The department shall provide appropriate alternative or follow-up supportive services consistent with available resources by agreement among the department, the local intellectual and developmental disability 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1461, effective April 2, 2015.

Secs. 594.020 to 594.030. [Reserved for expansion].

Subchapter C

Transfer to State Mental Hospital

Sec. 594.0301. Definition.

In this subchapter, "state mental hospital" has the meaning assigned by Section 571.003.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1462, effective April 2, 2015.

Sec. 594.031. Transfer of Voluntary Resident.

A voluntary resident may not be transferred to a state mental hospital without legally adequate consent to the transfer.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.032. Transfer of Court-Committed Resident.

(a) The director 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:

(1) an examination of the resident by a licensed physician indicates symptoms of mental illness to the extent that care, treatment, and rehabilitation in a state mental hospital is in the best interest of the resident;

(2) the hospital administrator of the state mental hospital to which the resident is to be transferred agrees to the transfer; and

(3) the director coordinates the transfer with the hospital administrator of the state mental hospital.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1463, effective April 2, 2015.

Sec. 594.033. Evaluation; Court Order.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.034. Request for Transfer Order.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.035. Hearing Date.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.036. Notice.

(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 and a guardian has been appointed in a proceeding under Title 3, Estates Code.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 1039 (H.B. 2029), § 1, effective September 1, 1995; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1464, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 846 (H.B. 2780), § 10, effective September 1, 2019.

Sec. 594.037. Hearing Location.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.038. Hearing Before Jury.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.039. Resident Present at Hearing.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.040. Open Hearing.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.041. Medical Evidence.

(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 state mental hospital except on competent medical or psychiatric testimony.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1465, effective April 2, 2015.

Sec. 594.042. Hearing Determination.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.043. Discharge of Resident.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.044. Transfer To Residential Care Facility.

(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 director 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 director shall immediately provide for the return of the resident to the facility.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1466, 3.1467, effective April 2, 2015.

Sec. 594.045. Return of Court-Ordered Transfer Resident.

(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 the resident's intellectual disability; 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1468, effective April 2, 2015.

CHAPTER 595

Records

Section
595.001.

Confidentiality of Records.

595.002.	Rules.
595.003.	Consent to Disclosure.
595.004.	Right to Personal Record.
595.005.	Exceptions.
595.0055.	Disclosure of Name and Birth and Death Dates for Certain Purposes.
595.006.	Use of Record in Criminal Proceedings.
595.007.	Confidentiality of Past Services.
595.008.	Exchange of Records.
595.009.	Receipt of Information by Persons Other Than Client or Patient.
595.010.	Disclosure of Physical or Mental Condition.

Sec. 595.001. Confidentiality of Records.

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 an intellectual disability are confidential and may be disclosed only for the purposes and under the circumstances authorized by this chapter, subject to applicable federal and other state law .

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1469, effective April 2, 2015.

Sec. 595.002. Rules.

The executive commissioner shall adopt rules to carry out this chapter that are necessary or proper to:

- (1) prevent circumvention or evasion of the chapter;
- or
- (2) facilitate compliance with the chapter.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1470, effective April 2, 2015.

Sec. 595.003. Consent to Disclosure.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 595.004. Right to Personal Record.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 595.005. Exceptions.

(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 an intellectual disability.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1471, effective April 2, 2015.

Sec. 595.0055. Disclosure of Name and Birth and Death Dates for Certain Purposes.

(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 director 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.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 174 (S.B. 1764), § 2, effective May 27, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1472, effective April 2, 2015.

Sec. 595.006. Use of Record in Criminal Proceedings.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 595.007. Confidentiality of Past Services.

The prohibition against disclosing information in a confidential record applies regardless of when the person received services.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 595.008. Exchange of Records.

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 intellectual disability services as defined in this subtitle.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1473, effective April 2, 2015.

Sec. 595.009. Receipt of Information by Persons Other Than Client or Patient.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 595.010. Disclosure of Physical or Mental Condition.

This chapter does not prohibit a qualified professional from disclosing the current physical and mental condition of a person with an intellectual disability to the person's parent, guardian, relative, or friend.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1474, effective April 2, 2015.

CHAPTER 596

Public Responsibility Committees [Repealed]

Section 596.001.	Definitions [Repealed].
596.002.	Safeguard Procedure [Repealed].
596.003.	Creation of Committee [Repealed].
596.004.	Membership [Repealed].

Section	
596.005.	Selection [Repealed].
596.006.	Meetings [Repealed].
596.007.	Compensation [Repealed].
596.008.	Duties [Repealed].
596.009.	Investigations [Repealed].
596.010.	Annual Report [Repealed].

Sec. 596.001. Definitions [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 543 (S.B. 261), § 4, effective June 18, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 596.002. Safeguard Procedure [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 543 (S.B. 261), § 4, effective June 18, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 596.003. Creation of Committee [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 543 (S.B. 261), § 4, effective June 18, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 596.004. Membership [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 543 (S.B. 261), § 4, effective June 18, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 596.005. Selection [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 543 (S.B. 261), § 4, effective June 18, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 596.006. Meetings [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 543 (S.B. 261), § 4, effective June 18, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 596.007. Compensation [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 543 (S.B. 261), § 4, effective June 18, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 596.008. Duties [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 543 (S.B. 261), § 4, effective June 18, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 596.009. Investigations [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 543 (S.B. 261), § 4, effective June 18, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 596.010. Annual Report [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 543 (S.B. 261), § 4, effective June 18, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

CHAPTER 597

Capacity of Clients to Consent to Treatment

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Subchapter A

General Provisions

Sec. 597.001. Definitions.

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-IID.

(3) "Committee" means a surrogate consent committee established under Section 597.042.

(4) "ICF-IID" 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 individuals with intellectual and developmental disabilities.

(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-IID.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1475, effective April 2, 2015.

Sec. 597.002. Rules.

The executive commissioner may adopt rules necessary to implement this chapter.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1476, effective April 2, 2015.

Sec. 597.003. Exceptions.

(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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999.

Secs. 597.004 to 597.020. [Reserved for expansion].

Subchapter B

Assessment of Client's Capacity; Incapacitated Clients Without Guardians

Sec. 597.021. ICF-IID Assessment of Client's Capacity to Consent to Treatment.

(a) The executive commissioner by rule shall require an ICF-IID 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 department rule to determine a client's capacity to make treatment decisions.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1477, effective April 2, 2015.

Secs. 597.022 to 597.040. [Reserved for expansion].

Subchapter C

Surrogate Consent for ICF-IID Clients

Sec. 597.041. Surrogate Decision-Makers.

(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 Title 3, Estates Code.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1479, effective April 2, 2015.

Sec. 597.042. Surrogate Consent Committee Established; Departmental Support.

(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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999.

Sec. 597.043. Committee Membership.

(a) A surrogate consent committee considering an ap-

plication 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 an intellectual disability or parents, siblings, spouses, or children of a person with an intellectual disability;

(3) attorneys licensed in this state who have knowledge of legal issues of concern to persons with an intellectual disability or to the families of persons with an intellectual disability;

(4) members of private organizations that advocate on behalf of persons with an intellectual disability; and

(5) persons with demonstrated expertise or interest in the care and treatment of persons with an intellectual disability.

(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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1997, 75th Leg., ch. 450 (S.B. 85), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1480, effective April 2, 2015.

Sec. 597.044. Application for Treatment Decision.

(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-IID 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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1997, 75th Leg., ch. 450 (S.B. 85), § 2, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1481, effective April 2, 2015.

Sec. 597.045. Notice of Review of Application for Treatment Decision.

(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-IID with assistance from the department shall schedule a review of the application.

(c) The ICF-IID 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 department rule. The ICF-IID 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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1997, 75th Leg., ch. 450 (S.B. 85), § 3, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1482, effective April 2, 2015.

Sec. 597.046. Prereview of Application.

(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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1997, 75th Leg., ch. 450 (S.B. 85), § 4, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999.

Sec. 597.047. Confidential Information.

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 an intellectual disability, 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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1483, effective April 2, 2015.

Sec. 597.048. Review of Application.

(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 Estates Code.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1997, 75th Leg., ch. 450 (S.B. 85), § 5, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1484, effective April 2, 2015.

Sec. 597.049. Determination of Best Interest.

(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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1997, 75th Leg., ch. 450 (S.B. 85), § 6, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999.

Sec. 597.050. Notice of Determination.

(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-IID shall send a copy of the committee's opinion to:

- (1) each person notified under Section 597.045; and
- (2) the department.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1997, 75th Leg., ch. 450 (S.B. 85), § 7, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1485, effective April 2, 2015.

Sec. 597.051. Effect of Committee's Determination.

This chapter does not limit the availability of other lawful means of obtaining a client's consent for medical treatment.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999.

Sec. 597.052. Scope of Consent.

(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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1997, 75th Leg., ch. 450

(S.B. 85), § 8, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999.

Sec. 597.053. Appeals.

(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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999.

Sec. 597.054. Procedures.

(a) Each ICF-IID 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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(49), (82), (88), effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 450 (S.B. 85), § 9, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1486, effective April 2, 2015.

Sec. 597.055. Expiration [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 450 (S.B. 85), § 10, effective September 1, 1997.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993.

CHAPTERS 598 TO 610
[Reserved for expansion]

SUBTITLE E
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MENTAL ILLNESS
AND MENTAL RETARDATION

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CHAPTER 611

Mental Health Records

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Sec. 611.001. Definitions.

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.

HISTORY: Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 611.002. Confidentiality of Information and Prohibition Against Disclosure.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.11, effective August 30, 1993.

Sec. 611.003. Persons Who May Claim Privilege of Confidentiality.

- (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.

HISTORY: Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 611.004. Authorized Disclosure of Confidential Information Other Than in Judicial or Administrative Proceeding.

(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 iden-

tify 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 856 (S.B. 667), § 8, effective September 1, 1995; am. Acts 1999, 76th Leg., ch. 1264 (S.B. 1217), § 1, effective September 1, 1999; am. Acts 2005, 79th Leg., ch. 138 (H.B. 741), § 1, effective September 1, 2005.

Sec. 611.0041. Required Disclosure of Confidential Information Other Than in Judicial or Administrative Proceeding.

(a) In this section:

- (1) "Patient" has the meaning assigned by Section 552.0011.
- (2) "State hospital" has the meaning assigned by Section 552.0011.

(b) To the extent permitted by federal law, a professional shall disclose confidential information to the descendant of a patient of a state hospital if:

- (1) the patient has been deceased for at least 50 years; and
- (2) the professional does not have information indicating that releasing the medical record is inconsistent with any prior expressed preference of the deceased patient or personal representatives of the deceased patient's estate.

(c) 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.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1088 (H.B. 1901), § 1, effective September 1, 2019.

Sec. 611.0045. Right to Mental Health Record.

(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 Section 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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.12, effective August 30, 1993; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 14.806, effective September 1, 2001.

Sec. 611.005. Legal Remedies for Improper Disclosure or Failure to Disclose.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.13, effective August 30, 1993.

Sec. 611.006. Authorized Disclosure of Confidential Information in Judicial or Administrative Proceeding.

(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, of 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.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 856 (S.B. 667), § 9, effective September 1, 1995.

Sec. 611.007. Revocation of Consent.

(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.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 856 (S.B. 667), § 9, effective September 1, 1995.

Sec. 611.008. Request by Patient.

(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.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 856 (S.B. 667), § 9, effective September 1, 1995.

CHAPTER 612

Interstate Compact On Mental Health

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

Sec. 612.001. Execution of Interstate Compact.

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 pa-

tient 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 designated 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.”

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 612.002. Compact Administrator.

(a) Under the compact, the governor shall appoint the executive commissioner of the Health and Human Services Commission as the compact administrator.

(b) The compact administrator may appoint a designee to perform the administrator’s duties.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1487, effective April 2, 2015.

Sec. 612.003. Application of Sunset Act [Repealed].

Repealed by Acts 1991, 72nd Leg., 1st C.S., ch. 17 (H.B. 435), § 7.01(22), effective November 12, 1991.

Sec. 612.004. General Powers and Duties of Administrator.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 612.005. Supplementary Agreements.

(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 executive commissioner and the head of the department or agency:

- (1) under whose jurisdiction the institution or facility is operated; or
- (2) that will perform the service.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1488, effective April 2, 2015.

Sec. 612.006. Financial Arrangements.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 612.007. Requirements Affecting Transfers of Certain Patients.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

CHAPTER 613

Kidney Donation By Ward With Mental Retardation

Section	
613.001.	Definition.
613.002.	Court Order Authorizing Kidney Donation.
613.003.	Petition for Court Order.
613.004.	Court Hearing.
613.005.	Interview and Evaluation Order by Court.

Sec. 613.001. Definition.

In this chapter, “ward with mental retardation” means a ward who is a person with mental retardation, as defined by Subtitle D.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 613.002. Court Order Authorizing Kidney Donation.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 613.003. Petition for Court Order.

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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 613.004. Court Hearing.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 613.005. Interview and Evaluation Order by Court.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 17, effective September 1, 1993.

CHAPTER 614

Texas Correctional Office On Offenders With Medical or Mental Impairments

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614.003.	Texas Correctional Office on Offenders with Medical or Mental Impairments; Director.
614.0031.	Training Program.
614.0032.	Special Duties Related to Medically Recommended Supervision; Determinations Regarding Mental Illness or Intellectual Disability.
614.004.	Terms.
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614.007.	Powers and Duties.
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614.009.	Biennial Report.
614.010.	Personnel [Repealed].
614.0101.	Public Access.
614.0102.	Complaints.
614.011.	Additional Pilot Program [Repealed].
614.012.	Additional Duties [Repealed].
614.013.	Continuity of Care for Offenders with Mental Impairments.
614.014.	Continuity of Care for Elderly Offenders.
614.015.	Continuity of Care for Offenders with Physical Disabilities, Terminal Illnesses, or Significant Illnesses.
614.016.	Continuity of Care for Certain Offenders by Law Enforcement and Jails.
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614.018.	Continuity of Care for Juveniles with Mental Impairments.
614.019.	Programs for Juveniles.
614.020.	Youth Assertive Community Treatment Program.
614.0205.	Appropriation Contingency.
614.021.	Services for Wrongfully Imprisoned Persons.

Sec. 614.001. Definitions.

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 an intellectual disability 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 service 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;

(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

(E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services of extended or lifelong duration that are individually planned and coordinated.

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

(5) "Mental illness" has the meaning assigned by Section 571.003.

(6) "Mental impairment" means a mental illness, an intellectual disability, or a developmental disability.

(7) "Intellectual disability" 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 criminal offense and who:

(A) is a person with:

(i) a mental impairment; or

(ii) a physical disability, terminal illness, or significant illness; or

(B) is elderly.

(9) "Office" means the Texas Correctional Office on Offenders with Medical or Mental Impairments.

(10) "Person with an intellectual disability" means a juvenile or adult with an intellectual disability that is not a mental disorder who, because of the mental deficit, requires special training, education, supervision, treat-

ment, care, or control in the person's home or community or in a private school or state supported living center for persons with an intellectual disability.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.52, effective August 30, 1993; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 2, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 1306 (S.B. 839), § 1, effective September 1, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1489, effective April 2, 2015.

Sec. 614.002. Composition of Committee; Duties.

(a) The Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments is composed of 28 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, intellectual disabilities, 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 correctional institutions division of the Texas Department of Criminal Justice;

(2) the Department of State Health Services;

(3) the parole division of the Texas Department of Criminal Justice;

(4) the community justice assistance division of the Texas Department of Criminal Justice;

(5) the Texas Juvenile Justice Department;

(6) the Department of Assistive and Rehabilitative Services;

(7) the Correctional Managed Health Care Committee;

(8) Mental Health America of Texas;

(9) the Board of Pardons and Paroles;

(10) the Texas Commission on Law Enforcement;

(11) the Texas Council of Community Centers;

(12) the Commission on Jail Standards;

(13) the Texas Council for Developmental Disabilities;

(14) the Arc of Texas;

(15) the National Alliance on Mental Illness of Texas;

(16) the Parent Association for the Retarded of Texas, Inc.;

(17) the Health and Human Services Commission; and

(18) 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.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.53(a), effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 321 (H.B. 2162), § 2.020, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 6.50, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 79 (H.B. 1610), § 5, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 1188 (S.B. 365), § 3.01, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 3, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1170 (S.B. 287), § 27.01, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 9.005, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 1112 (H.B. 2384), § 1, effective September 1, 2005; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.112, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 1176 (H.B. 3278), § 8, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 93 (S.B. 686), § 2.39, effective May 18, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1490, effective April 2, 2015.

Sec. 614.003. Texas Correctional Office on Offenders with Medical or Mental Impairments; Director.

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.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1188 (S.B. 365), § 3.02, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 4, effective September 1, 2003.

Sec. 614.0031. Training Program.

(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.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1188 (S.B. 365), § 3.02, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 5, effective September 1, 2003.

Sec. 614.0032. Special Duties Related to Medically Recommended Supervision; Determinations Regarding Mental Illness or Intellectual Disability.

(a) The office shall:

(1) perform duties imposed on the office by Section 508.146, Government Code; and

(2) periodically identify state jail felony defendants suitable for release under Article 42A.561, Code of Criminal Procedure, and perform other duties imposed on the office by that article.

(b) The office shall

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) The office shall approve and make generally available in electronic format a standard form for use by a person providing a written report under Article 16.22(a)(1)(B), Code of Criminal Procedure.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 6, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 35, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 1269 (H.B. 2194), § 3, effective June 18, 2005; am. Acts 2007, 80th Leg., ch. 617 (H.B. 431), § 2, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 8.003, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 1308 (S.B. 909), § 44, effective June 15, 2007; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 12.019, effective September 1, 2009; am. Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 2.70, effective January 1, 2017; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), §§ 34, 35(3), effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 1276 (H.B. 601), §§ 24, 25, effective September 1, 2019.

Sec. 614.004. Terms.

The at-large members of the committee serve for staggered six-year terms with the terms of approximately one-third of the at-large members expiring on February 1 of each odd-numbered year.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 7, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1170 (S.B. 287), § 27.02, effective September 1, 2003.

Sec. 614.005. Officers; Meetings.

(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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.53(a), effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 1188 (S.B. 365), § 3.03, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 8, effective September 1, 2003.

Sec. 614.006. Applicability of Certain Government Code Provisions.

(a) The provisions of Chapter 2110, Government Code, other than Section 2110.002(a), apply to the committee.

(b) 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 9, effective September 1, 2003.

Sec. 614.007. Powers and Duties.

The office 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 office 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

(11) assess the need for demonstration projects and provide management for approved projects.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.53(a), effective August 30, 1993; am. Acts 1997, 75th Leg., ch. 312 (H.B. 1747), § 6, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1188 (S.B. 365), § 3.04, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 10, effective September 1, 2003.

Sec. 614.008. Community-Based Diversion Program for Offenders with Medical or Mental Impairments.

(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 or persons with physical disabilities, terminal illnesses, or significant illnesses 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 office.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.53(a), effective August 30, 1993; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 11, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1491, effective April 2, 2015.

Sec. 614.009. Biennial Report.

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 special needs;

(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, 614.016, and 614.018, 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 488 (S.B. 252), § 2, effective September 1, 1993; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 12, effective September 1, 2003; am. Acts 2009, 81st Leg., ch. 1187 (H.B. 3689), § 4.009, effective June 19, 2009.

Sec. 614.010. Personnel [Repealed].

Repealed by Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 22(1), effective September 1, 2003.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1188 (S.B. 365), § 3.05, effective September 1, 1999.

Sec. 614.0101. Public Access.

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.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1188 (S.B. 365), § 3.05, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 13, effective September 1, 2003.

Sec. 614.0102. Complaints.

(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.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1188 (S.B. 365), § 3.05, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 14, effective September 1, 2003.

Sec. 614.011. Additional Pilot Program [Repealed].

Repealed by Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 22(2), effective September 1, 2003.

HISTORY: Enacted by Acts 1991, 72nd Leg., 2nd C.S., ch. 10 (H.B. 93), § 1.04, effective December 1, 1991.

Sec. 614.012. Additional Duties [Repealed].

Repealed by Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 22(3), effective September 1, 2003.

HISTORY: Enacted by Acts 1991, 72nd Leg., 2nd C.S., ch. 10 (H.B. 93), § 1.05, effective December 1, 1991.

Sec. 614.013. Continuity of Care for Offenders with Mental Impairments.

(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 intellectual and developmental disability 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 of and the exchange of information on offenders with mental impairments by local and state criminal justice agencies, the Department of State Health Services and the Department of Aging and Disability Services, local mental health or intellectual and developmental disability 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.

(b-1) Subject to available resources, and to the extent feasible, the methods established under Subsection (b) must ensure that each offender with a mental impairment is identified and qualified for the continuity of care system and serve adults with severe and persistent mental illness who are experiencing significant functional impairment due to a mental health disorder that is defined by the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5), including:

(1) major depressive disorder, including single episode or recurrent major depressive disorder;

(2) post-traumatic stress disorder;

(3) schizoaffective disorder, including bipolar and depressive types;

(4) psychotic disorder;

(5) anxiety disorder;

(6) delusional disorder; or

(7) any other diagnosed mental health disorder that is severe or persistent in nature.

(c) The Texas Department of Criminal Justice, the Department of State Health Services, local mental health or intellectual and developmental disability 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 intellectual and developmental disability 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 intellectual and developmental disability 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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 488 (S.B. 252), § 1, effective September 1, 1993; am. Acts 1997, 75th Leg., ch. 312 (H.B. 1747), § 7, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 165 (S.B. 644), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 15, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 1306 (S.B. 839), § 2, effective September 1, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1492, effective April 2, 2015; am. Acts 2015, 84th Leg., ch. 753 (H.B. 1908), § 1, effective September 1, 2015.

Sec. 614.014. Continuity of Care for Elderly Offenders.

(a) The Texas Department of Criminal Justice and the executive commissioner by rule shall adopt a memorandum of understanding that establishes the respective responsibilities of the Texas Department of Criminal Justice, the Department of State Health Services, the Department of Aging and Disability Services, and the Department of Assistive and Rehabilitative Services 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 Department of State Health Services, the Department of Aging and Disability Services, and the Department of Assistive and Rehabilitative Services; and
- (3) identifying the services needed by elderly offenders to reenter the community successfully.

(c) The Texas Department of Criminal Justice, the Department of State Health Services, the Department of Aging and Disability Services, and the Department of Assistive and Rehabilitative Services 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.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 488 (S.B. 252), § 1, effective September 1, 1993; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 16, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1493, effective April 2, 2015.

Sec. 614.015. Continuity of Care for Offenders with Physical Disabilities, Terminal Illnesses, or Significant Illnesses.

(a) The Texas Department of Criminal Justice and the executive commissioner by rule shall adopt a memoran-

dum of understanding that establishes the respective responsibilities of 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 to institute a continuity of care and service program for offenders in the criminal justice system who are persons with physical disabilities, terminal illnesses, or significant illnesses. 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 persons with physical disabilities, terminal illnesses, or significant illnesses;

- (2) developing interagency rules, policies, and procedures for the coordination of care of and the exchange of information on offenders who are persons with physical disabilities, terminal illnesses, or significant illnesses 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 persons with physical disabilities, terminal illnesses, or significant illnesses 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 persons with physical disabilities, terminal illnesses, or significant illnesses; and
- (2) actively seek federal grants or funds to operate and expand the program.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 488 (S.B. 252), § 1, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 835 (H.B. 2859), § 26, effective September 1, 1995; am. Acts 2007, 80th Leg., ch. 1306 (S.B. 839), § 3, effective September 1, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1494, effective April 2, 2015.

Sec. 614.016. Continuity of Care for Certain Offenders by Law Enforcement and Jails.

(a) The office, the Texas Commission on Law Enforcement, 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 persons with mental impairments, physical disabilities, terminal illnesses, or significant illnesses, or who are elderly.

(b) The memorandum of understanding must establish methods for:

- (1) identifying offenders in the criminal justice system who are persons with mental impairments, physical

disabilities, terminal illnesses, or significant illnesses, or who are elderly;

(2) developing procedures for the exchange of information relating to offenders who are persons with mental impairments, physical disabilities, terminal illnesses, or significant illnesses, or who are elderly by the office, the Texas Commission on Law Enforcement, 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 persons with mental impairments, physical disabilities, terminal illnesses, or significant illnesses, or who are elderly.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 488 (S.B. 252), § 1, effective September 1, 1993; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 17, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 1306 (S.B. 839), § 4, effective September 1, 2007; am. Acts 2013, 83rd Leg., ch. 93 (S.B. 686), § 2.40, effective May 18, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1495, effective April 2, 2015.

Sec. 614.017. Exchange of Information.

(a) An agency shall:

(1) accept information relating to a special needs offender or a juvenile with a mental impairment 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 or a juvenile with a mental impairment, including information about the offender's or juvenile'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 juvenile or 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 Justice Department;
- (E) the Department of Assistive and Rehabilitative Services;
- (F) the Texas Education Agency;
- (G) the Commission on Jail Standards;
- (H) the Department of Aging and Disability Services;
- (I) the Texas School for the Blind and Visually Impaired;
- (J) community supervision and corrections departments and local juvenile probation departments;

(K) personal bond pretrial release offices established under Article 17.42, Code of Criminal Procedure;

(L) local jails regulated by the Commission on Jail Standards;

(M) a municipal or county health department;

(N) a hospital district;

(O) a judge of this state with jurisdiction over juvenile or criminal cases;

(P) an attorney who is appointed or retained to represent a special needs offender or a juvenile with a mental impairment;

(Q) the Health and Human Services Commission;

(R) the Department of Information Resources;

(S) 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; and

(T) the Department of Family and Protective Services.

(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.

(3) "Juvenile with a mental impairment" means a juvenile with a mental impairment in the juvenile justice system.

(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.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 321 (H.B. 2162), § 1.107, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 312 (H.B. 1747), § 8, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1067 (H.B. 3256), § 1, effective June 18, 1999; am. Acts 1999, 76th Leg., ch. 1188 (S.B. 365), § 3.06, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 247 (S.B. 661), § 1, effective May 22, 2001; am. Acts 2003, 78th Leg., ch. 6 (S.B. 519), §§ 1, 2, 6, effective April 10, 2003; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 18, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 706 (S.B. 396), § 1, effective June 17, 2005; am. Acts 2007, 80th Leg., ch. 1306 (S.B. 839), § 5, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 1187 (H.B. 3689), §§ 4.007, 4.008, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 2.003, effective September 1, 2011.

Sec. 614.018. Continuity of Care for Juveniles with Mental Impairments.

(a) The Texas Juvenile Justice Department, the Department of Public Safety, the Department of State Health Services, the Department of Aging and Disability Services, the Department of Family and Protective Services, the Texas Education Agency, and local juvenile probation departments shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for

juveniles with mental impairments in the juvenile justice system. The Texas Correctional Office on Offenders with Medical and Mental Impairments shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying juveniles with mental impairments in the juvenile justice system and collecting and reporting relevant data to the office;

(2) developing interagency rules, policies, and procedures for the coordination of care of and the exchange of information on juveniles with mental impairments who are committed to or treated, served, or supervised by the Texas Juvenile Justice Department, the Department of Public Safety, the Department of State Health Services, the Department of Family and Protective Services, the Department of Aging and Disability Services, the Texas Education Agency, local juvenile probation departments, local mental health or intellectual and developmental disability authorities, and independent school districts; and

(3) identifying the services needed by juveniles with mental impairments in the juvenile justice system.

(c) For purposes of this section, "continuity of care and service program" includes:

(1) identifying the medical, psychiatric, or psychological care or treatment needs and educational or rehabilitative service needs of a juvenile with mental impairments in the juvenile justice system;

(2) developing a plan for meeting the needs identified under Subdivision (1); and

(3) coordinating the provision of continual treatment, care, and services throughout the juvenile justice system to juveniles with mental impairments.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1187 (H.B. 3689), § 4.006, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 2.004, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1496, effective April 2, 2015.

Sec. 614.019. Programs for Juveniles.

(a) The office, in cooperation with the Department of State Health Services, the Department of Family and Protective Services, the Texas Juvenile Justice Department, 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.

(b) A child with mental illness who is receiving continuity of care services during parole from the Texas Juvenile Justice Department and who is no longer eligible to receive services from a local mental health authority when the child becomes 17 years of age because the child does not meet the requirements of a local service area plan under Section 533.0352(a) may continue to receive continuity of care services from the office until the child completes the child's parole.

(c) A child with mental illness or an intellectual disability who is discharged from the Texas Juvenile Justice Department under Section 244.011, Human Resources Code, may receive continuity of care services from the

office for a minimum of 90 days after discharge from the department and for as long as necessary for the child to demonstrate sufficient stability to transition successfully to mental health or intellectual disability services provided by a local mental health or intellectual and developmental disability authority.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 328 (H.B. 1901), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 19, effective September 1, 2003; am. Acts 2009, 81st Leg., ch. 1038 (H.B. 4451), § 3, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 3.015, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1497, effective April 2, 2015.

Sec. 614.020. Youth Assertive Community Treatment Program.

(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 Department of State Health Services. 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.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1499 (S.B. 1470), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 20, effective September 1, 2003 (renumbered from Sec. 614.019); am. Acts 2003, 78th Leg., ch. 1275 (H.B.

3506), § 2(95), effective September 1, 2003 (renumbered from Sec. 614.019); am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1498, effective April 2, 2015.

Sec. 614.0205. Appropriation Contingency.

The office is required to provide a service or program under Section 614.019(a) or 614.020 only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the office may, but is not required to, provide a service or program under Section 614.019(a) or 614.020 using other appropriations available for that purpose.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 785 (H.B. 2119), § 1, effective June 17, 2011.

Sec. 614.021. Services for Wrongfully Imprisoned Persons.

(a) In this section, “wrongfully imprisoned person” has the meaning assigned by Section 501.101, Government Code.

(b) The office shall develop a plan to use existing case management functions to assist wrongfully imprisoned persons who are discharged from the Texas Department of Criminal Justice in:

- (1) accessing medical and dental services, including assistance in completing documents required for application to federal entitlement programs;
- (2) obtaining mental health treatment and related support services through the public mental health system for as long as the wrongfully imprisoned person requires assistance; and
- (3) obtaining appropriate support services, as identified by the wrongfully imprisoned person and the assigned case manager, to assist the person in making the transition from incarceration into the community.

(c) The office shall submit an annual report to the legislature on the provision of services under this section to wrongfully imprisoned persons.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 180 (H.B. 1736), § 11, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 27.002(10), effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1499, effective April 2, 2015.

CHAPTER 615

Miscellaneous Provisions

Section 615.001. 615.002.	County Responsibility. Access to Records by Protection and Advocacy System.
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Sec. 615.001. County Responsibility.

Each commissioners court shall provide for the support of a person with mental illness or an intellectual disability 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 intellectual disability facility.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1500, effective April 2, 2015.

Sec. 615.002. Access to Records by Protection and Advocacy System.

(a) Notwithstanding other state law, the protection and advocacy system established in this state under the federal Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. Sec. 10801 et seq.) and the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. Sec. 15001 et seq.) is entitled to access to records relating to persons with mental illness or developmental disabilities to the extent authorized by federal law.

(b) If the person consents to notification, the protection and advocacy system shall notify the Department of State Health Services or the Department of Aging and Disability Services, as appropriate, if the system decides to investigate a complaint of abuse, neglect, or rights violation that relates to a person with mental illness or a developmental disability who is a patient or client in a facility or program operated by, licensed by, certified by, or in a contractual relationship with that department.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1500, effective April 2, 2015.

CHAPTER 616

Mental Health Court Programs [Renumbered]

Section 616.001. 616.002. 616.003. 616.004. 616.005.	Mental Health Court Program Defined [Renumbered]. Authority to Establish Program [Renumbered]. Program [Renumbered]. Oversight [Deleted]. Participant Payment for Treatment and Services [Renumbered].
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Sec. 616.001. Mental Health Court Program Defined [Renumbered].

Renumbered to Tex. Gov’t Code § 125.001 by Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.06, effective September 1, 2013.

Sec. 616.002. Authority to Establish Program [Renumbered].

Renumbered to Tex. Gov’t Code § 125.002 by Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.06, effective September 1, 2013.

Sec. 616.003. Program [Renumbered].

Renumbered to Tex. Gov’t Code § 125.003 by Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.06, effective September 1, 2013.

Sec. 616.004. Oversight [Deleted].

Deleted by Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.06, effective September 1, 2013.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1120 (H.B. 2609), § 1, effective September 1, 2003.

Sec. 616.005. Participant Payment for Treatment and Services [Renumbered].

Renumbered to Tex. Gov’t Code § 125.004 by Acts 2013,

83rd Leg., ch. 747 (S.B. 462), § 1.06, effective September 1, 2013.

CHAPTER 617

**Veterans Court Program
[Renumbered]**

Section 617.001.	Veterans Court Program Defined; Procedures for Certain Defendants [Renumbered].
617.002.	Authority to Establish Program; Eligibility [Renumbered].
617.003.	Duties of Veterans Court [Renumbered].
617.004.	Establishment of Regional Program [Renumbered].
617.005.	Oversight [Deleted].
617.006.	Fees [Renumbered].

Sec. 617.001. Veterans Court Program Defined; Procedures for Certain Defendants [Renumbered].

Renumbered to Tex. Gov't Code § 124.001 by Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.05, effective September 1, 2013.

Sec. 617.002. Authority to Establish Program; Eligibility [Renumbered].

Renumbered to Tex. Gov't Code § 124.002 by Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.05, effective September 1, 2013.

Sec. 617.003. Duties of Veterans Court [Renumbered].

Renumbered to Tex. Gov't Code § 124.003 by Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.05, effective September 1, 2013.

Sec. 617.004. Establishment of Regional Program [Renumbered].

Renumbered to Tex. Gov't Code § 124.004 by Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.05, effective September 1, 2013.

Sec. 617.005. Oversight [Deleted].

Deleted by Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.05, effective September 1, 2013.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 840 (S.B. 1940), § 4, effective June 19, 2009; Enacted by Acts 2009, 81st Leg., ch. 1103 (H.B. 4833), § 17, effective September 1, 2009.

Sec. 617.006. Fees [Renumbered].

Renumbered to Tex. Gov't Code § 124.005 by Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.05, effective September 1, 2013.

**CHAPTERS 618 TO 670
[Reserved for expansion]**

TITLE 9

SAFETY

SUBTITLE B

EMERGENCIES

CHAPTER 773

Emergency Medical Services

Subchapter A

General Provisions

Section 773.003.	Definitions.
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Sec. 773.003. Definitions.

In this chapter:

- (1) "Advanced life support" means emergency prehospital care that uses invasive medical acts.
- (2) "Basic life support" means emergency prehospital care that uses noninvasive medical acts.
- (3) to (5) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(114) effective April 2, 2015.]
- (6) "Commissioner" means the commissioner of state health services.
- (7) "Department" means the Department of State Health Services.
- (7-a) "Emergency medical care" means bona fide emergency services provided after the sudden onset of a medical or traumatic condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:
 - (A) placing the patient's health in serious jeopardy;
 - (B) serious impairment to bodily functions; or
 - (C) serious dysfunction of any bodily organ or part.
- (8) "Emergency medical services" means services used to respond to an individual's perceived need for immediate medical care and to prevent death or aggravation of physiological or psychological illness or injury.
- (9) "Emergency medical services and trauma care system" means an arrangement of available resources that are coordinated for the effective delivery of emergency health care services in geographical regions consistent with planning and management standards.
- (10) "Emergency medical services personnel" means:
 - (A) emergency care attendant;
 - (B) emergency medical technicians;
 - (C) advanced emergency medical technicians;
 - (D) emergency medical technicians—paramedic; or
 - (E) licensed paramedic.
- (11) "Emergency medical services provider" means a person who uses or maintains emergency medical services vehicles, medical equipment, and emergency medi-

cal services personnel to provide emergency medical services.

(12) "Emergency medical services vehicle" means:

(A) a basic life-support emergency medical services vehicle;

(B) an advanced life-support emergency medical services vehicle;

(C) a mobile intensive-care unit; or

(D) a specialized emergency medical services vehicle.

(13) "Emergency medical services volunteer" means emergency medical services personnel who provide emergency prehospital care without remuneration, except reimbursement for expenses.

(14) "Emergency medical services volunteer provider" means an emergency medical services provider that has at least 75 percent of its total personnel as volunteers and is recognized as a Section 501(c)(3) nonprofit corporation by the Internal Revenue Service.

(15) "Emergency prehospital care" means care provided to the sick or injured before or during transportation to a medical facility, and includes any necessary stabilization of the sick or injured in connection with that transportation.

(15-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(16) "First responder organization" means a group or association of certified emergency medical services personnel that, working in cooperation with a licensed emergency medical services provider, provides immediate on-scene care to ill or injured persons but does not transport those persons.

(17) "Governmental entity" means a county, municipality, school district, or special district or authority created in accordance with the Texas Constitution.

(18) "Medical supervision" means direction given to emergency medical services personnel by a licensed physician under Subtitle B, Title 3, Occupations Code, and the rules adopted under that subtitle by the Texas Medical Board.

(19) "Trauma facility" means a health care facility that is capable of comprehensive treatment of seriously injured persons and is a part of an emergency medical services and trauma care system.

(20) "Trauma patient" means a critically injured person who has been:

(A) evaluated by a physician, a registered nurse, or emergency medical services personnel; and

(B) found to require medical care in a trauma facility.

(21) [Blank].

(22) "Trauma services" includes services provided to a severely or seriously injured patient who has a principal diagnosis listed in the Injuries and Poisonings Chapter of the International Classification of Diseases, Clinical Modification.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 678 (H.B. 2136), § 1, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 14 (S.B. 404), § 239, effective September 1, 1991; am. Acts 1991, 72nd Leg., ch. 605 (S.B. 1129), § 1, effective September 1, 1991; am. Acts 1991, 72nd Leg., ch. 853 (S.B. 1412), § 3, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 915 (H.B. 1604),

§ 1, effective August 28, 1995; am. Acts 1997, 75th Leg., ch. 435 (H.B. 1407), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1377 (H.B. 1398), § 2.02, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 14.808, effective September 1, 2001; am. Acts 2005, 79th Leg., ch. 299 (S.B. 330), § 2, effective September 1, 2005; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 22.001(29), effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1511, 3.1639(114), effective April 2, 2015.

TITLE 12

HEALTH AND MENTAL HEALTH

CHAPTER 1001

Department of State Health Services [Expires September 1, 2027]

Subchapter D. Powers and Duties of Department [Expires September 1, 2027]

Section	
1001.071.	General Powers and Duties of Department Related to Health Care. [Expires September 1, 2027]
1001.0711.	School Health Advisory Committee. [Expires September 1, 2027]
1001.072.	General Powers and Duties of Department Related to Mental Health. [Expires September 1, 2027]
1001.075.	Rules. [Expires September 1, 2027]
1001.084.	[2 Versions: As added by Acts 2015, 84th Leg., ch. 1, expires September 1, 2023] Contracting and Auditing Authority; Delegation.
1001.084.	[2 Versions: As renumbered by Acts 2015, 84th Leg., ch. 1236, Mental Health and Substance Abuse Public Reporting System. [Expires September 1, 2027]
1001.086.	Treatment Alternatives Training Curriculum for Judges and Attorneys. [Expires September 1, 2027]
1001.087.	Contracting for and Administration of Certain Functions Relating to Substance Abuse. [Expires September 1, 2027]
1001.088.	Mental Health and Substance Abuse Hotlines. [Expires September 1, 2027]
Subchapter H. Mental Health First Aid Training [Expires September 1, 2027]	
1001.201.	Definitions. [Expires September 1, 2027]
1001.2015.	Limitation on Grants. [Expires September 1, 2027]
1001.202.	Grants for Training of Mental Health First Aid Trainers. [Expires September 1, 2027]
1001.203.	Grants for Training Certain University Employees, School District Employees, and School Resource Officers in Mental Health First Aid. [Expires September 1, 2027]
1001.2031.	Supplemental Grants for Training Certain University Employees, School District Employees, and School Resource Officers in Mental Health First Aid. [Expires September 1, 2027]
1001.204.	Plans for Mental Health First Aid Training Programs. [Expires September 1, 2027]
1001.205.	Reports. [Expires September 1, 2027]
1001.206.	Liability. [Expires September 1, 2027]
1001.207.	Program Promotion [Expires September 1, 2027]

**Subchapter I. Mental Health Program for Veterans
[Expires September 1, 2027]**

- Section
- 1001.221. Definitions. [Expires September 1, 2027]
- 1001.222. General Powers and Duties. [Expires September 1, 2027]
- 1001.223. Grants. [Repealed]
- 1001.224. Annual Report. [Expires September 1, 2027]

Subchapter K. Data Collection and Analysis Regarding Opioid Overdose Deaths and Co-Occurring Substance Use Disorders

- 1001.261. Data Collection and Analysis Regarding Opioid Overdose Deaths and Co-Occurring Substance Use Disorders.

Subchapter K. High-Risk Maternal Care Coordination Services Pilot Program [Effective until September 2, 2023]

- 1001.261. Definitions. [Effective until September 2, 2023]
- 1001.262. Establishment of Pilot Program; Rules. [Effective until September 2, 2023]
- 1001.263. Duties of Department. [Effective until September 2, 2023]
- 1001.264. Pilot Program Report. [Effective until September 2, 2023]
- 1001.265. Expiration. [Effective until September 2, 2023]

Subchapter D

*Powers and Duties of Department
[Expires September 1, 2027]*

Sec. 1001.071. General Powers and Duties of Department Related to Health Care. [Expires September 1, 2027]

(a) The department is the state agency with primary responsibility to administer or provide health services, including:

- (1) disease prevention;
- (2) health promotion;
- (3) indigent health care;
- (4) certain acute care services;
- (5) licensing of certain health professions; and
- (6) other health-related services as provided by law.

(b) The department is responsible for administering human services programs regarding the public health, including:

- (1) implementing the state’s public health care delivery programs under the authority of the department;
- (2) administering state health facilities, hospitals, and health care systems;
- (3) developing and providing health care services, as directed by law;
- (4) providing for the prevention and control of communicable diseases;
- (5) providing public education on health-related matters, as directed by law;
- (6) compiling and reporting health-related information, as directed by law;
- (7) acting as the lead agency for implementation of state policies regarding the human immunodeficiency virus and acquired immunodeficiency syndrome and administering programs related to the human immuno-

deficiency virus and acquired immunodeficiency syndrome;

(8) investigating the causes of injuries and methods of prevention;

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

(10) administering the registration of vital statistics;

(11) licensing, inspecting, and enforcing regulations regarding health facilities, other than long-term care facilities regulated by the Department of Aging and Disability Services;

(12) implementing established standards and procedures for the management and control of sanitation and for health protection measures;

(13) enforcing regulations regarding radioactive materials;

(14) enforcing regulations regarding food, drugs, cosmetics, and health devices;

(15) enforcing regulations regarding food service establishments, retail food stores, mobile food units, and roadside food vendors;

(16) enforcing regulations controlling hazardous substances in households and workplaces; and

(17) implementing a mental health program for veterans.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.09, effective September 1, 2003; am. Acts 2013, 83rd Leg., ch. 352 (H.B. 2392), § 1, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.0005(a), 3.0005(b), effective April 2, 2015; am. Acts 2015, 84th Leg., ch. 838 (S.B. 202), § 3.020, effective September 1, 2015.

Sec. 1001.0711. School Health Advisory Committee. [Expires September 1, 2027]

(a) The executive commissioner by rule shall establish a School Health Advisory Committee at the department to provide assistance to the council in establishing a leadership role for the department in support for and delivery of coordinated school health programs and school health services.

(b) The committee shall include at least:

(1) one representative from the Department of Agriculture, appointed by the commissioner of agriculture; and

(2) one representative from the Texas Education Agency, appointed by the commissioner of education.

(c) Section 2110.008, Government Code, does not apply to a committee created under this section.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 784 (S.B. 42), § 9, effective June 17, 2005; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1633, effective April 2, 2015.

Sec. 1001.072. General Powers and Duties of Department Related to Mental Health. [Expires September 1, 2027]

The department is responsible for administering human services programs regarding mental health, including:

(1) administering and coordinating mental health services at the local and state level;

(2) operating the state’s mental health facilities; and

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.09, effective September 1, 2003.

Sec. 1001.075. Rules. [Expires September 1, 2027]

The executive commissioner may adopt rules reasonably necessary for the department to administer this chapter, consistent with the memorandum of understanding under Section 531.0055(k), Government Code, between the commissioner and the executive commissioner, as adopted by rule.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.09, effective September 1, 2003.

Sec. 1001.084. [2 Versions: As added by Acts 2015, 84th Leg., ch. 1, expires September 1, 2023] Contracting and Auditing Authority; Delegation.

(a) The executive commissioner, as authorized by Section 531.0055, Government Code, may delegate to the department the executive commissioner's authority under that section for contracting and auditing relating to the department's powers, duties, functions, and activities.

(b) If the executive commissioner does not make a delegation under Subsection (a), a reference in law to the department with respect to the department's contracting or auditing authority means the executive commissioner. If the executive commissioner makes a delegation under Subsection (a), a reference in law to the department's contracting or auditing authority means that authority the executive commissioner has delegated to the department.

(c) If the executive commissioner revokes all or part of a delegation made under Subsection (a), a reference in law to the department with respect to a function for which the delegation was revoked means the executive commissioner or another entity to which the executive commissioner delegates that authority.

(d) It is the legislature's intent that the executive commissioner retain the authority over and responsibility for contracting and auditing at each health and human services agency as provided by Section 531.0055, Government Code. A statute enacted on or after January 1, 2015, that references the contracting or auditing authority of the department does not give the department direct contracting or auditing authority unless the statute expressly provides that the contracting or auditing authority:

- (1) is given directly to the department; and
- (2) is an exception to the exclusive contracting and auditing authority given to the executive commissioner under Section 531.0055, Government Code.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1635, effective April 2, 2015.

Sec. 1001.084 [2 Versions: As renumbered by Acts 2015, 84th Leg., ch. 1236, Mental Health and Substance Abuse Public Reporting System. [Expires September 1, 2027]

(a) The department, in collaboration with the commission, shall establish and maintain a public reporting

system of performance and outcome measures relating to mental health and substance abuse services established by the Legislative Budget Board, the department, and the commission. The system must allow external users to view and compare the performance, outputs, and outcomes of:

- (1) community centers established under Subchapter A, Chapter 534, that provide mental health services;
- (2) Medicaid managed care pilot programs that provide mental health services; and
- (3) agencies, organizations, and persons that contract with the state to provide substance abuse services.

(b) The system must allow external users to view and compare the performance, outputs, and outcomes of the Medicaid managed care programs that provide mental health services.

(c) The department shall post the performance, output, and outcome measures on the department's website so that the information is accessible to the public. The department shall post the measures quarterly or semiannually in accordance with when the measures are reported to the department.

(d) The department shall consider public input in determining the appropriate outcome measures to collect in the public reporting system. To the extent possible, the department shall include outcome measures that capture inpatient psychiatric care diversion, avoidance of emergency room use, criminal justice diversion, and the numbers of people who are homeless served.

(e) The commission shall conduct a study to determine the feasibility of establishing and maintaining the public reporting system, including, to the extent possible, the cost to the state and impact on managed care organizations and providers of collecting the outcome measures required by Subsection (d). Not later than December 1, 2014, the commission shall report the results of the study to the legislature and appropriate legislative committees.

(f) The department shall ensure that information reported through the public reporting system does not permit the identification of an individual.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1143 (S.B. 58), § 3, effective September 1, 2013; Enacted by Acts 2013, 83rd Leg., ch. 1147 (S.B. 126), § 1, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 21.001(34), effective September 1, 2015 (renumbered from Sec. 1001.078).

Sec. 1001.086. Treatment Alternatives Training Curriculum for Judges and Attorneys. [Expires September 1, 2027]

(a) The department, with input from the court of criminal appeals and the forensic director appointed under Section 532.013, shall develop and maintain a training curriculum for judges and attorneys that provides information on inpatient and outpatient treatment alternatives to inpatient commitment to a state hospital for a patient whom a court is ordering to receive mental health services:

- (1) to attain competency to stand trial under Chapter 46B, Code of Criminal Procedure; or
- (2) following an acquittal by reason of insanity under Chapter 46C, Code of Criminal Procedure.

(b) The training curriculum developed and maintained under Subsection (a) must include a guide to treatment

alternatives, other than inpatient treatment at a state hospital, from which a patient described by Subsection (a) may receive mental health services.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 207 (S.B. 1507), § 3.

Sec. 1001.087. Contracting for and Administration of Certain Functions Relating to Substance Abuse. [Expires September 1, 2027]

(a) The department may contract only with local mental health authorities and local behavioral health authorities to administer outreach, screening, assessment, and referral functions relating to the provision of substance abuse services. A local mental health authority or local behavioral health authority may subcontract with a substance abuse or behavioral health service provider to provide those services.

(b) A local mental health authority or local behavioral health authority who contracts with the department to administer outreach, screening, assessment, and referral functions relating to the provision of substance abuse services shall develop an integrated service delivery model that, to the extent feasible, uses providers who have historically administered outreach, screening, assessment, and referral functions.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 207 (S.B. 1507), § 3, effective May 28, 2015.

Sec. 1001.088. Mental Health and Substance Abuse Hotlines. [Expires September 1, 2027]

The department shall ensure that each local mental health authority and local behavioral health authority operates a toll-free telephone hotline that enables a person to call a single hotline number to obtain information from the authority about mental health services, substance abuse services, or both.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 207 (S.B. 1507), § 3, effective May 28, 2015.

Subchapter H

*Mental Health First Aid Training
[Expires September 1, 2027]*

Sec. 1001.201. Definitions. [Expires September 1, 2027]

In this subchapter:

(1) “Educator” means a person who is required to hold a certificate issued under Subchapter B, Chapter 21, Education Code.

(2) “Local mental health authority” has the meaning assigned by Section 531.002.

(3) “Regional education service center” means a regional education service center established under Chapter 8, Education Code.

(4) “School district employee” means a person employed by a school district who regularly interacts with students through the course of the person’s duties, including an educator, a secretary, a school bus driver, or a cafeteria worker.

(5) “School resource officer” has the meaning assigned by Section 1701.601, Occupations Code.

(6) “University employee” means a person employed by a public or private institution of higher education who regularly interacts with students enrolled at the university through the course of the person’s duties.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1306 (H.B. 3793), § 4, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 836 (S.B. 133), § 1, effective June 17, 2015; am. Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 2.28, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 45 (S.B. 1533), § 1.

Sec. 1001.2015. Limitation on Grants. [Expires September 1, 2027]

For each state fiscal year, the department may give to a local mental health authority in the form of grants under Sections 1001.202 and 1001.203 an amount that may not exceed the lesser of:

- (1) three percent of the total amount appropriated to the department for making grants under those sections;
- or
- (2) \$70,000.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 836 (S.B. 133), § 2, effective June 17, 2015.

Sec. 1001.202. Grants for Training of Mental Health First Aid Trainers. [Expires September 1, 2027]

(a) To the extent funds are appropriated to the department for that purpose, the department shall make grants to local mental health authorities to contract with persons approved by the department to train employees or contractors of the authorities as mental health first aid trainers.

(b) The department shall make each grant to a local mental health authority under this section in an amount equal to \$1,000 times the number of employees or contractors of the authority whose training as mental health first aid trainers will be paid by the grant.

(c) [Repealed by Acts 2015, 84th Leg., ch. 836 (S.B. 133), § 8(1), effective June 17, 2015.]

(d) The executive commissioner shall adopt rules to establish the requirements for a person to be approved by the department to train employees or contractors of a local mental health authority as mental health first aid trainers. The rules must ensure that a person who is approved by the department is qualified to provide training in:

(1) the potential risk factors and warning signs for various mental illnesses, including depression, anxiety, trauma, psychosis, eating disorders, substance abuse disorders, and self-injury;

(2) the prevalence of various mental illnesses in the United States and the need to reduce the stigma associated with mental illness;

(3) an action plan for use by the employees or contractors that involves the use of skills, resources, and knowledge to assess a situation and develop and implement an appropriate intervention to help an individual experiencing a mental health crisis obtain appropriate professional care; and

(4) the evidence-based professional, peer, social, and self-help resources available to help individuals with mental illness.

(e) Two or more local mental health authorities may collaborate and share resources to provide training for employees or contractors of the authorities under this section.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1306 (H.B. 3793), § 4, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 836 (S.B. 133), §§ 3, 8(1), effective June 17, 2015.

Sec. 1001.203. Grants for Training Certain University Employees, School District Employees, and School Resource Officers in Mental Health First Aid. [Expires September 1, 2027]

(a) To the extent funds are appropriated to the department for that purpose, the department shall make grants to local mental health authorities to provide an approved mental health first aid training program, administered by mental health first aid trainers, at no cost to university employees, school district employees, and school resource officers.

(b) [Repealed by Acts 2015, 84th Leg., ch. 836 (S.B. 133), § 8(2), effective June 17, 2015.]

(c) The department shall grant \$100 to a local mental health authority for each university employee, school district employee, or school resource officer who successfully completes a mental health first aid training program provided by the authority under this section.

(d) A mental health first aid training program provided by a local mental health authority under this section must:

(1) be conducted by a person trained as a mental health first aid trainer;

(2) provide participants with the skills necessary to help an individual experiencing a mental health crisis until the individual is able to obtain appropriate professional care; and

(3) include:

(A) instruction in a five-step strategy for helping an individual experiencing a mental health crisis, including assessing risk, listening respectfully to and supporting the individual, and identifying professional help and other supports for the individual;

(B) an introduction to the risk factors and warning signs for mental illness and substance abuse problems;

(C) experiential activities to increase participants' understanding of the impact of mental illness on individuals and families; and

(D) a presentation of evidence-supported treatment and self-help strategies.

(e) A local mental health authority may contract with a regional education service center to provide a mental health first aid training program to university employees, school district employees, and school resource officers under this section.

(f) Two or more local mental health authorities may collaborate and share resources to develop and operate a mental health first aid training program under this section.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1306 (H.B. 3793), § 4, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 836 (S.B. 133), §§ 4, 8(2), effective June 17, 2015; am. Acts 2017, 85th Leg., ch. 45 (S.B. 1533), §§ 2, 3, effective May 19, 2017.

Sec. 1001.2031. Supplemental Grants for Training Certain University Employees, School District Employees, and School Resource Officers in Mental Health First Aid. [Expires September 1, 2027]

For each state fiscal year, the department may allocate any unobligated money appropriated for making grants under Sections 1001.202 and 1001.203 for supplemental grants. The department may give a supplemental grant to a local mental health authority that submits to the department a revised plan as provided under Section 1001.204 that demonstrates how the additional grant money would be used if made available to the authority.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 836 (S.B. 133), § 5, effective June 17, 2015; am. Acts 2017, 85th Leg., ch. 45 (S.B. 1533), § 4, effective May 19, 2017.

Sec. 1001.204. Plans for Mental Health First Aid Training Programs. [Expires September 1, 2027]

(a) Not later than July 1 of each state fiscal year for which a local mental health authority will seek a grant from the department under Section 1001.203, the authority shall submit to the department a plan demonstrating the manner in which grants made to the authority under that section will be used:

(1) to train individuals in mental health first aid throughout the authority's local service area to maximize the number of children who have direct contact with an individual who has successfully completed a mental health first aid training program provided by the authority;

(2) to meet the greatest needs of the authority's local service area, as identified by the authority; and

(3) to complement existing resources and not duplicate established mental health first aid training efforts.

(b) The department may not make a grant to a local mental health authority under Section 1001.203 unless the department has evaluated a plan submitted by the authority under this section.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1306 (H.B. 3793), § 4, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 836 (S.B. 133), § 6, effective June 17, 2015.

Sec. 1001.205. Reports. [Expires September 1, 2027]

(a) Not later than September 30 of each year, a local mental health authority shall provide to the department the number of:

(1) employees and contractors of the authority who were trained as mental health first aid trainers under Section 1001.202 during the preceding fiscal year, the number of trainers who left the program for any reason during the preceding fiscal year, and the number of active trainers;

(2) university employees, school district employees, and school resource officers who completed a mental health first aid training program offered by the authority under Section 1001.203 during the preceding fiscal year categorized by local mental health authority region, university or school district, as applicable, and category of personnel;

(3) individuals who are not university employees, school district employees, or school resource officers who

completed a mental health first aid training program offered by the authority during the preceding fiscal year; and

(4) veterans and immediate family members of veterans who completed the veterans module of a mental health first aid training program offered by the authority during the preceding fiscal year.

(b) Not later than December 1 of each year, the department shall compile the information submitted by local mental health authorities as required by Subsection (a) and submit a report to the legislature containing:

(1) the number of authority employees and contractors trained as mental health first aid trainers during the preceding fiscal year, the number of trainers who left the program for any reason during the preceding fiscal year, and the number of active trainers;

(2) the number of university employees, school district employees, and school resource officers who completed a mental health first aid training program provided by an authority during the preceding fiscal year categorized by local mental health authority region, university or school district, as applicable, and category of personnel;

(3) the number of individuals who are not university employees, school district employees, or school resource officers who completed a mental health first aid training program provided by an authority during the preceding fiscal year; and

(4) [As added by Acts 2019, 86th Leg., ch. 352 and 755 (H.B. 18 and H.B. 1070)] a detailed accounting of expenditures of money appropriated for the purpose of implementing this subchapter.

(4) [As added by Acts 2019, 86th Leg., ch. 1327 (H.B. 4429)] veterans and immediate family members of veterans who completed the veterans module of a mental health first aid training program provided by an authority during the preceding fiscal year.

(c) The department shall develop and provide to local mental health authorities a form to be used for the reporting of information required under Subsection (a), including the reporting of each category of personnel described by that subsection.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1306 (H.B. 3793), § 4, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 836 (S.B. 133), § 7, effective June 17, 2015; am. Acts 2017, 85th Leg., ch. 45 (S.B. 1533), § 5, effective May 19, 2017; am. Acts 2019, 86th Leg., ch. 352 (H.B. 18), § 2.01, effective December 1, 2019; am. Acts 2019, 86th Leg., ch. 755 (H.B. 1070), § 1, effective December 1, 2019; am. Acts 2019, 86th Leg., ch. 1327 (H.B. 4429), § 2, effective September 1, 2019.

Sec. 1001.206. Liability. [Expires September 1, 2027]

A person who has completed a mental health first aid training program offered by a local mental health authority under this subchapter and who in good faith attempts to assist an individual experiencing a mental health crisis is not liable in civil damages for an act performed in attempting to assist the individual unless the act is willfully or wantonly negligent.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1306 (H.B. 3793), § 4, effective September 1, 2013.

Sec. 1001.207. Program Promotion [Expires September 1, 2027]

(a) The commission shall make available on its official Internet website information about the mental health first aid training program for the purpose of promoting public awareness of the program. An electronic link to an outside source of information is not sufficient.

(b) The Texas Education Agency shall make available on its official Internet website information about the mental health first aid training program for the purpose of promoting public awareness of the program. An electronic link to an outside source of information is not sufficient.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 352 (H.B. 18), § 2.02, effective December 1, 2019.

Subchapter I

*Mental Health Program for Veterans
[Expires September 1, 2027]*

Sec. 1001.221. Definitions. [Expires September 1, 2027]

In this subchapter:

(1) "Peer" means a person who is a veteran or a veteran's family member.

(1-a) "Peer service coordinator" means a person who recruits and retains veterans, peers, and volunteers to participate in the mental health program for veterans and related activities.

(2) "Veteran" means a person who has served in:

(A) the army, navy, air force, coast guard, or marine corps of the United States;

(B) the state military forces as defined by Section 431.001, Government Code; or

(C) an auxiliary service of one of those branches of the armed forces.

(3) [Repealed.]

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 352 (H.B. 2392), § 2, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), Sec. 21.001(35), effective September 1, 2015 (renumbered from Sec. 1001.201.); am. Acts 2017, 85th Leg., ch. 512 (S.B. 27), §§ 5, 8(2), effective September 1, 2017.

Sec. 1001.222. General Powers and Duties. [Expires September 1, 2027]

(a) The department shall develop a mental health intervention program for veterans. The program must include:

(1) peer-to-peer counseling;

(2) access to licensed mental health professionals for peer service coordinators and peers;

(3) training approved by the department for peer service coordinators, licensed mental health professionals, and peers;

(4) technical assistance for peer service coordinators, licensed mental health professionals, and peers;

(5) identification, retention, and screening of community-based licensed mental health professionals;

(6) suicide prevention training for peer service coordinators and peers;

(7) veteran jail diversion services, including veterans treatment courts; and

(8) coordination of mental health first aid for veterans training to veterans and immediate family members of veterans.

(a-1) As part of the mental health intervention program for veterans, the department shall develop a women veterans mental health initiative.

(a-2) As part of the mental health intervention program for veterans, the department shall develop a rural veterans mental health initiative.

(b) The department shall solicit and ensure that specialized training is provided to persons who are peers and who want to provide peer-to-peer counseling or other peer-to-peer services under the program.

(c) The executive commissioner may adopt rules necessary to implement this subchapter.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 352 (H.B. 2392), § 2, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1636, effective April 2, 2015; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), Sec. 21.001(35), effective September 1, 2015 (renumbered from Sec. 1001.202); am. Acts 2015, 84th Leg., ch. 1237 (S.B. 1304), § 1, effective June 19, 2015; am. Acts 2015, 84th Leg., ch. 1238 (S.B. 1305), § 1, effective June 19, 2015; am. Acts 2017, 85th Leg., ch. 512 (S.B. 27), § 6, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 1327 (H.B. 4429), § 3, effective September 1, 2019.

Sec. 1001.223. Grants. [Repealed]

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 352 (H.B. 2392), § 2, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), Sec. 21.001(35), effective September 1, 2015 (renumbered from Sec. 1001.203); Repealed by Acts 2017, 85th Leg., ch. 512 (S.B. 27), § 8(3), effective September 1, 2017.

Sec. 1001.224. Annual Report. [Expires September 1, 2027]

Not later than December 1 of each year, the department shall submit a report to the governor and the legislature that includes:

- (1) the number of veterans who received services through the mental health program for veterans;
- (2) the number of peers and peer service coordinators trained;
- (3) an evaluation of the services provided under this subchapter; and
- (4) recommendations for program improvements.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 352 (H.B. 2392), § 2, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), Sec. 21.001(35), effective September 1, 2015 (renumbered from Sec. 1001.204); am. Acts 2017, 85th Leg., ch. 512 (S.B. 27), § 7, effective September 1, 2017.

Subchapter K.

Data Collection and Analysis Regarding Opioid Overdose Deaths and Co-Occurring Substance Use Disorders

Sec. 1001.261. Data Collection and Analysis Regarding Opioid Overdose Deaths and Co-Occurring Substance Use Disorders.

(a) The executive commissioner shall ensure that data is collected by the department regarding opioid overdose deaths and the co-occurrence of substance use disorders and mental illness. The department may use data col-

lected by the vital statistics unit and any other source available to the department.

(b) In analyzing data collected under this section, the department shall evaluate the capacity in this state for the treatment of co-occurring substance use disorders and mental illness.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1167 (H.B. 3285), § 8, effective September 1, 2019.

Subchapter K.

High-Risk Maternal Care Coordination Services Pilot Program [Effective until September 2, 2023]

Sec. 1001.261. Definitions. [Effective until September 2, 2023]

In this subchapter:

(1) “Pilot program” means the high-risk maternal care coordination services pilot program established under this subchapter.

(2) “Promotora” or “community health worker” has the meaning assigned by Section 48.001.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 973 (S.B. 748), § 6, effective September 1, 2019.

Sec. 1001.262. Establishment of Pilot Program; Rules. [Effective until September 2, 2023]

(a) The department shall develop and implement a high-risk maternal care coordination services pilot program in one or more geographic areas in this state.

(b) In implementing the pilot program, the department shall:

- (1) conduct a statewide assessment of training courses provided by promotoras or community health workers that target women of childbearing age;
- (2) study existing models of high-risk maternal care coordination services;
- (3) identify, adapt, or create a risk assessment tool to identify pregnant women who are at a higher risk for poor pregnancy, birth, or postpartum outcomes; and
- (4) create educational materials for promotoras and community health workers that include information on the:
 - (A) assessment tool described by Subdivision (3); and
 - (B) best practices for high-risk maternal care.

(c) The executive commissioner shall adopt rules as necessary to implement this subchapter and prescribe the types of information to be collected during the course of the pilot program and included in the report described by Section 1001.264.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 973 (S.B. 748), § 6, effective September 1, 2019.

Sec. 1001.263. Duties of Department. [Effective until September 2, 2023]

(a) The department shall provide to each geographic area selected for the pilot program the support, resources, technical assistance, training, and guidance necessary to:

- (1) screen all or a sample of pregnant patients with the assessment tool described by Section 1001.262(b)(3); and

(2) integrate community health worker services for women with high-risk pregnancies in:

(A) providing patient education on health-enhancing behaviors and chronic disease management and prevention;

(B) facilitating care coordination and navigation activities; and

(C) identifying and reducing barriers to the women's access to health care.

(b) The department shall develop training courses to prepare promotoras and community health workers in educating and supporting women at high risk for serious complications during the pregnancy and postpartum periods.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 973 (S.B. 748), § 6, effective September 1, 2019.

Sec. 1001.264. Pilot Program Report. [Effective until September 2, 2023]

(a) Not later than December 1 of each even-numbered year, the department shall prepare and submit a report on

the pilot program to the executive commissioner and the chairs of the standing committees of the senate and the house of representatives with primary jurisdiction over public health and human services. The report may be submitted with the report required under Section 34.0156.

(b) The report submitted under this section must include an evaluation from the commissioner of the pilot program's effectiveness.

(c) The report submitted under this section must include a recommendation from the department on whether the pilot program should continue, be expanded, or be terminated.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 973 (S.B. 748), § 6, effective September 1, 2019.

Sec. 1001.265. Expiration. [Effective until September 2, 2023]

This subchapter expires September 1, 2023.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 973 (S.B. 748), § 6, effective September 1, 2019.

CODE OF CRIMINAL PROCEDURE

TITLE 1

CODE OF CRIMINAL PROCEDURE OF 1965

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Introductory

CHAPTER 2

General Duties of Officers

Article 2.09.	Who Are Magistrates.
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Art. 2.09. Who Are Magistrates.

Each of the following officers is a magistrate within the meaning of this Code: The justices of the Supreme Court, the judges of the Court of Criminal Appeals, the justices of the Courts of Appeals, the judges of the District Court, the magistrates appointed by the judges of the district courts of Bexar County, Dallas County, or Tarrant County that give preference to criminal cases, the criminal law hearing officers for Harris County appointed under Subchapter L, Chapter 54, Government Code, the criminal law hearing

officers for Cameron County appointed under Subchapter BB, Chapter 54, Government Code, the magistrates or associate judges appointed by the judges of the district courts of Lubbock County, Nolan County, or Webb County, the magistrates appointed by the judges of the criminal district courts of Dallas County or Tarrant County, the associate judges appointed by the judges of the district courts and the county courts at law that give preference to criminal cases in Jefferson County, the associate judges appointed by the judges of the district courts and the statutory county courts of Brazos County, Nueces County, or Williamson County, the magistrates appointed by the judges of the district courts and statutory county courts that give preference to criminal cases in Travis County, the criminal magistrates appointed by the Brazoria County Commissioners Court, the criminal magistrates appointed by the Burnet County Commissioners Court, the magistrates appointed by the El Paso Council of Judges, the county judges, the judges of the county courts at law, judges of the county criminal courts, the judges of statutory probate courts, the associate judges appointed by the judges of the statutory probate courts under Chapter 54A, Government Code, the associate judges appointed by the judge of a district court under Chapter 54A, Government Code, the magistrates appointed under Subchapter JJ, Chapter 54, Government Code, the magistrates appointed by the Collin County Commissioners Court, the magistrates appointed by the Fort Bend County Commissioners Court, the justices of the peace, and the mayors and recorders and the judges of the municipal courts of incorporated cities or towns.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1981, 67th Leg., ch. 291 (S.B. 265), § 100, effective September 1, 1981; am. Acts 1983, 68th Leg., ch. 204 (S.B. 781), § 1, effective August 29, 1983; am. Acts 1989, 71st Leg., ch. 25 (S.B. 577), § 2, effective August 28, 1989; am. Acts 1989, 71st Leg., ch. 79 (S.B. 38), § 1, effective May 15, 1989; am. Acts 1989, 71st Leg., ch. 916 (S.B. 515), § 1, effective September 1, 1989; am. Acts 1989, 71st Leg., ch. 1068 (H.B. 4722), § 2, effective August 28, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 4.01, effective August 26, 1991; am. Acts 1993, 73rd Leg., ch. 224 (H.B. 2113), § 2, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 413 (S.B. 667), § 1, effective September 1, 1993; am. Acts 1993, 73rd Leg., ch. 468 (H.B. 567), § 1, effective June 9, 1993; am. Acts 1993, 73rd Leg., ch. 577 (H.B. 965), § 2, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 586 (S.B. 611), § 2, effective June 18, 1999; am. Acts 1999, 76th Leg., ch. 1503 (S.B. 294), § 2, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 979 (S.B. 1794), § 1, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1066 (H.B. 1539), § 9, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 109 (S.B. 552), § 2, effective May 20, 2005; am. Acts 2005, 79th Leg., ch. 767 (H.B. 3485), § 2, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 1331 (H.B. 3541), § 1, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1141 (H.B. 4107), § 1, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 646 (H.B. 1750), § 2, effective June 19, 2009; am. Acts 2009, 81st Leg., ch. 964 (H.B. 3554), § 2, effective June 19, 2009; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.06, effective January 1, 2012; am. Acts 2011, 82nd Leg., ch. 863 (H.B. 3844), § 2, effective June 17, 2011; am. Acts 2011, 82nd Leg., ch. 995 (H.B. 2132), § 2, effective June 17, 2011; am. Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.01, effective September 1, 2019.

Art. 2.12. Who Are Peace Officers.

The following are peace officers:

(1) sheriffs, their deputies, and those reserve deputies who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

(2) constables, deputy constables, and those reserve deputy constables who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

(3) marshals or police officers of an incorporated city, town, or village, and those reserve municipal police officers who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

(4) rangers, officers, and members of the reserve officer corps commissioned by the Public Safety Commission and the Director of the Department of Public Safety;

(5) investigators of the district attorneys', criminal district attorneys', and county attorneys' offices;

(6) law enforcement agents of the Texas Alcoholic Beverage Commission;

(7) each member of an arson investigating unit commissioned by a city, a county, or the state;

(8) officers commissioned under Section 37.081, Education Code, or Subchapter E, Chapter 51, Education Code;

(9) officers commissioned by the General Services Commission;

(10) law enforcement officers commissioned by the Parks and Wildlife Commission;

(11) airport police officers commissioned by a city with a population of more than 1.18 million located primarily in a county with a population of 2 million or more that operates an airport that serves commercial air carriers;

(12) airport security personnel commissioned as peace officers by the governing body of any political subdivision of this state, other than a city described by Subdivision (11), that operates an airport that serves commercial air carriers;

(13) municipal park and recreational patrolmen and security officers;

(14) security officers and investigators commissioned as peace officers by the comptroller;

(15) officers commissioned by a water control and improvement district under Section 49.216, Water Code;

(16) officers commissioned by a board of trustees under Chapter 54, Transportation Code;

(17) investigators commissioned by the Texas Medical Board;

(18) officers commissioned by:

(A) the board of managers of the Dallas County Hospital District, the Tarrant County Hospital District, the Bexar County Hospital District, or the El Paso County Hospital District under Section 281.057, Health and Safety Code;

(B) the board of directors of the Ector County Hospital District under Section 1024.117, Special District Local Laws Code;

(C) the board of directors of the Midland County Hospital District of Midland County, Texas, under Section 1061.121, Special District Local Laws Code; and

(D) the board of hospital managers of the Lubbock County Hospital District of Lubbock County, Texas, under Section 1053.113, Special District Local Laws Code;

(19) county park rangers commissioned under Subchapter E, Chapter 351, Local Government Code;

(20) investigators employed by the Texas Racing Commission;

(21) officers commissioned under Chapter 554, Occupations Code;

(22) officers commissioned by the governing body of a metropolitan rapid transit authority under Section 451.108, Transportation Code, or by a regional transportation authority under Section 452.110, Transportation Code;

(23) investigators commissioned by the attorney general under Section 402.009, Government Code;

(24) security officers and investigators commissioned as peace officers under Chapter 466, Government Code;

(25) officers appointed by an appellate court under Subchapter F, Chapter 53, Government Code;

(26) officers commissioned by the state fire marshal under Chapter 417, Government Code;

(27) an investigator commissioned by the commissioner of insurance under Section 701.104, Insurance Code;

(28) apprehension specialists and inspectors general commissioned by the Texas Juvenile Justice Department as officers under Sections 242.102 and 243.052, Human Resources Code;

(29) officers appointed by the inspector general of the Texas Department of Criminal Justice under Section 493.019, Government Code;

(30) investigators commissioned by the Texas Commission on Law Enforcement under Section 1701.160, Occupations Code;

(31) commission investigators commissioned by the Texas Private Security Board under Section 1702.061, Occupations Code;

(32) the fire marshal and any officers, inspectors, or investigators commissioned by an emergency services district under Chapter 775, Health and Safety Code;

(33) officers commissioned by the State Board of Dental Examiners under Section 254.013, Occupations Code, subject to the limitations imposed by that section;

(34) investigators commissioned by the Texas Juvenile Justice Department as officers under Section 221.011, Human Resources Code; and

(35) the fire marshal and any related officers, inspectors, or investigators commissioned by a county under Subchapter B, Chapter 352, Local Government Code.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1967, 60th Leg., ch. 659 (S.B. 145), § 5, effective August 28, 1967; am. Acts 1971, 62nd Leg., ch. 246 (H.B. 468), § 3, effective May 17, 1971; am. Acts 1973, 63rd Leg., ch. 7 (H.B. 82), § 2, effective August 27, 1973; am. Acts 1973, 63rd Leg., ch. 459 (S.B. 769), § 1, effective August 27, 1973; am. Acts 1975, 64th Leg., ch. 204 (H.B. 341), § 1, effective September 1, 1975; am. Acts 1977, 65th Leg., ch. 227 (S.B. 719), § 2, effective May 24, 1977; am. Acts 1977, 65th Leg., ch. 396 (S.B. 146), § 1, effective August 29, 1977; am. Acts 1983, 68th Leg., ch. 114 (S.B. 346), § 1, effective May 17, 1983; am. Acts 1983, 68th Leg., ch. 699 (S.B. 1352), § 11, effective June 19, 1983; am. Acts 1983, 68th Leg., ch. 867 (H.B. 1304), § 2, effective June

19, 1983; am. Acts 1983, 68th Leg., ch. 974 (H.B. 1999), § 11, effective August 29, 1983; am. Acts 1985, 69th Leg., ch. 384 (H.B. 1248), § 2, effective August 26, 1985; am. Acts 1985, 69th Leg., ch. 907 (H.B. 1592), § 6, effective September 1, 1985; am. Acts 1986, 69th Leg., 2nd C.S., ch. 19 (S.B. 15), § 4, effective December 4, 1986; am. Acts 1987, 70th Leg., ch. 262 (S.B. 1161), § 20, effective September 1, 1987; am. Acts 1987, 70th Leg., ch. 350 (H.B. 791), § 1, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 277 (H.B. 2780), § 4, effective June 14, 1989; am. Acts 1989, 71st Leg., ch. 794 (H.B. 427), § 1, effective August 28, 1989; am. Acts 1989, 71st Leg., ch. 1104 (S.B. 1190), § 4, effective June 16, 1989; am. Acts 1991, 72nd Leg., 1st C.S., ch. 6 (H.B. 54), § 6, effective November 5, 1991; am. Acts 1991, 72nd Leg., 1st C.S., ch. 14 (H.B. 169), § 3.01, effective November 12, 1991; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 4.02, effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 228 (H.B. 693), § 1, effective September 1, 1991; am. Acts 1991, 72nd Leg., ch. 287 (S.B. 1222), § 24, effective September 1, 1991; am. Acts 1991, 72nd Leg., ch. 386 (H.B. 2263), § 70, effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 446 (S.B. 411), § 1, effective June 11, 1991; am. Acts 1991, 72nd Leg., ch. 544 (S.B. 1816), § 1, effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 545 (H.B. 2140), § 2, effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 597 (S.B. 992), § 57, effective September 1, 1991; am. Acts 1991, 72nd Leg., ch. 853 (S.B. 1412), § 2, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 4.07, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 116 (H.B. 635), § 1, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 339 (S.B. 563), § 2, effective September 1, 1993; am. Acts 1993, 73rd Leg., ch. 695 (S.B. 841), § 2, effective September 1, 1993; am. Acts 1993, 73rd Leg., ch. 912 (S.B. 1110), § 25, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 10, effective May 30, 1995; am. Acts 1995, 74th Leg., ch. 621 (H.B. 1487), § 2, effective September 1, 1995; am. Acts 1995, 74th Leg., ch. 729 (H.B. 1275), § 1, effective August 28, 1995; am. Acts 1997, 75th Leg., ch. 1423 (H.B. 2841), § 4.01, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 90 (H.B. 957), § 1, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 322 (H.B. 1112), § 2, effective May 29, 1999; am. Acts 1999, 76th Leg., ch. 882 (H.B. 2023), § 2, effective June 18, 1999; am. Acts 1999, 76th Leg., ch. 974 (H.B. 2617), § 37, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 272 (S.B. 1167), § 7, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 442 (S.B. 1123), § 1, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 669 (H.B. 2810), § 8, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 3.001, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 235, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 474 (H.B. 875), § 1, effective June 20, 2003; am. Acts 2003, 78th Leg., ch. 930 (S.B. 1022), § 12, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 4.001, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 263 (S.B. 103), § 1, effective June 8, 2007; am. Acts 2007, 80th Leg., ch. 838 (H.B. 914), § 1, effective June 15, 2007; am. Acts 2007, 80th Leg., ch. 908 (H.B. 2884), § 1, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 1172 (H.B. 434), § 1, effective June 15, 2007; am. Acts 2009, 81st Leg., ch. 1164 (H.B. 3201), § 1, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 3.001, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 402 (S.B. 601), § 2, effective June 17, 2011; am. Acts 2011, 82nd Leg., ch. 584 (H.B. 3815), § 2, effective June 17, 2011; am. Acts 2011, 82nd Leg., ch. 1163 (H.B. 2702), § 5, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 8 (S.B. 543), § 2, effective May 2, 2013; am. Acts 2013, 83rd Leg., ch. 93 (S.B. 686), § 2.01, effective May 18, 2013; am. Acts 2019, 86th Leg., ch. 34 (S.B. 319), § 2, effective May 14, 2019.

Arrest, Commitment and Bail

CHAPTER 14

Arrest Without Warrant

Article
14.01.

Offense Within View.

Article
14.03.
14.035.

Authority of Peace Officers.
Authority to Release in Lieu of Arrest Certain Persons with Intellectual or Developmental Disability.

Art. 14.01. Offense Within View.

(a) A peace officer or any other person, may, without a warrant, arrest an offender when the offense is committed in his presence or within his view, if the offense is one classed as a felony or as an offense against the public peace.

(b) A peace officer may arrest an offender without a warrant for any offense committed in his presence or within his view.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1967, 60th Leg., ch. 659 (S.B. 145), § 8, effective August 28, 1967.

Art. 14.03. Authority of Peace Officers.

(a) Any peace officer may arrest, without warrant:

(1) persons found in suspicious places and under circumstances which reasonably show that such persons have been guilty of some felony, violation of Title 9, Chapter 42, Penal Code, breach of the peace, or offense under Section 49.02, Penal Code, or threaten, or are about to commit some offense against the laws;

(2) persons who the peace officer has probable cause to believe have committed an assault resulting in bodily injury to another person and the peace officer has probable cause to believe that there is danger of further bodily injury to that person;

(3) persons who the peace officer has probable cause to believe have committed an offense defined by Section 25.07, Penal Code, if the offense is not committed in the presence of the peace officer;

(4) persons who the peace officer has probable cause to believe have committed an offense involving family violence;

(5) persons who the peace officer has probable cause to believe have prevented or interfered with an individual's ability to place a telephone call in an emergency, as defined by Section 42.062(d), Penal Code, if the offense is not committed in the presence of the peace officer; or

(6) a person who makes a statement to the peace officer that would be admissible against the person under Article 38.21 and establishes probable cause to believe that the person has committed a felony.

(b) A peace officer shall arrest, without a warrant, a person the peace officer has probable cause to believe has committed an offense under Section 25.07, Penal Code, if the offense is committed in the presence of the peace officer.

(c) If reasonably necessary to verify an allegation of a violation of a protective order or of the commission of an offense involving family violence, a peace officer shall remain at the scene of the investigation to verify the allegation and to prevent the further commission of the violation or of family violence.

(d) A peace officer who is outside his jurisdiction may arrest, without warrant, a person who commits an offense within the officer's presence or view, if the offense is a

felony, a violation of Chapter 42 or 49, Penal Code, or a breach of the peace. A peace officer making an arrest under this subsection shall, as soon as practicable after making the arrest, notify a law enforcement agency having jurisdiction where the arrest was made. The law enforcement agency shall then take custody of the person committing the offense and take the person before a magistrate in compliance with Article 14.06 of this code.

(e) The justification for conduct provided under Section 9.21, Penal Code, applies to a peace officer when the peace officer is performing a duty required by this article.

(f) In this article, "family violence" has the meaning assigned by Section 71.004, Family Code.

(g) (1) A peace officer listed in Subdivision (1), (2), or (5), Article 2.12, who is licensed under Chapter 1701, Occupations Code, and is outside of the officer's jurisdiction may arrest without a warrant a person who commits any offense within the officer's presence or view, other than a violation of Subtitle C, Title 7, Transportation Code.

(2) A peace officer listed in Subdivision (3), Article 2.12, who is licensed under Chapter 1701, Occupations Code, and is outside of the officer's jurisdiction may arrest without a warrant a person who commits any offense within the officer's presence or view, except that an officer described in this subdivision who is outside of that officer's jurisdiction may arrest a person for a violation of Subtitle C, Title 7, Transportation Code, only if the offense is committed in the county or counties in which the municipality employing the peace officer is located.

(3) A peace officer making an arrest under this subsection shall as soon as practicable after making the arrest notify a law enforcement agency having jurisdiction where the arrest was made. The law enforcement agency shall then take custody of:

(A) the person committing the offense and take the person before a magistrate in compliance with Article 14.06; and

(B) any property seized during or after the arrest as if the property had been seized by a peace officer of that law enforcement agency.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1967, 60th Leg., ch. 659 (S.B. 145), § 9, effective August 28, 1967; am. Acts 1981, 67th Leg., ch. 442 (H.B. 1743), § 1, effective August 31, 1981; am. Acts 1985, 69th Leg., ch. 583 (S.B. 869), § 2, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 68 (S.B. 82), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 740 (H.B. 1231), § 1, effective August 28, 1989; am. Acts 1991, 72nd Leg., ch. 542 (H.B. 1563), § 9, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 3.02, effective September 1, 1994; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 14.17, effective September 1, 1995; am. Acts 1995, 74th Leg., ch. 829 (H.B. 2614), § 1, effective August 28, 1995; am. Acts 1999, 76th Leg., ch. 62 (S.B. 1368), § 3.02, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 210 (H.B. 1121), § 2, effective May 24, 1999; am. Acts 2003, 78th Leg., ch. 460 (H.B. 778), § 2, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 836 (S.B. 433), § 2, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 897 (S.B. 840), § 1, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 989 (S.B. 1896), § 1, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1164 (S.B. 176), § 2, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), § 7.002(d), effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 4.002, effective September 1, 2005; am. Acts 2005,

79th Leg., ch. 788 (S.B. 91), §§ 4, 5, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 847 (S.B. 907), § 1, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 1015 (H.B. 915), § 1, effective September 1, 2005; am. Acts 2015, 84th Leg., ch. 1133 (S.B. 147), § 5, effective September 1, 2015.

Art. 14.035. Authority to Release in Lieu of Arrest Certain Persons with Intellectual or Developmental Disability.

(a) This article applies only to a person with an intellectual or developmental disability who resides at one of the following types of facilities operated under the home and community-based services waiver program in accordance with Section 1915(c) of the Social Security Act (42 U.S.C. Section 1396n):

(1) a group home; or

(2) an intermediate care facility for persons with an intellectual or developmental disability (ICF/IID) as defined by 40 T.A.C. Section 9.153.

(b) In lieu of arresting a person described by Subsection (a), a peace officer may release the person at the person's residence if the officer:

(1) believes confinement of the person in a correctional facility as defined by Section 1.07, Penal Code, is unnecessary to protect the person and the other persons who reside at the residence; and

(2) made reasonable efforts to consult with the staff at the person's residence and with the person regarding that decision.

(c) A peace officer and the agency or political subdivision that employs the peace officer may not be held liable for damage to persons or property that results from the actions of a person released under Subsection (b).

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 460 (H.B. 3540), § 1, effective September 1, 2019.

CHAPTER 15

Arrest Under Warrant

Article
15.17.

Duties of Arresting Officer and Magistrate.

Art. 15.17. Duties of Arresting Officer and Magistrate.

(a) In each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall without unnecessary delay, but not later than 48 hours after the person is arrested, take the person arrested or have him taken before some magistrate of the county where the accused was arrested or, to provide more expeditiously to the person arrested the warnings described by this article, before a magistrate in any other county of this state. The arrested person may be taken before the magistrate in person or the image of the arrested person may be presented to the magistrate by means of a videoconference. The magistrate shall inform in clear language the person arrested, either in person or through a videoconference, of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to remain silent, of his right to have an attorney present during any interview with peace officers or attorneys representing the state, of his right to

terminate the interview at any time, and of his right to have an examining trial. The magistrate shall also inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel. The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel. If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate. The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. If the person arrested is indigent and requests appointment of counsel and if the magistrate is authorized under Article 26.04 to appoint counsel for indigent defendants in the county, the magistrate shall appoint counsel in accordance with Article 1.051. If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county, the forms requesting the appointment of counsel. The magistrate shall also inform the person arrested that he is not required to make a statement and that any statement made by him may be used against him. The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall, after determining whether the person is currently on bail for a separate criminal offense, admit the person arrested to bail if allowed by law. A record of the communication between the arrested person and the magistrate shall be made. The record shall be preserved until the earlier of the following dates: (1) the date on which the pretrial hearing ends; or (2) the 91st day after the date on which the record is made if the person is charged with a misdemeanor or the 120th day after the date on which the record is made if the person is charged with a felony. For purposes of this subsection, "videoconference" means a two-way electronic communication of image and sound between the arrested person and the magistrate and includes secure Internet videoconferencing.

(a-1) If a magistrate is provided written or electronic notice of credible information that may establish reasonable cause to believe that a person brought before the magistrate has a mental illness or is a person with an intellectual disability, the magistrate shall conduct the proceedings described by Article 16.22 or 17.032, as appropriate.

(b) After an accused charged with a misdemeanor punishable by fine only is taken before a magistrate under Subsection (a) and the magistrate has identified the accused with certainty, the magistrate may release the accused without bond and order the accused to appear at a later date for arraignment in the applicable justice court or municipal court. The order must state in writing the time, date, and place of the arraignment, and the magistrate must sign the order. The accused shall receive a copy of the order on release. If an accused fails to appear as required by the order, the judge of the court in which the accused is required to appear shall issue a warrant for the arrest of the accused. If the accused is arrested and

brought before the judge, the judge may admit the accused to bail, and in admitting the accused to bail, the judge should set as the amount of bail an amount double that generally set for the offense for which the accused was arrested. This subsection does not apply to an accused who has previously been convicted of a felony or a misdemeanor other than a misdemeanor punishable by fine only.

(c) When a deaf accused is taken before a magistrate under this article or Article 14.06 of this Code, an interpreter appointed by the magistrate qualified and sworn as provided in Article 38.31 of this Code shall interpret the warning required by those articles in a language that the accused can understand, including but not limited to sign language.

(d) If a magistrate determines that a person brought before the magistrate after an arrest authorized by Article 14.051 of this code was arrested unlawfully, the magistrate shall release the person from custody. If the magistrate determines that the arrest was lawful, the person arrested is considered a fugitive from justice for the purposes of Article 51.13 of this code, and the disposition of the person is controlled by that article.

(e) In each case in which a person arrested is taken before a magistrate as required by Subsection (a) or Article 15.18(a), a record shall be made of:

- (1) the magistrate informing the person of the person's right to request appointment of counsel;
- (2) the magistrate asking the person whether the person wants to request appointment of counsel; and
- (3) whether the person requested appointment of counsel.

(f) A record required under Subsection (a) or (e) may consist of written forms, electronic recordings, or other documentation as authorized by procedures adopted in the county under Article 26.04(a). The counsel for the defendant may obtain a copy of the record on payment of a reasonable amount to cover the costs of reproduction or, if the defendant is indigent, the court shall provide a copy to the defendant without charging a cost for the copy.

(g) If a person charged with an offense punishable as a misdemeanor appears before a magistrate in compliance with a citation issued under Article 14.06(b) or (c), the magistrate shall perform the duties imposed by this article in the same manner as if the person had been arrested and brought before the magistrate by a peace officer. After the magistrate performs the duties imposed by this article, the magistrate except for good cause shown may release the person on personal bond. If a person who was issued a citation under Article 14.06(c) fails to appear as required by that citation, the magistrate before which the person is required to appear shall issue a warrant for the arrest of the accused.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1967, 60th Leg., ch. 659 (S.B. 145), § 12, effective August 28, 1967; am. Acts 1979, 66th Leg., ch. 186 (H.B. 1521), § 3, effective May 15, 1979; am. Acts 1987, 70th Leg., ch. 455 (H.B. 249), § 2, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 467 (H.B. 1929), § 1, effective August 28, 1989; am. Acts 1989, 71st Leg., ch. 977 (H.B. 646), §§ 1, 3, effective August 28, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 19.01(2), effective August 26, 1991; am. Acts 2001, 77th Leg., ch. 906 (S.B. 7), § 4, effective January 1, 2002;

am. Acts 2001, 77th Leg., ch. 1281 (S.B. 1807), § 1, effective September 1, 2001; am. Acts 2005, 79th Leg., ch. 1094 (H.B. 2120), § 3, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 320 (H.B. 2391), § 2, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 735 (S.B. 415), § 1, effective September 1, 2009; am. Acts 2015, 84th Leg., ch. 858 (S.B. 1517), § 2, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 1, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 1064 (H.B. 3165), § 1, effective September 1, 2017.

CHAPTER 16

The Commitment or Discharge of the Accused

- Article 16.22. Early Identification of Defendant Suspected of Having Mental Illness or Intellectual Disability.
- 16.23. Diversion of Persons Suffering Mental Health Crisis or Substance Abuse Issue.

Art. 16.22. Early Identification of Defendant Suspected of Having Mental Illness or Intellectual Disability.

(a) (1) Not later than 12 hours after the sheriff or municipal jailer having custody of a defendant for an offense punishable as a Class B misdemeanor or any higher category of offense receives credible information that may establish reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability, the sheriff or municipal jailer shall provide written or electronic notice to the magistrate. The notice must include any information related to the sheriff's or municipal jailer's determination, such as information regarding the defendant's behavior immediately before, during, and after the defendant's arrest and, if applicable, the results of any previous assessment of the defendant. On a determination that there is reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability, the magistrate, except as provided by Subdivision (2), shall order the service provider that contracts with the jail to provide mental health or intellectual and developmental disability services, the local mental health authority, the local intellectual and developmental disability authority, or another qualified mental health or intellectual and developmental disability expert to:

- (A) interview the defendant if the defendant has not previously been interviewed by a qualified mental health or intellectual and developmental disability expert on or after the date the defendant was arrested for the offense for which the defendant is in custody and otherwise collect information regarding whether the defendant has a mental illness as defined by Section 571.003, Health and Safety Code, or is a person with an intellectual disability as defined by Section 591.003, Health and Safety Code, including, if applicable, information obtained from any previous assessment of the defendant and information regarding any previously recommended treatment or service; and
- (B) provide to the magistrate a written report of an interview described by Paragraph (A) and the other

information collected under that paragraph on the form approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments under Section 614.0032(c), Health and Safety Code.

(2) The magistrate is not required to order the interview and collection of other information under Subdivision (1) if the defendant in the year preceding the defendant's applicable date of arrest has been determined to have a mental illness or to be a person with an intellectual disability by the service provider that contracts with the jail to provide mental health or intellectual and developmental disability services, the local mental health authority, the local intellectual and developmental disability authority, or another mental health or intellectual and developmental disability expert described by Subdivision (1). A court that elects to use the results of that previous determination may proceed under Subsection (c).

(3) If the defendant fails or refuses to submit to the interview and collection of other information regarding the defendant as required under Subdivision (1), the magistrate may order the defendant to submit to an examination in a jail, or in another place determined to be appropriate by the local mental health authority or local intellectual and developmental disability authority, for a reasonable period not to exceed 72 hours. If applicable, the county in which the committing court is located shall reimburse the local mental health authority or local intellectual and developmental disability authority for the mileage and per diem expenses of the personnel required to transport the defendant, calculated in accordance with the state travel regulations in effect at the time.

(a-1) If a magistrate orders a local mental health authority, a local intellectual and developmental disability authority, or another qualified mental health or intellectual and developmental disability expert to conduct an interview or collect information under Subsection (a)(1), the commissioners court for the county in which the magistrate is located shall reimburse the local mental health authority, local intellectual and developmental disability authority, or qualified mental health or intellectual and developmental disability expert for the cost of performing those duties in the amount provided by the fee schedule adopted under Subsection (a-2) or in the amount determined by the judge under Subsection (a-3), as applicable.

(a-2) The commissioners court for a county may adopt a fee schedule to pay for the costs to conduct an interview and collect information under Subsection (a)(1). In developing the fee schedule, the commissioners court shall consider the generally accepted reasonable cost in that county of performing the duties described by Subsection (a)(1). A fee schedule described by this subsection must be adopted in a public hearing and must be periodically reviewed by the commissioners court.

(a-3) If the cost of performing the duties described by Subsection (a)(1) exceeds the amount provided by the applicable fee schedule or if the commissioners court for the applicable county has not adopted a fee schedule, the authority or expert who performed the duties may request that the judge who has jurisdiction over the underlying

offense determine the reasonable amount for which the authority or expert is entitled to be reimbursed under Subsection (a-1). The amount determined under this subsection may not be less than the amount provided by the fee schedule, if applicable. The judge shall determine the amount not later than the 45th day after the date the request is made. The judge is not required to hold a hearing before making a determination under this subsection.

(a-4) An interview under Subsection (a)(1) may be conducted in person in the jail, by telephone, or through a telemedicine medical service or telehealth service.

(b) Except as otherwise permitted by the magistrate for good cause shown, a written report of an interview described by Subsection (a)(1)(A) and the other information collected under that paragraph shall be provided to the magistrate:

(1) for a defendant held in custody, not later than 96 hours after the time an order was issued under Subsection (a); or

(2) for a defendant released from custody, not later than the 30th day after the date an order was issued under Subsection (a).

(b-1) The magistrate shall provide copies of the written report to the defense counsel, the attorney representing the state, and the trial court. The written report must include a description of the procedures used in the interview and collection of other information under Subsection (a)(1)(A) and the applicable expert's observations and findings pertaining to:

(1) whether the defendant is a person who has a mental illness or is a person with an intellectual disability;

(2) whether there is clinical evidence to support a belief that the defendant may be incompetent to stand trial and should undergo a complete competency examination under Subchapter B, Chapter 46B; and

(3) any appropriate or recommended treatment or service.

(c) [2 Versions: As amended by Acts 2019, 86th Leg., ch. 1276 (H.B. 601)] After the trial court receives the applicable expert's written report relating to the defendant under Subsection (b-1) or elects to use the results of a previous determination as described by Subsection (a)(2), the trial court may, as applicable:

(1) resume criminal proceedings against the defendant, including any appropriate proceedings related to the defendant's release on personal bond under Article 17.032 if the defendant is being held in custody;

(2) resume or initiate competency proceedings, if required, as provided by Chapter 46B or other proceedings affecting the defendant's receipt of appropriate court-ordered mental health or intellectual and developmental disability services, including proceedings related to the defendant's receipt of outpatient mental health services under Section 574.034, Health and Safety Code;

(3) consider the written report during the punishment phase after a conviction of the offense for which the defendant was arrested, as part of a presentence investigation report, or in connection with the impositions of conditions following placement on community

supervision, including deferred adjudication community supervision; or

(4) refer the defendant to an appropriate specialty court established or operated under Subtitle K, Title 2, Government Code.

(c) [2 Versions: As amended by Acts 2019, 86th Leg., ch. 582 (SB 362)] After the trial court receives the applicable expert's written assessment relating to the defendant under Subsection (b-1) or elects to use the results of a previous determination as described by Subsection (a)(2), the trial court may, as applicable:

(1) resume criminal proceedings against the defendant, including any appropriate proceedings related to the defendant's release on personal bond under Article 17.032 if the defendant is being held in custody;

(2) resume or initiate competency proceedings, if required, as provided by Chapter 46B;

(3) consider the written assessment during the punishment phase after a conviction of the offense for which the defendant was arrested, as part of a presentence investigation report, or in connection with the impositions of conditions following placement on community supervision, including deferred adjudication community supervision;

(4) refer the defendant to an appropriate specialty court established or operated under Subtitle K, Title 2, Government Code; or

(5) if the offense charged does not involve an act, attempt, or threat of serious bodily injury to another person, release the defendant on bail while charges against the defendant remain pending and enter an order transferring the defendant to the appropriate court for court-ordered outpatient mental health services under Chapter 574, Health and Safety Code.

(c-1) If an order is entered under Subsection (c)(5), an attorney representing the state shall file the application for court-ordered outpatient services under Chapter 574, Health and Safety Code.

(c-2) On the motion of an attorney representing the state, if the court determines the defendant has complied with appropriate court-ordered outpatient treatment, the court may dismiss the charges pending against the defendant and discharge the defendant.

(c-3) On the motion of an attorney representing the state, if the court determines the defendant has failed to comply with appropriate court-ordered outpatient treatment, the court shall proceed under this chapter or with the trial of the offense.

(d) This article does not prevent the applicable court from, before, during, or after the interview and collection of other information regarding the defendant as described by this article:

(1) releasing a defendant who has a mental illness or is a person with an intellectual disability from custody on personal or surety bond, including imposing as a condition of release that the defendant submit to an examination or other assessment; or

(2) ordering an examination regarding the defendant's competency to stand trial.

(e) The Texas Judicial Council shall adopt rules to require the reporting of the number of written reports provided to a court under Subsection (a)(1)(B). The rules

must require submission of the reports to the Office of Court Administration of the Texas Judicial System on a monthly basis.

(f) A written report submitted to a magistrate under Subsection (a)(1)(B) is confidential and not subject to disclosure under Chapter 552, Government Code, but may be used or disclosed as provided by this article.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 3.05, effective September 1, 1994; am. Acts 1997, 75th Leg., ch. 312 (H.B. 1747), § 1, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 828 (H.B. 1071), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 2, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 1, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 1228 (S.B. 1557), § 1, effective September 1, 2009; am. Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 4.003, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 2, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 1276 (H.B. 601), §§ 1, 2, effective September 1, 2019.

Art. 16.23. Diversion of Persons Suffering Mental Health Crisis or Substance Abuse Issue.

(a) Each law enforcement agency shall make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency's jurisdiction if:

- (1) there is an available and appropriate treatment center in the agency's jurisdiction to which the agency may divert the person;
- (2) it is reasonable to divert the person;
- (3) the offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence; and
- (4) the mental health crisis or substance abuse issue is suspected to be the reason the person committed the alleged offense.

(b) Subsection (a) does not apply to a person who is accused of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 950 (S.B. 1849), § 2.02, effective September 1, 2017.

CHAPTER 17

Bail

Article	
17.03.	Personal Bond.
17.031.	Release on Personal Bond.
17.032.	Release on Personal Bond of Certain Defendants with Mental Illness or Intellectual Disability.
17.04.	Requisites of a Personal Bond.

Art. 17.03. Personal Bond.

(a) Except as provided by Subsection (b) or (b-1), a magistrate may, in the magistrate's discretion, release the defendant on personal bond without sureties or other security.

(b) Only the court before whom the case is pending may release on personal bond a defendant who:

- (1) is charged with an offense under the following sections of the Penal Code:
 - (A) Section 19.03 (Capital Murder);
 - (B) Section 20.04 (Aggravated Kidnapping);

- (C) Section 22.021 (Aggravated Sexual Assault);
- (D) Section 22.03 (Deadly Assault on Law Enforcement or Corrections Officer, Member or Employee of Board of Pardons and Paroles, or Court Participant);
- (E) Section 22.04 (Injury to a Child, Elderly Individual, or Disabled Individual);
- (F) Section 29.03 (Aggravated Robbery);
- (G) Section 30.02 (Burglary);
- (H) Section 71.02 (Engaging in Organized Criminal Activity);

(I) Section 21.02 (Continuous Sexual Abuse of Young Child or Children); or

(J) Section 20A.03 (Continuous Trafficking of Persons);

(2) is charged with a felony under Chapter 481, Health and Safety Code, or Section 485.033, Health and Safety Code, punishable by imprisonment for a minimum term or by a maximum fine that is more than a minimum term or maximum fine for a first degree felony; or

(3) does not submit to testing for the presence of a controlled substance in the defendant's body as requested by the court or magistrate under Subsection (c) of this article or submits to testing and the test shows evidence of the presence of a controlled substance in the defendant's body.

(b-1) A magistrate may not release on personal bond a defendant who, at the time of the commission of the charged offense, is civilly committed as a sexually violent predator under Chapter 841, Health and Safety Code.

(c) When setting a personal bond under this chapter, on reasonable belief by the investigating or arresting law enforcement agent or magistrate of the presence of a controlled substance in the defendant's body or on the finding of drug or alcohol abuse related to the offense for which the defendant is charged, the court or a magistrate shall require as a condition of personal bond that the defendant submit to testing for alcohol or a controlled substance in the defendant's body and participate in an alcohol or drug abuse treatment or education program if such a condition will serve to reasonably assure the appearance of the defendant for trial.

(d) The state may not use the results of any test conducted under this chapter in any criminal proceeding arising out of the offense for which the defendant is charged.

(e) Costs of testing may be assessed as court costs or ordered paid directly by the defendant as a condition of bond.

(f) In this article, "controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.

(g) The court may order that a personal bond fee assessed under Section 17.42 be:

- (1) paid before the defendant is released;
- (2) paid as a condition of bond;
- (3) paid as court costs;
- (4) reduced as otherwise provided for by statute; or
- (5) waived.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1989, 71st Leg., ch. 374 (S.B. 376), § 1, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 14 (S.B. 404), §§ 284(45), (57), effective September 1,

1991; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 14.19, effective September 1, 1995; am. Acts 2007, 80th Leg., ch. 593 (H.B. 8), § 3.08, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 122 (H.B. 3000), § 3, effective September 1, 2011; am. Acts 2017, 85th Leg., ch. 34 (S.B. 1576), § 4, effective September 1, 2017.

Art. 17.031. Release on Personal Bond.

(a) Any magistrate in this state may release a defendant eligible for release on personal bond under Article 17.03 of this code on his personal bond where the complaint and warrant for arrest does not originate in the county wherein the accused is arrested if the magistrate would have had jurisdiction over the matter had the complaint arisen within the county wherein the magistrate presides. The personal bond may not be revoked by the judge of the court issuing the warrant for arrest except for good cause shown.

(b) If there is a personal bond office in the county from which the warrant for arrest was issued, the court releasing a defendant on his personal bond will forward a copy of the personal bond to the personal bond office in that county.

HISTORY: Enacted by Acts 1971, 62nd Leg., ch. 787 (H.B. 1202), § 1, effective June 8, 1971; am. Acts 1989, 71st Leg., ch. 374 (S.B. 376), § 2, effective September 1, 1989.

Art. 17.032. Release on Personal Bond of Certain Defendants with Mental Illness or Intellectual Disability.

(a) In this article, “violent offense” means an offense under the following sections of the Penal Code:

- (1) Section 19.02 (murder);
- (2) Section 19.03 (capital murder);
- (3) Section 20.03 (kidnapping);
- (4) Section 20.04 (aggravated kidnapping);
- (5) Section 21.11 (indecent with a child);
- (6) Section 22.01(a)(1) (assault), if the offense involved family violence as defined by Section 71.004, Family Code;
- (7) Section 22.011 (sexual assault);
- (8) Section 22.02 (aggravated assault);
- (9) Section 22.021 (aggravated sexual assault);
- (10) Section 22.04 (injury to a child, elderly individual, or disabled individual);
- (11) Section 29.03 (aggravated robbery);
- (12) Section 21.02 (continuous sexual abuse of young child or children); or
- (13) Section 20A.03 (continuous trafficking of persons).

(b) Notwithstanding Article 17.03(b), or a bond schedule adopted or a standing order entered by a judge, a magistrate shall release a defendant on personal bond unless good cause is shown otherwise if:

- (1) the defendant is not charged with and has not been previously convicted of a violent offense;
- (2) the defendant is examined by the service provider that contracts with the jail to provide mental health or intellectual and developmental disability services, the local mental health authority, the local intellectual and developmental disability authority, or another qualified mental health or intellectual and developmental disability expert under Article 16.22;

(3) the applicable expert, in a written report submitted to the magistrate under Article 16.22:

(A) concludes that the defendant has a mental illness or is a person with an intellectual disability and is nonetheless competent to stand trial; and

(B) recommends mental health treatment or intellectual and developmental disability services for the defendant, as applicable;

(4) the magistrate determines, in consultation with the local mental health authority or local intellectual and developmental disability authority, that appropriate community-based mental health or intellectual and developmental disability services for the defendant are available in accordance with Section 534.053 or 534.103, Health and Safety Code, or through another mental health or intellectual and developmental disability services provider; and

(5) the magistrate finds, after considering all the circumstances, a pretrial risk assessment, if applicable, and any other credible information provided by the attorney representing the state or the defendant, that release on personal bond would reasonably ensure the defendant’s appearance in court as required and the safety of the community and the victim of the alleged offense.

(c) The magistrate, unless good cause is shown for not requiring treatment or services, shall require as a condition of release on personal bond under this article that the defendant submit to outpatient or inpatient mental health treatment or intellectual and developmental disability services as recommended by the service provider that contracts with the jail to provide mental health or intellectual and developmental disability services, the local mental health authority, the local intellectual and developmental disability authority, or another qualified mental health or intellectual and developmental disability expert if the defendant’s:

(1) mental illness or intellectual disability is chronic in nature; or

(2) ability to function independently will continue to deteriorate if the defendant does not receive the recommended treatment or services.

(d) In addition to a condition of release imposed under Subsection (c), the magistrate may require the defendant to comply with other conditions that are reasonably necessary to ensure the defendant’s appearance in court as required and the safety of the community and the victim of the alleged offense.

(e) In this article, a person is considered to have been convicted of an offense if:

- (1) a sentence is imposed;
- (2) the person is placed on community supervision or receives deferred adjudication; or
- (3) the court defers final disposition of the case.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 3.06, effective September 1, 1994; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 14.20, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 312 (H.B. 1747), § 2, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 828 (H.B. 1071), § 2, effective September 1, 2001; am. Acts 2007, 80th Leg., ch. 593 (H.B. 8), § 3.09, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 1228 (S.B. 1557), § 2, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 122 (H.B. 3000), § 4, effective September 1, 2011;

am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 3, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 950 (S.B. 1849), §§ 3.01, 3.02, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 3, effective September 1, 2019.

Art. 17.04. Requisites of a Personal Bond.

A personal bond is sufficient if it includes the requisites of a bail bond as set out in Article 17.08, except that no sureties are required. In addition, a personal bond shall contain:

- (1) the defendant’s name, address, and place of employment;
- (2) identification information, including the defendant’s:
 - (A) date and place of birth;
 - (B) height, weight, and color of hair and eyes;
 - (C) driver’s license number and state of issuance, if any; and
 - (D) nearest relative’s name and address, if any; and
- (3) the following oath sworn and signed by the defendant:
 - (3) “I swear that I will appear before (the court or magistrate) at (address, city, county) Texas, on the (date), at the hour of (time, a.m. or p.m.) or upon notice by the court, or pay to the court the principal sum of (amount) plus all necessary and reasonable expenses incurred in any arrest for failure to appear.”

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1987, 70th Leg., ch. 623 (H.B. 1827), § 1, effective September 1, 1987.

Search Warrants

CHAPTER 18

Search Warrants

Article 18.191.	Disposition of Firearm Seized from Certain Persons with Mental Illness.
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Art. 18.191. Disposition of Firearm Seized from Certain Persons with Mental Illness.

(a) A law enforcement officer who seizes a firearm from a person taken into custody under Section 573.001, Health and Safety Code, and not in connection with an offense involving the use of a weapon or an offense under Chapter 46, Penal Code, shall immediately provide the person a written copy of the receipt for the firearm and a written notice of the procedure for the return of a firearm under this article.

(b) The law enforcement agency holding a firearm subject to disposition under this article shall, as soon as possible, but not later than the 15th day after the date the person is taken into custody under Section 573.001, Health and Safety Code, provide written notice of the procedure for the return of a firearm under this article to the last known address of the person’s closest immediate family member as identified by the person or reasonably identifiable by the law enforcement agency, sent by certified mail, return receipt requested. The written notice must state the date by which a request for the return of

the firearm must be submitted to the law enforcement agency as provided by Subsection (h).

(c) Not later than the 30th day after the date a firearm subject to disposition under this article is seized, the law enforcement agency holding the firearm shall contact the court in the county having jurisdiction to order commitment under Chapter 574, Health and Safety Code, and request the disposition of the case. Not later than the 30th day after the date of this request, the clerk of the court shall advise the requesting agency whether the person taken into custody was released under Section 573.023, Health and Safety Code, or was ordered to receive inpatient mental health services under Section 574.034 or 574.035, Health and Safety Code.

(d) Not later than the 30th day after the date the clerk of the court informs a law enforcement agency holding a firearm subject to disposition under this article that the person taken into custody was released under Section 573.023, Health and Safety Code, the law enforcement agency shall:

- (1) conduct a check of state and national criminal history record information to verify whether the person may lawfully possess a firearm under 18 U.S.C. Section 922(g); and
- (2) provide written notice to the person by certified mail that the firearm may be returned to the person on verification under Subdivision (1) that the person may lawfully possess the firearm.

(e) Not later than the 30th day after the date the clerk of the court informs a law enforcement agency holding a firearm subject to disposition under this article that the person taken into custody was ordered to receive inpatient mental health services under Section 574.034 or 574.035, Health and Safety Code, the law enforcement agency shall provide written notice to the person by certified mail that the person:

- (1) is prohibited from owning, possessing, or purchasing a firearm under 18 U.S.C. Section 922(g)(4);
- (2) may petition the court that entered the commitment order for relief from the firearms disability under Section 574.088, Health and Safety Code; and
- (3) may dispose of the firearm in the manner provided by Subsection (f).

(f) A person who receives notice under Subsection (e) may dispose of the person’s firearm by:

- (1) releasing the firearm to the person’s designee, if:
 - (A) the law enforcement agency holding the firearm conducts a check of state and national criminal history record information and verifies that the designee may lawfully possess a firearm under 18 U.S.C. Section 922(g);
 - (B) the person provides to the law enforcement agency a copy of a notarized statement releasing the firearm to the designee; and
 - (C) the designee provides to the law enforcement agency an affidavit confirming that the designee:
 - (i) will not allow access to the firearm by the person who was taken into custody under Section 573.001, Health and Safety Code, at any time during which the person may not lawfully possess a firearm under 18 U.S.C. Section 922(g); and
 - (ii) acknowledges the responsibility of the designee and no other person to verify whether the

person has reestablished the person's eligibility to lawfully possess a firearm under 18 U.S.C. Section 922(g); or

(2) releasing the firearm to the law enforcement agency holding the firearm, for disposition under Subsection (h).

(g) If a firearm subject to disposition under this article is wholly or partly owned by a person other than the person taken into custody under Section 573.001, Health and Safety Code, the law enforcement agency holding the firearm shall release the firearm to the person claiming a right to or interest in the firearm after:

(1) the person provides an affidavit confirming that the person:

(A) wholly or partly owns the firearm;

(B) will not allow access to the firearm by the person who was taken into custody under Section 573.001, Health and Safety Code, at any time during which that person may not lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(C) acknowledges the responsibility of the person and no other person to verify whether the person who was taken into custody under Section 573.001, Health and Safety Code, has reestablished the person's eligibility to lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(2) the law enforcement agency holding the firearm conducts a check of state and national criminal history record information and verifies that the person claiming a right to or interest in the firearm may lawfully possess a firearm under 18 U.S.C. Section 922(g).

(h) If a person to whom written notice is provided under Subsection (b) or another lawful owner of a firearm subject to disposition under this article does not submit a written request to the law enforcement agency for the return of the firearm before the 121st day after the date the law enforcement agency holding the firearm provides written notice under Subsection (b), the law enforcement agency may have the firearm sold by a person who is a licensed firearms dealer under 18 U.S.C. Section 923. The proceeds from the sale of a firearm under this subsection shall be given to the owner of the seized firearm, less the cost of administering this subsection. An unclaimed firearm that was seized from a person taken into custody under Section 573.001, Health and Safety Code, may not be destroyed or forfeited to the state.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 776 (S.B. 1189), § 2, effective September 1, 2013.

After Commitment or Bail and Before the Trial

CHAPTER 26

Arraignment

Article 26.04.	Procedures for Appointing Counsel.
26.047.	Managed Assigned Counsel Program.
26.05.	Compensation of Counsel Appointed to Defendant. [Effective until January 1, 2020]
26.05.	Compensation of Counsel Appointed to Defendant. [Effective January 1, 2020]

Article 26.051.
26.052.

Indigent Inmate Defense.
Appointment of Counsel in Death Penalty Case; Reimbursement of Investigative Expenses.

26.13.

Plea of Guilty. [Effective until January 1, 2021]

26.13.

Plea of Guilty. [Effective January 1, 2021]

Art. 26.04. Procedures for Appointing Counsel.

(a) The judges of the county courts, statutory county courts, and district courts trying criminal cases in each county, by local rule, shall adopt and publish written countywide procedures for timely and fairly appointing counsel for an indigent defendant in the county arrested for, charged with, or taking an appeal from a conviction of a misdemeanor punishable by confinement or a felony. The procedures must be consistent with this article and Articles 1.051, 15.17, 15.18, 26.05, and 26.052 and must provide for the priority appointment of a public defender's office as described by Subsection (f). A court shall appoint an attorney from a public appointment list using a system of rotation, unless the court appoints an attorney under Subsection (f), (f-1), (h), or (i). The court shall appoint attorneys from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.

(b) Procedures adopted under Subsection (a) shall:

(1) authorize only the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county, or the judges' designee, to appoint counsel for indigent defendants in the county;

(2) apply to each appointment of counsel made by a judge or the judges' designee in the county;

(3) ensure that each indigent defendant in the county who is charged with a misdemeanor punishable by confinement or with a felony and who appears in court without counsel has an opportunity to confer with appointed counsel before the commencement of judicial proceedings;

(4) require appointments for defendants in capital cases in which the death penalty is sought to comply with any applicable requirements under Articles 11.071 and 26.052;

(5) ensure that each attorney appointed from a public appointment list to represent an indigent defendant perform the attorney's duty owed to the defendant in accordance with the adopted procedures, the requirements of this code, and applicable rules of ethics; and

(6) ensure that appointments are allocated among qualified attorneys in a manner that is fair, neutral, and nondiscriminatory.

(c) Whenever a court or the courts' designee authorized under Subsection (b) to appoint counsel for indigent defendants in the county determines for purposes of a criminal proceeding that a defendant charged with or appealing a conviction of a felony or a misdemeanor punishable by confinement is indigent or that the interests of justice require representation of a defendant in the proceeding, the court or the courts' designee shall appoint

one or more practicing attorneys to represent the defendant in accordance with this subsection and the procedures adopted under Subsection (a). If the court or the courts' designee determines that the defendant does not speak and understand the English language or that the defendant is deaf, the court or the courts' designee shall make an effort to appoint an attorney who is capable of communicating in a language understood by the defendant.

(d) A public appointment list from which an attorney is appointed as required by Subsection (a) shall contain the names of qualified attorneys, each of whom:

- (1) applies to be included on the list;
- (2) meets the objective qualifications specified by the judges under Subsection (e);
- (3) meets any applicable qualifications specified by the Texas Indigent Defense Commission; and
- (4) is approved by a majority of the judges who established the appointment list under Subsection (e).

(e) In a county in which a court is required under Subsection (a) to appoint an attorney from a public appointment list:

(1) the judges of the county courts and statutory county courts trying misdemeanor cases in the county, by formal action:

(A) shall:

(i) establish a public appointment list of attorneys qualified to provide representation in the county in misdemeanor cases punishable by confinement; and

(ii) specify the objective qualifications necessary for an attorney to be included on the list; and

(B) may establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense, the attorneys' qualifications, and whether representation will be provided in trial court proceedings, appellate proceedings, or both; and

(2) the judges of the district courts trying felony cases in the county, by formal action:

(A) shall:

(i) establish a public appointment list of attorneys qualified to provide representation in felony cases in the county; and

(ii) specify the objective qualifications necessary for an attorney to be included on the list; and

(B) may establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense, the attorneys' qualifications, and whether representation will be provided in trial court proceedings, appellate proceedings, or both.

(f) In a county with a public defender's office, the court or the courts' designee shall give priority in appointing that office to represent the defendant in the criminal proceeding, including a proceeding in a capital murder case. However, the court is not required to appoint the public defender's office if:

(1) the court makes a finding of good cause for appointing other counsel, provided that in a capital murder case, the court makes a finding of good cause on the record for appointing that counsel;

(2) the appointment would be contrary to the office's written plan under Article 26.044;

(3) the office is prohibited from accepting the appointment under Article 26.044(j); or

(4) a managed assigned counsel program also exists in the county and an attorney will be appointed under that program.

(f-1) In a county in which a managed assigned counsel program is operated in accordance with Article 26.047, the managed assigned counsel program may appoint counsel to represent the defendant in accordance with the guidelines established for the program.

(g) A countywide alternative program for appointing counsel for indigent defendants in criminal cases is established by a formal action in which two-thirds of the judges of the courts designated under this subsection vote to establish the alternative program. An alternative program for appointing counsel in misdemeanor and felony cases may be established in the manner provided by this subsection by the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county. An alternative program for appointing counsel in misdemeanor cases may be established in the manner provided by this subsection by the judges of the county courts and statutory county courts trying criminal cases in the county. An alternative program for appointing counsel in felony cases may be established in the manner provided by this subsection by the judges of the district courts trying criminal cases in the county. In a county in which an alternative program is established:

(1) the alternative program may:

(A) use a single method for appointing counsel or a combination of methods; and

(B) use a multicounty appointment list using a system of rotation; and

(2) the procedures adopted under Subsection (a) must ensure that:

(A) attorneys appointed using the alternative program to represent defendants in misdemeanor cases punishable by confinement:

(i) meet specified objective qualifications for that representation, which may be graduated according to the degree of seriousness of the offense and whether representation will be provided in trial court proceedings, appellate proceedings, or both; and

(ii) are approved by a majority of the judges of the county courts and statutory county courts trying misdemeanor cases in the county;

(B) attorneys appointed using the alternative program to represent defendants in felony cases:

(i) meet specified objective qualifications for that representation, which may be graduated according to the degree of seriousness of the offense and whether representation will be provided in trial court proceedings, appellate proceedings, or both; and

(ii) are approved by a majority of the judges of the district courts trying felony cases in the county;

(C) appointments for defendants in capital cases in which the death penalty is sought comply with the requirements of Article 26.052; and

(D) appointments are reasonably and impartially allocated among qualified attorneys.

(h) Subject to Subsection (f), in a county in which an alternative program for appointing counsel is established as provided by Subsection (g) and is approved by the presiding judge of the administrative judicial region, a court or the courts' designee may appoint an attorney to represent an indigent defendant by using the alternative program. In establishing an alternative program under Subsection (g), the judges of the courts establishing the program may not, without the approval of the commissioners court, obligate the county by contract or by the creation of new positions that cause an increase in expenditure of county funds.

(i) Subject to Subsection (f), a court or the courts' designee required under Subsection (c) to appoint an attorney to represent a defendant accused or convicted of a felony may appoint an attorney from any county located in the court's administrative judicial region.

(j) An attorney appointed under this article shall:

(1) make every reasonable effort to contact the defendant not later than the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed;

(2) represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is permitted or ordered by the court to withdraw as counsel for the defendant after a finding of good cause is entered on the record;

(3) with respect to a defendant not represented by other counsel, before withdrawing as counsel for the defendant after a trial or the entry of a plea of guilty:

(A) advise the defendant of the defendant's right to file a motion for new trial and a notice of appeal;

(B) if the defendant wishes to pursue either or both remedies described by Paragraph (A), assist the defendant in requesting the prompt appointment of replacement counsel; and

(C) if replacement counsel is not appointed promptly and the defendant wishes to pursue an appeal, file a timely notice of appeal; and

(4) not later than October 15 of each year and on a form prescribed by the Texas Indigent Defense Commission, submit to the county information, for the preceding fiscal year, that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in the county under this article and Title 3, Family Code.

(k) A court may replace an attorney who violates Subsection (j)(1) with other counsel. A majority of the judges of the county courts and statutory county courts or the district courts, as appropriate, trying criminal cases in the county may remove from consideration for appointment an attorney who intentionally or repeatedly violates Subsection (j)(1).

(l) Procedures adopted under Subsection (a) must include procedures and financial standards for determining whether a defendant is indigent. The procedures and standards shall apply to each defendant in the county equally, regardless of whether the defendant is in custody or has been released on bail.

(m) In determining whether a defendant is indigent, the court or the courts' designee may consider the defendant's income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the defendant. The court or the courts' designee may not consider whether the defendant has posted or is capable of posting bail, except to the extent that it reflects the defendant's financial circumstances as measured by the considerations listed in this subsection.

(n) A defendant who requests a determination of indigency and appointment of counsel shall:

(1) complete under oath a questionnaire concerning his financial resources;

(2) respond under oath to an examination regarding his financial resources by the judge or magistrate responsible for determining whether the defendant is indigent; or

(3) complete the questionnaire and respond to examination by the judge or magistrate.

(o) Before making a determination of whether a defendant is indigent, the court shall request the defendant to sign under oath a statement substantially in the following form: "On this ___ day of _____, 20 ____, I have been advised by the (name of the court) Court of my right to representation by counsel in connection with the charge pending against me. I am without means to employ counsel of my own choosing and I hereby request the court to appoint counsel for me. (signature of the defendant)"

(p) A defendant who is determined by the court to be indigent is presumed to remain indigent for the remainder of the proceedings in the case unless a material change in the defendant's financial circumstances occurs. If there is a material change in financial circumstances after a determination of indigency or nonindigency is made, the defendant, the defendant's counsel, or the attorney representing the state may move for reconsideration of the determination.

(q) A written or oral statement elicited under this article or evidence derived from the statement may not be used for any purpose, except to determine the defendant's indigency or to impeach the direct testimony of the defendant. This subsection does not prohibit prosecution of the defendant under Chapter 37, Penal Code.

(r) A court may not threaten to arrest or incarcerate a person solely because the person requests the assistance of counsel.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1987, 70th Leg., ch. 979 (S.B. 1108), § 2, effective September 1, 1987; am. Acts 2001, 77th Leg., ch. 906 (S.B. 7), § 6, effective January 1, 2002; am. Acts 2011, 82nd Leg., ch. 671 (S.B. 1681), § 1, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 984 (H.B. 1754), § 7, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 912 (H.B. 1318), § 1(a), effective September 1, 2014; am. Acts 2015, 84th Leg., ch. 595 (S.B. 316), § 1, effective September 1, 2015; am. Acts 2015, 84th Leg., ch. 858 (S.B. 1517), § 4, effective September 1, 2015; am. Acts 2019, 86th Leg., ch. 591 (S.B. 583), § 1, effective September 1, 2019.

Art. 26.047. Managed Assigned Counsel Program.

(a) In this article:

(1) "Governmental entity" has the meaning assigned by Article 26.044.

(2) “Managed assigned counsel program” or “program” means a program operated with public funds:

(A) by a governmental entity, nonprofit corporation, or bar association under a written agreement with a governmental entity, other than an individual judge or court; and

(B) for the purpose of appointing counsel under Article 26.04 of this code or Section 51.10, Family Code.

(b) The commissioners court of any county, on written approval of a judge of the juvenile court of a county or a county court, statutory county court, or district court trying criminal cases in the county, may appoint a governmental entity, nonprofit corporation, or bar association to operate a managed assigned counsel program. The commissioners courts of two or more counties may enter into a written agreement to jointly appoint and fund a governmental entity, nonprofit corporation, or bar association to operate a managed assigned counsel program. In appointing an entity to operate a managed assigned counsel program under this subsection, the commissioners court shall specify or the commissioners courts shall jointly specify:

(1) the types of cases in which the program may appoint counsel under Article 26.04 of this code or Section 51.10, Family Code, and the courts in which the counsel appointed by the program may be required to appear; and

(2) the term of any agreement establishing a program and how the agreement may be terminated or renewed.

(c) The commissioners court or commissioners courts shall require a written plan of operation from an entity operating a program under this article. The plan of operation must include:

(1) a budget for the program, including salaries;

(2) a description of each personnel position, including the program’s director;

(3) the maximum allowable caseload for each attorney appointed by the program;

(4) provisions for training personnel of the program and attorneys appointed under the program;

(5) a description of anticipated overhead costs for the program;

(6) a policy regarding licensed investigators and expert witnesses used by attorneys appointed under the program;

(7) a policy to ensure that appointments are reasonably and impartially allocated among qualified attorneys; and

(8) a policy to ensure that an attorney appointed under the program does not accept appointment in a case that involves a conflict of interest for the attorney that has not been waived by all affected clients.

(d) A program under this article must have a director. Unless the program uses a review committee appointed under Subsection (e), a program under this article must be directed by a person who:

(1) is a member of the State Bar of Texas;

(2) has practiced law for at least three years; and

(3) has substantial experience in the practice of criminal law.

(e) The governmental entity, nonprofit corporation, or bar association operating the program may appoint a

review committee of three or more individuals to approve attorneys for inclusion on the program’s public appointment list described by Subsection (f). Each member of the committee:

(1) must meet the requirements described by Subsection (d);

(2) may not be employed as a prosecutor; and

(3) may not be included on or apply for inclusion on the public appointment list described by Subsection (f).

(f) The program’s public appointment list from which an attorney is appointed must contain the names of qualified attorneys, each of whom:

(1) applies to be included on the list;

(2) meets any applicable requirements specified by the procedure for appointing counsel adopted under Article 26.04(a) and the Texas Indigent Defense Commission; and

(3) is approved by the program director or review committee, as applicable.

(g) A court may replace an attorney appointed by the program for the same reasons and in the same manner described by Article 26.04(k).

(h) A managed assigned counsel program is entitled to receive funds for personnel costs and expenses incurred in amounts fixed by the commissioners court and paid out of the appropriate county fund, or jointly fixed by the commissioners courts and proportionately paid out of each appropriate county fund if the program serves more than one county.

(i) A managed assigned counsel program may employ personnel and enter into contracts necessary to perform the program’s duties as specified by the commissioners court or commissioners courts under this article.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 984 (H.B. 1754), § 11, effective September 1, 2011.

Art. 26.05. Compensation of Counsel Appointed to Defend. [Effective until January 1, 2020]

(a) A counsel, other than an attorney with a public defender’s office or an attorney employed by the office of capital and forensic writs, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be paid a reasonable attorney’s fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:

(1) time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited;

(2) reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires;

(3) preparation of an appellate brief and preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and

(4) preparation of a motion for rehearing.

(b) All payments made under this article shall be paid in accordance with a schedule of fees adopted by formal action of the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county. On adoption of a schedule of fees as provided by

this subsection, a copy of the schedule shall be sent to the commissioners court of the county.

(c) Each fee schedule adopted shall state reasonable fixed rates or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and shall provide a form for the appointed counsel to itemize the types of services performed. No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings or, if the county operates a managed assigned counsel program under Article 26.047, to the director of the program, and until the judge or director, as applicable, approves the payment. If the judge or director disapproves the requested amount of payment, the judge or director shall make written findings stating the amount of payment that the judge or director approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment or failure to act and determine the appropriate amount of payment. In reviewing the disapproval or failure to act, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county.

(d) A counsel in a noncapital case, other than an attorney with a public defender's office, appointed to represent a defendant under this code shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts. Expenses incurred with prior court approval shall be reimbursed in the same manner provided for capital cases by Articles 26.052(f) and (g), and expenses incurred without prior court approval shall be reimbursed in the manner provided for capital cases by Article 26.052(h).

(e) A majority of the judges of the county courts and statutory county courts or the district courts, as appropriate, trying criminal cases in the county may remove an attorney from consideration for appointment if, after a hearing, it is shown that the attorney submitted a claim for legal services not performed by the attorney.

(f) All payments made under this article shall be paid from the general fund of the county in which the prosecution was instituted or habeas corpus hearing held and may be included as costs of court.

(g) If the judge determines that a defendant has financial resources that enable the defendant to offset in part or in whole the costs of the legal services provided to the defendant in accordance with Article 1.051(c) or (d), including any expenses and costs, the judge shall order the defendant to pay during the pendency of the charges or, if

convicted, as court costs the amount that the judge finds the defendant is able to pay. The defendant may not be ordered to pay an amount that exceeds:

(1) the actual costs, including any expenses and costs, paid by the county for the legal services provided by an appointed attorney; or

(2) if the defendant was represented by a public defender's office, the actual amount, including any expenses and costs, that would have otherwise been paid to an appointed attorney had the county not had a public defender's office.

(g-1) (1) This subsection applies only to a defendant who at the time of sentencing to confinement or placement on community supervision, including deferred adjudication community supervision, did not have the financial resources to pay the maximum amount described by Subsection (g)(1) or (2), as applicable, for legal services provided to the defendant.

(2) At any time during a defendant's sentence of confinement or period of community supervision, the judge, after providing written notice to the defendant and an opportunity for the defendant to present information relevant to the defendant's ability to pay, may order a defendant to whom this subsection applies to pay any unpaid portion of the amount described by Subsection (g)(1) or (2), as applicable, if the judge determines that the defendant has the financial resources to pay the additional portion.

(3) The judge may amend an order entered under Subdivision (2) if, subsequent to the judge's determination under that subdivision, the judge determines that the defendant is indigent or demonstrates an inability to pay the amount ordered.

(4) In making a determination under this subsection, the judge may only consider the information a court or courts' designee is authorized to consider in making an indigency determination under Article 26.04(m).

(5) Notwithstanding any other law, the judge may not revoke or extend the defendant's period of community supervision solely to collect the amount the defendant has been ordered to pay under this subsection.

(h) Reimbursement of expenses incurred for purposes of investigation or expert testimony may be paid directly to a private investigator licensed under Chapter 1702, Occupations Code, or to an expert witness in the manner designated by appointed counsel and approved by the court.

(i) [Repealed by Acts 2011, 82nd Leg., ch. 984 (H.B. 1754), § 15(1), effective September 1, 2011.]

HISTORY: Am. Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1969, 61st Leg., ch. 347 (H.B. 541), § 1, effective May 27, 1969; am. Acts 1971, 62nd Leg., ch. 520 (H.B. 1792), § 1, effective August 30, 1971; am. Acts 1973, 63rd Leg., ch. 426 (H.B. 200), art. 3, § 3, effective June 14, 1973; am. Acts 1981, 67th Leg., ch. 291 (S.B. 265), § 106, effective September 1, 1981; am. Acts 1987, 70th Leg., ch. 979 (S.B. 1108), § 3, effective September 1, 1987; am. Acts 1999, 76th Leg., ch. 837 (H.B. 1752), § 1, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 906 (S.B. 7), § 8, effective January 1, 2002; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 14.734, effective September 1, 2001; am. Acts 2007, 80th Leg., ch. 1014 (H.B. 1267), § 1, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 781 (S.B. 1091), § 9, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 984 (H.B. 1754), §§ 12, 15(1), effective

September 1, 2011; am. Acts 2015, 84th Leg., ch. 106 (H.B. 3633), § 1, effective September 1, 2015; am. Acts 2015, 84th Leg., ch. 1215 (S.B. 1743), § 7, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 554 (S.B. 527), § 1, effective September 1, 2017.

Art. 26.05. Compensation of Counsel Appointed to Defend. [Effective January 1, 2020]

(a) A counsel, other than an attorney with a public defender's office or an attorney employed by the office of capital and forensic writs, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:

- (1) time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited;
- (2) reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires;
- (3) preparation of an appellate brief and preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and
- (4) preparation of a motion for rehearing.

(b) All payments made under this article shall be paid in accordance with a schedule of fees adopted by formal action of the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county. On adoption of a schedule of fees as provided by this subsection, a copy of the schedule shall be sent to the commissioners court of the county.

(c) Each fee schedule adopted shall state reasonable fixed rates or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and shall provide a form for the appointed counsel to itemize the types of services performed. No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings or, if the county operates a managed assigned counsel program under Article 26.047, to the director of the program, and until the judge or director, as applicable, approves the payment. If the judge or director disapproves the requested amount of payment, the judge or director shall make written findings stating the amount of payment that the judge or director approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment or failure to act and determine the appropriate amount of payment. In reviewing the disapproval or failure to act, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the commissioners court

shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county.

(d) A counsel in a noncapital case, other than an attorney with a public defender's office, appointed to represent a defendant under this code shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts. Expenses incurred with prior court approval shall be reimbursed in the same manner provided for capital cases by Articles 26.052(f) and (g), and expenses incurred without prior court approval shall be reimbursed in the manner provided for capital cases by Article 26.052(h).

(e) A majority of the judges of the county courts and statutory county courts or the district courts, as appropriate, trying criminal cases in the county may remove an attorney from consideration for appointment if, after a hearing, it is shown that the attorney submitted a claim for legal services not performed by the attorney.

(f) All payments made under this article shall be paid from the general fund of the county in which the prosecution was instituted or habeas corpus hearing held and may be included as reimbursement fees.

(g) If the judge determines that a defendant has financial resources that enable the defendant to offset in part or in whole the costs of the legal services provided to the defendant in accordance with Article 1.051(c) or (d), including any expenses and costs, the judge shall order the defendant to pay during the pendency of the charges or, if convicted, as a reimbursement fee the amount that the judge finds the defendant is able to pay. The defendant may not be ordered to pay an amount that exceeds:

- (1) the actual costs, including any expenses and costs, paid by the county for the legal services provided by an appointed attorney; or
- (2) if the defendant was represented by a public defender's office, the actual amount, including any expenses and costs, that would have otherwise been paid to an appointed attorney had the county not had a public defender's office.

(g-1) (1) This subsection applies only to a defendant who at the time of sentencing to confinement or placement on community supervision, including deferred adjudication community supervision, did not have the financial resources to pay the maximum amount described by Subsection (g)(1) or (2), as applicable, for legal services provided to the defendant.

(2) At any time during a defendant's sentence of confinement or period of community supervision, the judge, after providing written notice to the defendant and an opportunity for the defendant to present information relevant to the defendant's ability to pay, may order a defendant to whom this subsection applies to pay any unpaid portion of the amount described by Subsection (g)(1) or (2), as applicable, if the judge determines that the defendant has the financial resources to pay the additional portion.

(3) The judge may amend an order entered under Subdivision (2) if, subsequent to the judge's determination under that subdivision, the judge determines that the defendant is indigent or demonstrates an inability to pay the amount ordered.

(4) In making a determination under this subsection, the judge may only consider the information a court or courts' designee is authorized to consider in making an indigency determination under Article 26.04(m).

(5) Notwithstanding any other law, the judge may not revoke or extend the defendant's period of community supervision solely to collect the amount the defendant has been ordered to pay under this subsection.

(h) Reimbursement of expenses incurred for purposes of investigation or expert testimony may be paid directly to a private investigator licensed under Chapter 1702, Occupations Code, or to an expert witness in the manner designated by appointed counsel and approved by the court.

(i) [Repealed by Acts 2011, 82nd Leg., ch. 984 (H.B. 1754), § 15(1), effective September 1, 2011.]

HISTORY: Am. Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1969, 61st Leg., ch. 347 (H.B. 541), § 1, effective May 27, 1969; am. Acts 1971, 62nd Leg., ch. 520 (H.B. 1792), § 1, effective August 30, 1971; am. Acts 1973, 63rd Leg., ch. 426 (H.B. 200), art. 3, § 3, effective June 14, 1973; am. Acts 1981, 67th Leg., ch. 291 (S.B. 265), § 106, effective September 1, 1981; am. Acts 1987, 70th Leg., ch. 979 (S.B. 1108), § 3, effective September 1, 1987; am. Acts 1999, 76th Leg., ch. 837 (H.B. 1752), § 1, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 906 (S.B. 7), § 8, effective January 1, 2002; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 14.734, effective September 1, 2001; am. Acts 2007, 80th Leg., ch. 1014 (H.B. 1267), § 1, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 781 (S.B. 1091), § 9, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 984 (H.B. 1754), §§ 12, 15(1), effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 106 (H.B. 3633), § 1, effective September 1, 2015; am. Acts 2015, 84th Leg., ch. 1215 (S.B. 1743), § 7, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 554 (S.B. 527), § 1, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 1352 (S.B. 346), § 2.07, effective January 1, 2020.

Art. 26.051. Indigent Inmate Defense.

(a) In this article:

(1) "Board" means the Texas Board of Criminal Justice.

(2) "Correctional institutions division" means the correctional institutions division of the Texas Department of Criminal Justice.

(b), (c) [Repealed by Acts 2007, 80th Leg., ch. 1014 (H.B. 1267), § 7, effective September 1, 2007.]

(d) A court shall:

(1) notify the board if it determines that a defendant before the court is indigent and is an inmate charged with an offense committed while in the custody of the correctional institutions division or a correctional facility authorized by Section 495.001, Government Code; and

(2) request that the board provide legal representation for the inmate.

(e) The board shall provide legal representation for inmates described by Subsection (d) of this section. The board may employ attorneys, support staff, and any other personnel required to provide legal representation for those inmates. All personnel employed under this article are directly responsible to the board in the performance of their duties. The board shall pay all fees and costs associated with providing legal representation for those inmates.

(f) [Repealed by Acts 1993, 73rd Leg., ch. 988 (S.B. 532), § 7.02, effective September 1, 1993.]

(g) The court shall appoint an attorney other than an attorney provided by the board if the court determines for any of the following reasons that a conflict of interest could arise from the use of an attorney provided by the board under Subsection (e) of this article:

(1) the case involves more than one inmate and the representation of more than one inmate could impair the attorney's effectiveness;

(2) the case is appealed and the court is satisfied that conflict of interest would prevent the presentation of a good faith allegation of ineffective assistance of counsel by a trial attorney provided by the board; or

(3) any conflict of interest exists under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas that precludes representation by an attorney appointed by the board.

(h) When the court appoints an attorney other than an attorney provided by the board:

(1) except as otherwise provided by this article, the inmate's legal defense is subject to Articles 1.051, 26.04, 26.05, and 26.052, as applicable; and

(2) the county in which a facility of the correctional institutions division or a correctional facility authorized by Section 495.001, Government Code, is located shall pay from its general fund the total costs of the aggregate amount allowed and awarded by the court for attorney compensation and expenses under Article 26.05 or 26.052, as applicable.

(i) The state shall reimburse a county for attorney compensation and expenses awarded under Subsection (h). A court seeking reimbursement for a county shall certify to the comptroller of public accounts the amount of compensation and expenses for which the county is entitled to be reimbursed under this article. Not later than the 60th day after the date the comptroller receives from the court the request for reimbursement, the comptroller shall issue a warrant to the county in the amount certified by the court.

HISTORY: Am. Acts 1990, 71st Leg., 6th C.S., ch. 15 (H.B. 80), § 2, effective June 14, 1990; am. Acts 1991, 72nd Leg., ch. 719 (H.B. 2426), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 988 (S.B. 532), §§ 7.01, 7.02, effective September 1, 1993; am. Acts 2007, 80th Leg., ch. 1014 (H.B. 1267), §§ 2, 3, 7, effective September 1, 2007.

Art. 26.052. Appointment of Counsel in Death Penalty Case; Reimbursement of Investigative Expenses.

(a) Notwithstanding any other provision of this chapter, this article establishes procedures in death penalty cases for appointment and payment of counsel to represent indigent defendants at trial and on direct appeal and to apply for writ of certiorari in the United States Supreme Court.

(b) If a county is served by a public defender's office, trial counsel and counsel for direct appeal or to apply for a writ of certiorari may be appointed as provided by the guidelines established by the public defender's office. In all other cases in which the death penalty is sought, counsel shall be appointed as provided by this article.

(c) A local selection committee is created in each administrative judicial region created under Section 74.042, Government Code. The administrative judge of the judicial region shall appoint the members of the committee. A committee shall have not less than four members, including:

- (1) the administrative judge of the judicial region;
- (2) at least one district judge;
- (3) a representative from the local bar association; and
- (4) at least one practitioner who is board certified by the State Bar of Texas in criminal law.

(d) (1) The committee shall adopt standards for the qualification of attorneys to be appointed to represent indigent defendants in capital cases in which the death penalty is sought.

(2) The standards must require that a trial attorney appointed as lead counsel to a capital case:

- (A) be a member of the State Bar of Texas;
- (B) exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases;
- (C) have not been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any capital case, unless the local selection committee determines under Subsection (n) that the conduct underlying the finding no longer accurately reflects the attorney's ability to provide effective representation;
- (D) have at least five years of criminal law experience;
- (E) have tried to a verdict as lead defense counsel a significant number of felony cases, including homicide trials and other trials for offenses punishable as second or first degree felonies or capital felonies;
- (F) have trial experience in:
 - (i) the use of and challenges to mental health or forensic expert witnesses; and
 - (ii) investigating and presenting mitigating evidence at the penalty phase of a death penalty trial; and
- (G) have participated in continuing legal education courses or other training relating to criminal defense in death penalty cases.

(3) The standards must require that an attorney appointed as lead appellate counsel in the direct appeal of a capital case:

- (A) be a member of the State Bar of Texas;
- (B) exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases;
- (C) have not been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any capital case, unless the local selection committee determines under Subsection (n) that the conduct underlying the finding no longer accurately reflects the attorney's ability to provide effective representation;
- (D) have at least five years of criminal law experience;
- (E) have authored a significant number of appellate briefs, including appellate briefs for homicide

cases and other cases involving an offense punishable as a capital felony or a felony of the first degree or an offense described by Article 42A.054(a);

(F) have trial or appellate experience in:

- (i) the use of and challenges to mental health or forensic expert witnesses; and
- (ii) the use of mitigating evidence at the penalty phase of a death penalty trial; and

(G) have participated in continuing legal education courses or other training relating to criminal defense in appealing death penalty cases.

(4) The committee shall prominently post the standards in each district clerk's office in the region with a list of attorneys qualified for appointment.

(5) Not later than the second anniversary of the date an attorney is placed on the list of attorneys qualified for appointment in death penalty cases and each year following the second anniversary, the attorney must present proof to the committee that the attorney has successfully completed the minimum continuing legal education requirements of the State Bar of Texas, including a course or other form of training relating to criminal defense in death penalty cases or in appealing death penalty cases, as applicable. The committee shall remove the attorney's name from the list of qualified attorneys if the attorney fails to provide the committee with proof of completion of the continuing legal education requirements.

(e) The presiding judge of the district court in which a capital felony case is filed shall appoint two attorneys, at least one of whom must be qualified under this chapter, to represent an indigent defendant as soon as practicable after charges are filed, unless the state gives notice in writing that the state will not seek the death penalty.

(f) Appointed counsel may file with the trial court a pretrial ex parte confidential request for advance payment of expenses to investigate potential defenses. The request for expenses must state:

- (1) the type of investigation to be conducted;
- (2) specific facts that suggest the investigation will result in admissible evidence; and
- (3) an itemized list of anticipated expenses for each investigation.

(g) The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:

- (1) state the reasons for the denial in writing;
- (2) attach the denial to the confidential request; and
- (3) submit the request and denial as a sealed exhibit to the record.

(h) Counsel may incur expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred.

(i) If the indigent defendant is convicted of a capital felony and sentenced to death, the defendant is entitled to be represented by competent counsel on appeal and to apply for a writ of certiorari to the United States Supreme Court.

(j) As soon as practicable after a death sentence is imposed in a capital felony case, the presiding judge of the

convicting court shall appoint counsel to represent an indigent defendant on appeal and to apply for a writ of certiorari, if appropriate.

(k) The court may not appoint an attorney as counsel on appeal if the attorney represented the defendant at trial, unless:

(1) the defendant and the attorney request the appointment on the record; and

(2) the court finds good cause to make the appointment.

(l) An attorney appointed under this article to represent a defendant at trial or on direct appeal is compensated as provided by Article 26.05 from county funds. Advance payment of expenses anticipated or reimbursement of expenses incurred for purposes of investigation or expert testimony may be paid directly to a private investigator licensed under Chapter 1702, Occupations Code, or to an expert witness in the manner designated by appointed counsel and approved by the court.

(m) The local selection committee shall annually review the list of attorneys posted under Subsection (d) to ensure that each listed attorney satisfies the requirements under this chapter.

(n) At the request of an attorney, the local selection committee shall make a determination under Subsection (d)(2)(C) or (3)(C), as applicable, regarding an attorney's current ability to provide effective representation following a judicial finding that the attorney previously rendered ineffective assistance of counsel in a capital case.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 319 (S.B. 440), § 2, effective September 1, 1995; am. Acts 1999, 76th Leg., ch. 837 (H.B. 1752), § 2, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 906 (S.B. 7), § 9, effective January 1, 2002; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 14.735, effective September 1, 2001; am. Acts 2005, 79th Leg., ch. 787 (S.B. 60), § 14, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 965 (H.B. 1701), § 7, effective September 1, 2005; am. Acts 2009, 81st Leg., ch. 32 (H.B. 2058), § 1, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 1343 (S.B. 1308), § 1, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 2.06, effective January 1, 2017.

Art. 26.13. Plea of Guilty. [Effective until January 1, 2021]

(a) Prior to accepting a plea of guilty or a plea of nolo contendere, the court shall admonish the defendant of:

(1) the range of the punishment attached to the offense;

(2) the fact that the recommendation of the prosecuting attorney as to punishment is not binding on the court. Provided that the court shall inquire as to the existence of a plea bargain agreement between the state and the defendant and, if an agreement exists, the court shall inform the defendant whether it will follow or reject the agreement in open court and before any finding on the plea. Should the court reject the agreement, the defendant shall be permitted to withdraw the defendant's plea of guilty or nolo contendere;

(3) the fact that if the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and the defendant's attorney, the trial court must give its permission to the defendant before the defendant may prosecute an ap-

peal on any matter in the case except for those matters raised by written motions filed prior to trial;

(4) the fact that if the defendant is not a citizen of the United States of America, a plea of guilty or nolo contendere for the offense charged may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law;

(5) the fact that the defendant will be required to meet the registration requirements of Chapter 62, if the defendant is convicted of or placed on deferred adjudication for an offense for which a person is subject to registration under that chapter; and

(6) the fact that if the defendant is placed on community supervision, after satisfactorily fulfilling the conditions of community supervision and on expiration of the period of community supervision, the court is authorized to release the defendant from the penalties and disabilities resulting from the offense as provided by Article 42A.701(f).

(b) No plea of guilty or plea of nolo contendere shall be accepted by the court unless it appears that the defendant is mentally competent and the plea is free and voluntary.

(c) In admonishing the defendant as herein provided, substantial compliance by the court is sufficient, unless the defendant affirmatively shows that he was not aware of the consequences of his plea and that he was misled or harmed by the admonishment of the court.

(d) Except as provided by Subsection (d-1), the court may make the admonitions required by this article either orally or in writing. If the court makes the admonitions in writing, it must receive a statement signed by the defendant and the defendant's attorney that the defendant understands the admonitions and is aware of the consequences of the plea. If the defendant is unable or refuses to sign the statement, the court shall make the admonitions orally.

(d-1) The court shall make the admonition required by Subsection (a)(4) both orally and in writing. Unless the court has received the statement as described by Subsection (d), the court must receive a statement signed by the defendant and the defendant's attorney that the defendant understands the admonition required by Subsection (a)(4) and is aware of the consequences of the plea. If the defendant is unable or refuses to sign the statement, the court shall make a record of that fact.

(e) Before accepting a plea of guilty or a plea of nolo contendere, the court shall, as applicable in the case:

(1) inquire as to whether a victim impact statement has been returned to the attorney representing the state and ask for a copy of the statement if one has been returned; and

(2) inquire as to whether the attorney representing the state has given notice of the existence and terms of any plea bargain agreement to the victim, guardian of a victim, or close relative of a deceased victim, as those terms are defined by Article 56.01.

(f) The court must substantially comply with Subsection (e) of this article. The failure of the court to comply with Subsection (e) of this article is not grounds for the defendant to set aside the conviction, sentence, or plea.

(g) Before accepting a plea of guilty or a plea of nolo contendere and on the request of a victim of the offense,

the court may assist the victim and the defendant in participating in a victim-offender mediation program.

(h) The court must substantially comply with Subsection (a)(5). The failure of the court to comply with Subsection (a)(5) is not a ground for the defendant to set aside the conviction, sentence, or plea.

(h-1) The court must substantially comply with Subsection (a)(6). The failure of the court to comply with Subsection (a)(6) is not a ground for the defendant to set aside the conviction, sentence, or plea.

(i) Notwithstanding this article, a court shall not order the state or any of its prosecuting attorneys to participate in mediation, dispute resolution, arbitration, or other similar procedures in relation to a criminal prosecution unless upon written consent of the state.

HISTORY: Am. Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1973, 63rd Leg., ch. 399 (S.B. 34), § 2(A), effective January 1, 1974; am. Acts 1975, 64th Leg., ch. 341 (S.B. 122), § 3, effective June 19, 1975; am. Acts 1977, 65th Leg., ch. 280 (S.B. 937), § 1, effective August 29, 1977; am. Acts 1979, 66th Leg., ch. 524 (S.B. 854), § 1, effective September 1, 1979; am. Acts 1979, 66th Leg., ch. 561 (H.B. 1566), § 1, effective September 1, 1979; am. Acts 1985, 69th Leg., ch. 671 (S.B. 1348), § 1, effective June 14, 1985; am. Acts 1985, 69th Leg., ch. 685 (H.B. 13), § 8(a), effective August 26, 1985; am. Acts 1987, 70th Leg., ch. 443 (H.B. 95), § 1, effective August 31, 1987; am. Acts 1991, 72nd Leg., ch. 202 (S.B. 1407), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 670 (H.B. 156), § 4, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 425 (S.B. 1125), § 1, effective August 30, 1999; am. Acts 1999, 76th Leg., ch. 1415 (H.B. 2145), § 1, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 21.001(8), effective September 1, 2001; am. Acts 2005, 79th Leg., ch. 1008 (H.B. 867), § 1.03, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 125 (S.B. 1470), § 1, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 1379 (S.B. 1236), § 2, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 1073 (S.B. 1010), § 1, effective September 1, 2011; am. Acts 2017, 85th Leg., ch. 1017 (H.B. 1507), § 1, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 185 (H.B. 1996), § 1, effective September 1, 2019.

Art. 26.13. Plea of Guilty. [Effective January 1, 2021]

(a) Prior to accepting a plea of guilty or a plea of nolo contendere, the court shall admonish the defendant of:

(1) the range of the punishment attached to the offense;

(2) the fact that the recommendation of the prosecuting attorney as to punishment is not binding on the court. Provided that the court shall inquire as to the existence of a plea bargain agreement between the state and the defendant and, if an agreement exists, the court shall inform the defendant whether it will follow or reject the agreement in open court and before any finding on the plea. Should the court reject the agreement, the defendant shall be permitted to withdraw the defendant's plea of guilty or nolo contendere;

(3) the fact that if the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and the defendant's attorney, the trial court must give its permission to the defendant before the defendant may prosecute an appeal on any matter in the case except for those matters raised by written motions filed prior to trial;

(4) the fact that if the defendant is not a citizen of the United States of America, a plea of guilty or nolo

contendere for the offense charged may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law;

(5) the fact that the defendant will be required to meet the registration requirements of Chapter 62, if the defendant is convicted of or placed on deferred adjudication for an offense for which a person is subject to registration under that chapter; and

(6) the fact that if the defendant is placed on community supervision, after satisfactorily fulfilling the conditions of community supervision and on expiration of the period of community supervision, the court is authorized to release the defendant from the penalties and disabilities resulting from the offense as provided by Article 42A.701(f).

(b) No plea of guilty or plea of nolo contendere shall be accepted by the court unless it appears that the defendant is mentally competent and the plea is free and voluntary.

(c) In admonishing the defendant as herein provided, substantial compliance by the court is sufficient, unless the defendant affirmatively shows that he was not aware of the consequences of his plea and that he was misled or harmed by the admonishment of the court.

(d) Except as provided by Subsection (d-1), the court may make the admonitions required by this article either orally or in writing. If the court makes the admonitions in writing, it must receive a statement signed by the defendant and the defendant's attorney that the defendant understands the admonitions and is aware of the consequences of the plea. If the defendant is unable or refuses to sign the statement, the court shall make the admonitions orally.

(d-1) The court shall make the admonition required by Subsection (a)(4) both orally and in writing. Unless the court has received the statement as described by Subsection (d), the court must receive a statement signed by the defendant and the defendant's attorney that the defendant understands the admonition required by Subsection (a)(4) and is aware of the consequences of the plea. If the defendant is unable or refuses to sign the statement, the court shall make a record of that fact.

(e) Before accepting a plea of guilty or a plea of nolo contendere, the court shall, as applicable in the case:

(1) inquire as to whether a victim impact statement has been returned to the attorney representing the state and ask for a copy of the statement if one has been returned; and

(2) inquire as to whether the attorney representing the state has given notice of the existence and terms of any plea bargain agreement to the victim, guardian of a victim, or close relative of a deceased victim, as those terms are defined by Article 56A.001.

(f) The court must substantially comply with Subsection (e) of this article. The failure of the court to comply with Subsection (e) of this article is not grounds for the defendant to set aside the conviction, sentence, or plea.

(g) Before accepting a plea of guilty or a plea of nolo contendere and on the request of a victim of the offense, the court may assist the victim and the defendant in participating in a victim-offender mediation program.

(h) The court must substantially comply with Subsection (a)(5). The failure of the court to comply with Subsec-

tion (a)(5) is not a ground for the defendant to set aside the conviction, sentence, or plea.

(h-1) The court must substantially comply with Subsection (a)(6). The failure of the court to comply with Subsection (a)(6) is not a ground for the defendant to set aside the conviction, sentence, or plea.

(i) Notwithstanding this article, a court shall not order the state or any of its prosecuting attorneys to participate in mediation, dispute resolution, arbitration, or other similar procedures in relation to a criminal prosecution unless upon written consent of the state.

HISTORY: Am. Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1973, 63rd Leg., ch. 399 (S.B. 34), § 2(A), effective January 1, 1974; am. Acts 1975, 64th Leg., ch. 341 (S.B. 122), § 3, effective June 19, 1975; am. Acts 1977, 65th Leg., ch. 280 (S.B. 937), § 1, effective August 29, 1977; am. Acts 1979, 66th Leg., ch. 524 (S.B. 854), § 1, effective September 1, 1979; am. Acts 1979, 66th Leg., ch. 561 (H.B. 1566), § 1, effective September 1, 1979; am. Acts 1985, 69th Leg., ch. 671 (S.B. 1348), § 1, effective June 14, 1985; am. Acts 1985, 69th Leg., ch. 685 (H.B. 13), § 8(a), effective August 26, 1985; am. Acts 1987, 70th Leg., ch. 443 (H.B. 95), § 1, effective August 31, 1987; am. Acts 1991, 72nd Leg., ch. 202 (S.B. 1407), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 670 (H.B. 156), § 4, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 425 (S.B. 1125), § 1, effective August 30, 1999; am. Acts 1999, 76th Leg., ch. 1415 (H.B. 2145), § 1, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 21.001(8), effective September 1, 2001; am. Acts 2005, 79th Leg., ch. 1008 (H.B. 867), § 1.03, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 125 (S.B. 1470), § 1, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 1379 (S.B. 1236), § 2, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 1073 (S.B. 1010), § 1, effective September 1, 2011; am. Acts 2017, 85th Leg., ch. 1017 (H.B. 1507), § 1, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 185 (H.B. 1996), § 1, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 469 (H.B. 4173), § 2.09, effective January 1, 2021.

Trial and Its Incidents

CHAPTER 32A

Speedy Trial

Article	
32A.01.	Trial Priorities.
32A.02.	Time Limitations [Repealed].

Art. 32A.01. Trial Priorities.

(a) Insofar as is practicable, the trial of a criminal action shall be given preference over trials of civil cases, and the trial of a criminal action against a defendant who is detained in jail pending trial of the action shall be given preference over trials of other criminal actions not described by Subsection (b) or (c).

(b) Unless extraordinary circumstances require otherwise, the trial of a criminal action in which the alleged victim is younger than 14 years of age shall be given preference over other matters before the court, whether civil or criminal.

(c) Except as provided by Subsection (b), the trial of a criminal action against a defendant who has been determined to be restored to competency under Article 46B.084 shall be given preference over other matters before the court, whether civil or criminal.

HISTORY: Enacted by Acts 1977, 65th Leg., ch. 787 (S.B. 1043), § 1, effective July 1, 1978; am. Acts 2015, 84th Leg., ch. 1251 (H.B. 1396), § 3, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 4, effective September 1, 2017.

Art. 32A.02. Time Limitations [Repealed].

Repealed by Acts 2005, 79th Leg., ch. 1019 (H.B. 969), § 2, effective June 18, 2005.

HISTORY: Enacted by Acts 1977, 65th Leg., ch. 787 (S.B. 1043), § 1, effective July 1, 1978; am. Acts 1979, 66th Leg., ch. 3 (S.B. 106), § 1, effective September 1, 1979; am. Acts 1987, 70th Leg., ch. 383 (H.B. 23), § 2, effective September 1, 1987.

CHAPTER 35

Formation of the Jury

Article	
35.16.	Reasons for Challenge for Cause.

Art. 35.16. Reasons for Challenge for Cause.

(a) A challenge for cause is an objection made to a particular juror, alleging some fact which renders the juror incapable or unfit to serve on the jury. A challenge for cause may be made by either the state or the defense for any one of the following reasons:

1. That the juror is not a qualified voter in the state and county under the Constitution and laws of the state; provided, however, the failure to register to vote shall not be a disqualification;
2. That the juror has been convicted of misdemeanor theft or a felony;
3. That the juror is under indictment or other legal accusation for misdemeanor theft or a felony;
4. That the juror is insane;
5. That the juror has such defect in the organs of feeling or hearing, or such bodily or mental defect or disease as to render the juror unfit for jury service, or that the juror is legally blind and the court in its discretion is not satisfied that the juror is fit for jury service in that particular case;
6. That the juror is a witness in the case;
7. That the juror served on the grand jury which found the indictment;
8. That the juror served on a petit jury in a former trial of the same case;
9. That the juror has a bias or prejudice in favor of or against the defendant;

10. That from hearsay, or otherwise, there is established in the mind of the juror such a conclusion as to the guilt or innocence of the defendant as would influence the juror in finding a verdict. To ascertain whether this cause of challenge exists, the juror shall first be asked whether, in the juror's opinion, the conclusion so established will influence the juror's verdict. If the juror answers in the affirmative, the juror shall be discharged without further interrogation by either party or the court. If the juror answers in the negative, the juror shall be further examined as to how the juror's conclusion was formed, and the extent to which it will affect the juror's action; and, if it appears to have been formed from reading newspaper accounts, communications, statements or reports or mere rumor or hearsay, and if

the juror states that the juror feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that the juror is impartial and will render such verdict, may, in its discretion, admit the juror as competent to serve in such case. If the court, in its discretion, is not satisfied that the juror is impartial, the juror shall be discharged;

11. That the juror cannot read or write.

No juror shall be impaneled when it appears that the juror is subject to the second, third or fourth grounds of challenge for cause set forth above, although both parties may consent. All other grounds for challenge may be waived by the party or parties in whose favor such grounds of challenge exist.

In this subsection "legally blind" shall mean having not more than 20/200 of visual acuity in the better eye with correcting lenses, or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(b) A challenge for cause may be made by the State for any of the following reasons:

1. That the juror has conscientious scruples in regard to the infliction of the punishment of death for crime, in a capital case, where the State is seeking the death penalty;

2. That he is related within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code, to the defendant; and

3. That he has a bias or prejudice against any phase of the law upon which the State is entitled to rely for conviction or punishment.

(c) A challenge for cause may be made by the defense for any of the following reasons:

1. That he is related within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code, to the person injured by the commission of the offense, or to any prosecutor in the case; and

2. That he has a bias or prejudice against any of the law applicable to the case upon which the defense is entitled to rely, either as a defense to some phase of the offense for which the defendant is being prosecuted or as a mitigation thereof or of the punishment therefor.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1969, 61st Leg., ch. 412 (S.B. 424), § 3, effective September 1, 1969; am. Acts 1975, 64th Leg., ch. 202 (H.B. 159), § 2, effective September 1, 1975; am. Acts 1981, 67th Leg., ch. 827 (H.B. 1288), § 8, effective August 31, 1981; am. Acts 1983, 68th Leg., ch. 134 (H.B. 176), § 2, effective September 1, 1983; am. Acts 2005, 79th Leg., ch. 801 (S.B. 451), § 3, effective September 1, 2005.

CHAPTER 38

Evidence in Criminal Actions

Article 38.07.	Testimony in Corroboration of Victim of Sexual Offense.
38.072.	Hearsay Statement of Certain Abuse Victims.
38.31.	Interpreters for Deaf Persons.

Art. 38.07. Testimony in Corroboration of Victim of Sexual Offense.

(a) A conviction under Chapter 21, Section 20A.02(a)(3), (4), (7), or (8), Section 22.011, or Section 22.021, Penal Code, is supportable on the uncorroborated testimony of the victim of the sexual offense if the victim informed any person, other than the defendant, of the alleged offense within one year after the date on which the offense is alleged to have occurred.

(b) The requirement that the victim inform another person of an alleged offense does not apply if at the time of the alleged offense the victim was a person:

- (1) 17 years of age or younger;
- (2) 65 years of age or older; or
- (3) 18 years of age or older who by reason of age or physical or mental disease, defect, or injury was substantially unable to satisfy the person's need for food, shelter, medical care, or protection from harm.

HISTORY: Enacted by Acts 1975, 64th Leg., ch. 203 (H.B. 284), § 6, effective September 1, 1975; am. Acts 1983, 68th Leg., ch. 382 (S.B. 838), § 1, effective September 1, 1983; am. Acts 1983, 68th Leg., ch. 977 (H.B. 2008), § 7, effective September 1, 1983; am. Acts 1993, 73rd Leg., ch. 200 (H.B. 261), § 1, effective May 19, 1993; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 12.01, effective September 1, 1993; am. Acts 2001, 77th Leg., ch. 1018 (H.B. 1209), § 1, effective September 1, 2001; am. Acts 2011, 82nd Leg., ch. 1 (S.B. 24), § 2.05, effective September 1, 2011.

Art. 38.072. Hearsay Statement of Certain Abuse Victims.

Sec. 1. This article applies to a proceeding in the prosecution of an offense under any of the following provisions of the Penal Code, if committed against a child younger than 14 years of age or a person with a disability:

- (1) Chapter 21 (Sexual Offenses) or 22 (Assaultive Offenses);
- (2) Section 25.02 (Prohibited Sexual Conduct);
- (3) Section 43.25 (Sexual Performance by a Child);
- (4) Section 43.05(a)(2) (Compelling Prostitution);
- (5) Section 20A.02(a)(7) or (8) (Trafficking of Persons); or
- (6) Section 15.01 (Criminal Attempt), if the offense attempted is described by Subdivision (1), (2), (3), (4), or (5) of this section.

Sec. 2. (a) [2 Versions: As amended by Acts 2009, 81st Leg., ch. 284] This article applies only to statements that describe the alleged offense that:

- (1) were made by the child or person with a disability against whom the offense was allegedly committed; and
- (2) were made to the first person, 18 years of age or older, other than the defendant, to whom the child or person with a disability made a statement about the offense.

Sec. 2. (a) [2 Versions: As amended by Acts 2009, 81st Leg., ch. 710] This article applies only to statements that:

- (1) describe:
 - (A) the alleged offense; or
 - (B) if the statement is offered during the punishment phase of the proceeding, a crime, wrong, or act other than the alleged offense that is:
 - (i) described by Section 1;

(ii) allegedly committed by the defendant against the child who is the victim of the offense or another child younger than 14 years of age; and

(iii) otherwise admissible as evidence under Article 38.37, Rule 404 or 405, Texas Rules of Evidence, or another law or rule of evidence of this state;

(2) were made by the child against whom the charged offense or extraneous crime, wrong, or act was allegedly committed; and

(3) were made to the first person, 18 years of age or older, other than the defendant, to whom the child made a statement about the offense or extraneous crime, wrong, or act.

(b) A statement that meets the requirements of Subsection (a) is not inadmissible because of the hearsay rule if:

(1) on or before the 14th day before the date the proceeding begins, the party intending to offer the statement:

(A) notifies the adverse party of its intention to do so;

(B) provides the adverse party with the name of the witness through whom it intends to offer the statement; and

(C) provides the adverse party with a written summary of the statement;

(2) the trial court finds, in a hearing conducted outside the presence of the jury, that the statement is reliable based on the time, content, and circumstances of the statement; and

(3) the child or person with a disability testifies or is available to testify at the proceeding in court or in any other manner provided by law.

Sec. 3. In this article, "person with a disability" means a person 13 years of age or older who because of age or physical or mental disease, disability, or injury is substantially unable to protect the person's self from harm or to provide food, shelter, or medical care for the person's self.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 590 (H.B. 579), § 1, effective September 1, 1985; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 14.25, effective September 1, 1995; am. Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 1, effective June 11, 2009; am. Acts 2009, 81st Leg., ch. 710 (H.B. 2846), § 1, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 1 (S.B. 24), § 2.07, effective September 1, 2011.

Art. 38.31. Interpreters for Deaf Persons.

(a) If the court is notified by a party that the defendant is deaf and will be present at an arraignment, hearing, examining trial, or trial, or that a witness is deaf and will be called at a hearing, examining trial, or trial, the court shall appoint a qualified interpreter to interpret the proceedings in any language that the deaf person can understand, including but not limited to sign language. On the court's motion or the motion of a party, the court may order testimony of a deaf witness and the interpretation of that testimony by the interpreter visually, electronically recorded for use in verification of the transcrip-

tion of the reporter's notes. The clerk of the court shall include that recording in the appellate record if requested by a party under Article 40.09 of this Code.

(b) Following the filing of an indictment, information, or complaint against a deaf defendant, the court on the motion of the defendant shall appoint a qualified interpreter to interpret in a language that the defendant can understand, including but not limited to sign language, communications concerning the case between the defendant and defense counsel. The interpreter may not disclose a communication between the defendant and defense counsel or a fact that came to the attention of the interpreter while interpreting those communications if defense counsel may not disclose that communication or fact.

(c) In all cases where the mental condition of a person is being considered and where such person may be committed to a mental institution, and where such person is deaf, all of the court proceedings pertaining to him shall be interpreted by a qualified interpreter appointed by the court.

(d) A proceeding for which an interpreter is required to be appointed under this Article may not commence until the appointed interpreter is in a position not exceeding ten feet from and in full view of the deaf person.

(e) The interpreter appointed under the terms of this Article shall be required to take an oath that he will make a true interpretation to the person accused or being examined, which person is deaf, of all the proceedings of his case in a language that he understands; and that he will repeat said deaf person's answer to questions to counsel, court, or jury, in the English language, in his best skill and judgment.

(f) Interpreters appointed under this Article are entitled to a reasonable fee determined by the court after considering the recommendations of the Texas Commission for the Deaf and Hard of Hearing. When travel of the interpreter is involved all the actual expenses of travel, lodging, and meals incurred by the interpreter pertaining to the case he is appointed to serve shall be paid at the same rate applicable to state employees.

(g) In this Code:

(1) "Deaf person" means a person who has a hearing impairment, regardless of whether the person also has a speech impairment, that inhibits the person's comprehension of the proceedings or communication with others.

(2) "Qualified interpreter" means an interpreter for the deaf who holds a current legal certificate issued by the National Registry of Interpreters for the Deaf or a current court interpreter certificate issued by the Board for Evaluation of Interpreters at the Department of Assistive and Rehabilitative Services.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1967, 60th Leg., ch. 105 (H.B. 36), § 2, effective August 28, 1967; am. Acts 1979, 66th Leg., ch. 186 (H.B. 1521), § 1, effective May 15, 1979; am. Acts 1987, 70th Leg., ch. 434 (S.B. 1346), § 1, effective June 17, 1987; am. Acts 1995, 74th Leg., ch. 835 (H.B. 2859), § 14, effective September 1, 1995; am. Acts 2005, 79th Leg., ch. 614 (H.B. 2200),

§ 11, effective September 1, 2006; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 3.006, effective September 1, 2013.

Proceedings After Verdict

CHAPTER 42

Judgment and Sentence

Article	
42.03.	Pronouncing Sentence; Time; Credit for Time Spent in Jail Between Arrest and Sentence or Pending Appeal. [Effective until January 1, 2021]
42.03.	Pronouncing Sentence; Time; Credit for Time Spent in Jail Between Arrest and Sentence or Pending Appeal. [Effective January 1, 2021]
42.09.	Commencement of Sentence; Status During Appeal; Pen Packet. [Effective until January 1, 2021]
42.09.	Commencement of Sentence; Status During Appeal; Pen Packet. [Effective January 1, 2021]
42.19.	Interstate Corrections Compact.

Art. 42.03. Pronouncing Sentence; Time; Credit for Time Spent in Jail Between Arrest and Sentence or Pending Appeal. [Effective until January 1, 2021]

Sec. 1. (a) Except as provided in Article 42.14, sentence shall be pronounced in the defendant's presence.

(b) The court shall permit a victim, close relative of a deceased victim, or guardian of a victim, as defined by Article 56.01 of this code, to appear in person to present to the court and to the defendant a statement of the person's views about the offense, the defendant, and the effect of the offense on the victim. The victim, relative, or guardian may not direct questions to the defendant while making the statement. The court reporter may not transcribe the statement. The statement must be made:

- (1) after punishment has been assessed and the court has determined whether or not to grant community supervision in the case;
- (2) after the court has announced the terms and conditions of the sentence; and
- (3) after sentence is pronounced.

(c) The court may not impose a limit on the number of victims, close relatives, or guardians who may appear and present statements under Subsection (b) unless the court finds that additional statements would unreasonably delay the proceeding.

Sec. 2. (a) In all criminal cases the judge of the court in which the defendant is convicted shall give the defendant credit on the defendant's sentence for the time that the defendant has spent:

- (1) in jail for the case, including confinement served as described by Article 46B.009 and excluding confinement served as a condition of community supervision, from the time of his arrest and confinement until his sentence by the trial court;
- (2) in a substance abuse treatment facility operated by the Texas Department of Criminal Justice under Section 493.009, Government Code, or another

court-ordered residential program or facility as a condition of deferred adjudication community supervision granted in the case if the defendant successfully completes the treatment program at that facility; or

(3) confined in a mental health facility or residential care facility as described by Article 46B.009.

(b) In all revocations of a suspension of the imposition of a sentence the judge shall enter the restitution due and owing on the date of the revocation.

Sec. 3. If a defendant appeals his conviction, is not released on bail, and is retained in a jail as provided in Section 7, Article 42.09, pending his appeal, the judge of the court in which the defendant was convicted shall give the defendant credit on his sentence for the time that the defendant has spent in jail pending disposition of his appeal. The court shall endorse on both the commitment and the mandate from the appellate court all credit given the defendant under this section, and the Texas Department of Criminal Justice shall grant the credit in computing the defendant's eligibility for parole and discharge.

Sec. 4. When a defendant who has been sentenced to imprisonment in the Texas Department of Criminal Justice has spent time in jail pending trial and sentence or pending appeal, the judge of the sentencing court shall direct the sheriff to attach to the commitment papers a statement assessing the defendant's conduct while in jail.

Sec. 5. Except as otherwise provided by Article 42A.106(b), the court after pronouncing the sentence shall inform the defendant of the defendant's right to petition the court for an order of nondisclosure of criminal history record information under Subchapter E-1, Chapter 411, Government Code, unless the defendant is ineligible to pursue that right because of the requirements that apply to obtaining the order in the defendant's circumstances, such as:

- (1) the nature of the offense for which the defendant is convicted; or
- (2) the defendant's criminal history.

Sec. 6. [Repealed by Acts 1989, 71st Leg., ch. 785 (H.B. 2335), § 4.24, effective September 1, 1989.]

Secs. 7, 7A, and 8. [Deleted by Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 5.03, effective September 1, 1993.]

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1967, 60th Leg., ch. 659 (S.B. 145), § 28, effective August 28, 1967; am. Acts 1973, 63rd Leg., ch. 91 (H.B. 403), § 1, effective August 27, 1973; am. Acts 1977, 65th Leg., ch. 382 (H.B. 1322), § 1, effective August 29, 1977; am. Acts 1977, 65th Leg., ch. 827 (H.B. 1271), § 1, effective August 29, 1977; am. Acts 1981, 67th Leg., ch. 141 (S.B. 125), § 1, effective September 1, 1981; am. Acts 1981, 67th Leg., ch. 291 (S.B. 265), § 113, effective September 1, 1981; am. Acts 1981, 67th Leg., ch. 616 (H.B. 1695), § 1, effective August 31, 1981; am. Acts 1983, 68th Leg., ch. 586 (S.B. 779), § 4, effective August 29, 1983; am. Acts 1983, 68th Leg., ch. 809 (H.B. 855), § 1, effective August 29, 1983; am. Acts 1985, 69th Leg., ch. 232 (S.B. 1175), § 13, effective September 1, 1985; am. Acts 1989, 71st Leg., ch. 785 (H.B. 2335), § 4.06, effective June 15, 1989; am. Acts 1989, 71st Leg., ch. 785 (H.B. 2335), § 4.24, effective September 1, 1989; am. Acts 1989, 71st Leg., ch. 848 (S.B. 638), § 1, effective June 14, 1989; am. Acts 1989, 71st Leg., ch. 1040 (H.B. 1779), §§ 1, 2, effective August 28, 1989; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 10 (H.B. 93), § 8.02, effective December 1, 1991; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 10 (H.B. 93), §§ 14.01—14.04, 15.03, effective October 1, 1991; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 4.05, effective August 26, 1991; am. Acts 1991, 72nd

Leg., ch. 278 (H.B. 520), § 1, effective June 5, 1991; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 5.03, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 556 (S.B. 39), § 1, effective September 1, 1995; am. Acts 2003, 78th Leg., ch. 406 (H.B. 178), § 2, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 1205 (H.B. 1678), § 1, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.018, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 718 (H.B. 748), § 1, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 1, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 2.12, effective January 1, 2017; am. Acts 2015, 84th Leg., ch. 1279 (S.B. 1902), § 15, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 23.002, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 437 (S.B. 1268), § 1, effective September 1, 2019.

Art. 42.03. Pronouncing Sentence; Time; Credit for Time Spent in Jail Between Arrest and Sentence or Pending Appeal. [Effective January 1, 2021]

Sec. 1. (a) Except as provided in Article 42.14, sentence shall be pronounced in the defendant's presence.

(b) The court shall permit a victim, close relative of a deceased victim, or guardian of a victim, as defined by Article 56A.001, to appear in person to present to the court and to the defendant a statement of the person's views about the offense, the defendant, and the effect of the offense on the victim. The victim, relative, or guardian may not direct questions to the defendant while making the statement. The court reporter may not transcribe the statement. The statement must be made:

- (1) after punishment has been assessed and the court has determined whether or not to grant community supervision in the case;
- (2) after the court has announced the terms and conditions of the sentence; and
- (3) after sentence is pronounced.

(c) The court may not impose a limit on the number of victims, close relatives, or guardians who may appear and present statements under Subsection (b) unless the court finds that additional statements would unreasonably delay the proceeding.

Sec. 2. (a) In all criminal cases the judge of the court in which the defendant is convicted shall give the defendant credit on the defendant's sentence for the time that the defendant has spent:

- (1) in jail for the case, including confinement served as described by Article 46B.009 and excluding confinement served as a condition of community supervision, from the time of his arrest and confinement until his sentence by the trial court;
- (2) in a substance abuse treatment facility operated by the Texas Department of Criminal Justice under Section 493.009, Government Code, or another court-ordered residential program or facility as a condition of deferred adjudication community supervision granted in the case if the defendant successfully completes the treatment program at that facility; or
- (3) confined in a mental health facility or residential care facility as described by Article 46B.009.

(b) In all revocations of a suspension of the imposition of a sentence the judge shall enter the restitution due and owing on the date of the revocation.

Sec. 3. If a defendant appeals his conviction, is not released on bail, and is retained in a jail as provided in

Section 7, Article 42.09, pending his appeal, the judge of the court in which the defendant was convicted shall give the defendant credit on his sentence for the time that the defendant has spent in jail pending disposition of his appeal. The court shall endorse on both the commitment and the mandate from the appellate court all credit given the defendant under this section, and the Texas Department of Criminal Justice shall grant the credit in computing the defendant's eligibility for parole and discharge.

Sec. 4. When a defendant who has been sentenced to imprisonment in the Texas Department of Criminal Justice has spent time in jail pending trial and sentence or pending appeal, the judge of the sentencing court shall direct the sheriff to attach to the commitment papers a statement assessing the defendant's conduct while in jail.

Sec. 5. Except as otherwise provided by Article 42A.106(b), the court after pronouncing the sentence shall inform the defendant of the defendant's right to petition the court for an order of nondisclosure of criminal history record information under Subchapter E-1, Chapter 411, Government Code, unless the defendant is ineligible to pursue that right because of the requirements that apply to obtaining the order in the defendant's circumstances, such as:

- (1) the nature of the offense for which the defendant is convicted; or
- (2) the defendant's criminal history.

Sec. 6. [Repealed by Acts 1989, 71st Leg., ch. 785 (H.B. 2335), § 4.24, effective September 1, 1989.]

Secs. 7,7A, and 8. [Deleted by Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 5.03, effective September 1, 1993.]

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1967, 60th Leg., ch. 659 (S.B. 145), § 28, effective August 28, 1967; am. Acts 1973, 63rd Leg., ch. 91 (H.B. 403), § 1, effective August 27, 1973; am. Acts 1977, 65th Leg., ch. 382 (H.B. 1322), § 1, effective August 29, 1977; am. Acts 1977, 65th Leg., ch. 827 (H.B. 1271), § 1, effective August 29, 1977; am. Acts 1981, 67th Leg., ch. 141 (S.B. 125), § 1, effective September 1, 1981; am. Acts 1981, 67th Leg., ch. 291 (S.B. 265), § 113, effective September 1, 1981; am. Acts 1981, 67th Leg., ch. 616 (H.B. 1695), § 1, effective August 31, 1981; am. Acts 1983, 68th Leg., ch. 586 (S.B. 779), § 4, effective August 29, 1983; am. Acts 1983, 68th Leg., ch. 809 (H.B. 855), § 1, effective August 29, 1983; am. Acts 1985, 69th Leg., ch. 232 (S.B. 1175), § 13, effective September 1, 1985; am. Acts 1989, 71st Leg., ch. 785 (H.B. 2335), § 4.06, effective June 15, 1989; am. Acts 1989, 71st Leg., ch. 785 (H.B. 2335), § 4.24, effective September 1, 1989; am. Acts 1989, 71st Leg., ch. 848 (S.B. 638), § 1, effective June 14, 1989; am. Acts 1989, 71st Leg., ch. 1040 (H.B. 1779), §§ 1, 2, effective August 28, 1989; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 10 (H.B. 93), § 8.02, effective December 1, 1991; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 10 (H.B. 93), §§ 14.01—14.04, 15.03, effective October 1, 1991; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 4.05, effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 278 (H.B. 520), § 1, effective June 5, 1991; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 5.03, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 556 (S.B. 39), § 1, effective September 1, 1995; am. Acts 2003, 78th Leg., ch. 406 (H.B. 178), § 2, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 1205 (H.B. 1678), § 1, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.018, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 718 (H.B. 748), § 1, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 1, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 2.12, effective January 1, 2017; am. Acts 2015, 84th Leg., ch. 1279 (S.B. 1902), § 15, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 23.002, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 437 (S.B. 1268),

§ 1, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 469 (H.B. 4173), § 2.13, effective January 1, 2021.

Art. 42.09. Commencement of Sentence; Status During Appeal; Pen Packet. [Effective until January 1, 2021]

Sec. 1. Except as provided in Sections 2 and 3, a defendant shall be delivered to a jail or to the Texas Department of Criminal Justice when his sentence is pronounced, or his sentence to death is announced, by the court. The defendant's sentence begins to run on the day it is pronounced, but with all credits, if any, allowed by Article 42.03.

Sec. 2. If a defendant appeals his conviction and is released on bail pending disposition of his appeal, when his conviction is affirmed, the clerk of the trial court, on receipt of the mandate from the appellate court, shall issue a commitment against the defendant. The officer executing the commitment shall endorse thereon the date he takes the defendant into custody and the defendant's sentence begins to run from the date endorsed on the commitment. The Texas Department of Criminal Justice shall admit the defendant named in the commitment on the basis of the commitment.

Sec. 3. If a defendant convicted of a felony is sentenced to death or to life in the Texas Department of Criminal Justice or is ineligible for release on bail pending appeal under Article 44.04(b) and gives notice of appeal, the defendant shall be transferred to the department on a commitment pending a mandate from the court of appeals or the Court of Criminal Appeals.

Sec. 4. If a defendant is convicted of a felony, is eligible for release on bail pending appeal under Article 44.04(b), and gives notice of appeal, he shall be transferred to the Texas Department of Criminal Justice on a commitment pending a mandate from the Court of Appeals or the Court of Criminal Appeals upon request in open court or upon written request to the sentencing court. Upon a valid transfer to the department under this section, the defendant may not thereafter be released on bail pending his appeal.

Sec. 5. If a defendant is transferred to the Texas Department of Criminal Justice pending appeal under Section 3 or 4, his sentence shall be computed as if no appeal had been taken if the appeal is affirmed.

Sec. 6. All defendants who have been transferred to the Texas Department of Criminal Justice pending the appeal of their convictions under this article shall be under the control and authority of the department for all purposes as if no appeal were pending.

Sec. 7. If a defendant is sentenced to a term of imprisonment in the Texas Department of Criminal Justice but is not transferred to the department under Section 3 or 4, the court, before the date on which it would lose jurisdiction under Article 42A.202(a), shall send to the department a document containing a statement of the date on which the defendant's sentence was pronounced and credits earned by the defendant under Article 42.03 as of the date of the statement.

Sec. 8. (a) A county that transfers a defendant to the Texas Department of Criminal Justice under this article shall deliver to an officer designated by the department:

(1) a copy of the judgment entered pursuant to Article 42.01, completed on a standardized felony judgment form described by Section 4 of that article;

(2) a copy of any order revoking community supervision and imposing sentence pursuant to Article 42A.755, including:

(A) any amounts owed for restitution, fines, and court costs, completed on a standardized felony judgment form described by Section 4, Article 42.01; and

(B) a copy of the client supervision plan prepared for the defendant by the community supervision and corrections department supervising the defendant, if such a plan was prepared;

(3) a written report that states the nature and the seriousness of each offense and that states the citation to the provision or provisions of the Penal Code or other law under which the defendant was convicted;

(4) a copy of the victim impact statement, if one has been prepared in the case under Article 56.03;

(5) a statement as to whether there was a change in venue in the case and, if so, the names of the county prosecuting the offense and the county in which the case was tried;

(6) if requested, information regarding the criminal history of the defendant, including the defendant's state identification number if the number has been issued;

(7) a copy of the indictment or information for each offense;

(8) a checklist sent by the department to the county and completed by the county in a manner indicating that the documents required by this subsection and Subsection (c) accompany the defendant;

(9) if prepared, a copy of a presentence or postsentence report prepared under Subchapter F, Chapter 42A;

(10) a copy of any detainer, issued by an agency of the federal government, that is in the possession of the county and that has been placed on the defendant;

(11) if prepared, a copy of the defendant's Texas Uniform Health Status Update Form;

(12) a written description of a hold or warrant, issued by any other jurisdiction, that the county is aware of and that has been placed on or issued for the defendant; and

(13) a copy of any mental health records, mental health screening reports, or similar information regarding the mental health of the defendant.

(b) The Texas Department of Criminal Justice shall not take a defendant into custody under this article until the designated officer receives the documents required by Subsections (a) and (c) of this section. The designated officer shall certify under the seal of the department the documents received under Subsections (a) and (c) of this section. A document certified under this subsection is self-authenticated for the purposes of Rules 901 and 902, Texas Rules of Evidence.

(c) A county that transfers a defendant to the Texas Department of Criminal Justice under this article shall also deliver to the designated officer any presentence or postsentence investigation report, revocation report,

psychological or psychiatric evaluation of the defendant, including a written report provided to a court under Article 16.22(a)(1)(B) or an evaluation prepared for the juvenile court before transferring the defendant to criminal court and contained in the criminal prosecutor's file, and available social or psychological background information relating to the defendant and may deliver to the designated officer any additional information upon which the judge or jury bases the punishment decision.

(d) The correctional institutions division of the Texas Department of Criminal Justice shall make documents received under Subsections (a) and (c) available to the parole division on the request of the parole division and shall, on release of a defendant on parole or to mandatory supervision, immediately provide the parole division with copies of documents received under Subsection (a). The parole division shall provide to the parole officer appointed to supervise the defendant a comprehensive summary of the information contained in the documents referenced in this section not later than the 14th day after the date of the defendant's release. The summary shall include a current photograph of the defendant and a complete set of the defendant's fingerprints. Upon written request from the county sheriff, the photograph and fingerprints shall be filed with the sheriff of the county to which the parolee is assigned if that county is not the county from which the parolee was sentenced.

(e) A county is not required to deliver separate documents containing information relating to citations to provisions of the Penal Code or other law and to changes of venue, as otherwise required by Subsections (a)(3) and (a)(5) of this article, if the standardized felony judgment form described by Section 4, Article 42.01, of this code is modified to require that information.

(f) Except as provided by Subsection (g) of this section, the county sheriff is responsible for ensuring that documents and information required by this section accompany defendants sentenced by district courts in the county to the Texas Department of Criminal Justice.

(g) If the presiding judge of the administrative judicial region in which the county is located determines that the county sheriff is unable to perform the duties required by Subsection (f) of this section, the presiding judge may impose those duties on:

- (1) the district clerk; or
- (2) the prosecutor of each district court in the county.

(h) If a parole panel releases on parole a person who is confined in a jail in this state, a federal correctional institution, or a correctional institution in another state, the Texas Department of Criminal Justice shall request the sheriff who would otherwise be required to transfer the person to the department to forward to the department the information described by Subsections (a) and (c) of this section. The sheriff shall comply with the request of the department. The department shall determine whether the information forwarded by the sheriff under this subsection contains a thumbprint taken from the person in the manner provided by Article 38.33 of this code and, if not, the department shall

obtain a thumbprint taken in the manner provided by that article and shall forward the thumbprint to the department for inclusion with the information sent by the sheriff.

(i) A county may deliver the documents required under Subsections (a) and (c) of this section to the Texas Department of Criminal Justice by electronic means. For purposes of this subsection, "electronic means" means the transmission of data between word processors, data processors, or similar automated information equipment over dedicated cables, commercial lines, or other similar methods of transmission.

(j) If after a county transfers a defendant or inmate to the Texas Department of Criminal Justice the charges on which the defendant or inmate was convicted and for which the defendant or inmate was transferred are dismissed, the county shall immediately notify an officer designated by the department of the dismissal.

Sec. 9. A county that transfers a defendant to the Texas Department of Criminal Justice under this article may deliver to an officer designated by the department a certified copy of a final order of a state or federal court that dismisses as frivolous or malicious a lawsuit brought by the inmate while the inmate was confined in the county jail awaiting transfer to the department following conviction of a felony or revocation of community supervision, parole, or mandatory supervision. The county may deliver the copy to the department at the time of the transfer of the inmate or at any time after the transfer of the inmate.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1973, 63rd Leg., ch. 91 (H.B. 403), § 2, effective August 27, 1973; am. Acts 1977, 65th Leg., ch. 806 (H.B. 39), § 1, effective August 29, 1977; am. Acts 1981, 67th Leg., ch. 291 (S.B. 265), § 117, effective September 1, 1981; am. Acts 1983, 68th Leg., ch. 40 (S.B. 218), § 1, effective April 26, 1983; am. Acts 1983, 68th Leg., ch. 810 (H.B. 859), § 1, effective September 1, 1983; am. Acts 1985, 69th Leg., ch. 344 (S.B. 845), § 3, effective January 1, 1986; am. Acts 1987, 70th Leg., ch. 1049 (S.B. 245), § 53, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 33 (S.B. 192), § 2, effective April 26, 1989; am. Acts 1989, 71st Leg., ch. 785 (H.B. 2335), § 4.12, effective September 1, 1989; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 10 (H.B. 93), § 11.05, effective August 29, 1991; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 5.03, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 321 (H.B. 2162), § 3.001, effective September 1, 1995; am. Acts 1995, 74th Leg., ch. 723 (H.B. 253), § 1, effective September 1, 1995; am. Acts 1999, 76th Leg., ch. 655 (H.B. 261), § 1, effective June 18, 1999; am. Acts 1999, 76th Leg., ch. 1188 (S.B. 365), § 1.42, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 29, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 214 (H.B. 261), § 1, effective May 22, 2001; am. Acts 2001, 77th Leg., ch. 453 (H.B. 1658), § 1, effective June 8, 2001; am. Acts 2003, 78th Leg., ch. 14 (H.B. 1236), § 1, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 4.005, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1308 (S.B. 909), § 4, effective June 15, 2007; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), §§ 25.023, 25.024, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 980 (H.B. 3671), § 1, effective September 1, 2009; am. Acts 2015, 84th Leg., ch. 282 (H.B. 904), § 1, effective September 1, 2015; am. Acts 2015, 84th Leg., ch. 770 (H.B. 2299), §§ 2.15, 2.16, effective January 1, 2017; am. Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 1, effective June 14, 2019; am. Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 4, effective September 1, 2019.

Art. 42.09. Commencement of Sentence; Status During Appeal; Pen Packet. [Effective January 1, 2021]

Sec. 1. Except as provided in Sections 2 and 3, a

defendant shall be delivered to a jail or to the Texas Department of Criminal Justice when his sentence is pronounced, or his sentence to death is announced, by the court. The defendant's sentence begins to run on the day it is pronounced, but with all credits, if any, allowed by Article 42.03.

Sec. 2. If a defendant appeals his conviction and is released on bail pending disposition of his appeal, when his conviction is affirmed, the clerk of the trial court, on receipt of the mandate from the appellate court, shall issue a commitment against the defendant. The officer executing the commitment shall endorse thereon the date he takes the defendant into custody and the defendant's sentence begins to run from the date endorsed on the commitment. The Texas Department of Criminal Justice shall admit the defendant named in the commitment on the basis of the commitment.

Sec. 3. If a defendant convicted of a felony is sentenced to death or to life in the Texas Department of Criminal Justice or is ineligible for release on bail pending appeal under Article 44.04(b) and gives notice of appeal, the defendant shall be transferred to the department on a commitment pending a mandate from the court of appeals or the Court of Criminal Appeals.

Sec. 4. If a defendant is convicted of a felony, is eligible for release on bail pending appeal under Article 44.04(b), and gives notice of appeal, he shall be transferred to the Texas Department of Criminal Justice on a commitment pending a mandate from the Court of Appeals or the Court of Criminal Appeals upon request in open court or upon written request to the sentencing court. Upon a valid transfer to the department under this section, the defendant may not thereafter be released on bail pending his appeal.

Sec. 5. If a defendant is transferred to the Texas Department of Criminal Justice pending appeal under Section 3 or 4, his sentence shall be computed as if no appeal had been taken if the appeal is affirmed.

Sec. 6. All defendants who have been transferred to the Texas Department of Criminal Justice pending the appeal of their convictions under this article shall be under the control and authority of the department for all purposes as if no appeal were pending.

Sec. 7. If a defendant is sentenced to a term of imprisonment in the Texas Department of Criminal Justice but is not transferred to the department under Section 3 or 4, the court, before the date on which it would lose jurisdiction under Article 42A.202(a), shall send to the department a document containing a statement of the date on which the defendant's sentence was pronounced and credits earned by the defendant under Article 42.03 as of the date of the statement.

Sec. 8. (a) A county that transfers a defendant to the Texas Department of Criminal Justice under this article shall deliver to an officer designated by the department:

(1) a copy of the judgment entered pursuant to Article 42.01, completed on a standardized felony judgment form described by Section 4 of that article;

(2) a copy of any order revoking community supervision and imposing sentence pursuant to Article 42A.755, including:

(A) any amounts owed for restitution, fines, and court costs, completed on a standardized felony

judgment form described by Section 4, Article 42.01; and

(B) a copy of the client supervision plan prepared for the defendant by the community supervision and corrections department supervising the defendant, if such a plan was prepared;

(3) a written report that states the nature and the seriousness of each offense and that states the citation to the provision or provisions of the Penal Code or other law under which the defendant was convicted;

(4) a copy of the victim impact statement, if one has been prepared in the case under Subchapter D, Chapter 56A;

(5) a statement as to whether there was a change in venue in the case and, if so, the names of the county prosecuting the offense and the county in which the case was tried;

(6) if requested, information regarding the criminal history of the defendant, including the defendant's state identification number if the number has been issued;

(7) a copy of the indictment or information for each offense;

(8) a checklist sent by the department to the county and completed by the county in a manner indicating that the documents required by this subsection and Subsection (c) accompany the defendant;

(9) if prepared, a copy of a presentence or postsentence report prepared under Subchapter F, Chapter 42A;

(10) a copy of any detainer, issued by an agency of the federal government, that is in the possession of the county and that has been placed on the defendant;

(11) if prepared, a copy of the defendant's Texas Uniform Health Status Update Form;

(12) a written description of a hold or warrant, issued by any other jurisdiction, that the county is aware of and that has been placed on or issued for the defendant; and

(13) a copy of any mental health records, mental health screening reports, or similar information regarding the mental health of the defendant.

(b) The Texas Department of Criminal Justice shall not take a defendant into custody under this article until the designated officer receives the documents required by Subsections (a) and (c) of this section. The designated officer shall certify under the seal of the department the documents received under Subsections (a) and (c) of this section. A document certified under this subsection is self-authenticated for the purposes of Rules 901 and 902, Texas Rules of Evidence.

(c) A county that transfers a defendant to the Texas Department of Criminal Justice under this article shall also deliver to the designated officer any presentence or postsentence investigation report, revocation report, psychological or psychiatric evaluation of the defendant, including a written report provided to a court under Article 16.22(a)(1)(B) or an evaluation prepared for the juvenile court before transferring the defendant to criminal court and contained in the criminal prosecutor's file, and available social or psychological background information relating to the defendant and may

deliver to the designated officer any additional information upon which the judge or jury bases the punishment decision.

(d) The correctional institutions division of the Texas Department of Criminal Justice shall make documents received under Subsections (a) and (c) available to the parole division on the request of the parole division and shall, on release of a defendant on parole or to mandatory supervision, immediately provide the parole division with copies of documents received under Subsection (a). The parole division shall provide to the parole officer appointed to supervise the defendant a comprehensive summary of the information contained in the documents referenced in this section not later than the 14th day after the date of the defendant's release. The summary shall include a current photograph of the defendant and a complete set of the defendant's fingerprints. Upon written request from the county sheriff, the photograph and fingerprints shall be filed with the sheriff of the county to which the parolee is assigned if that county is not the county from which the parolee was sentenced.

(e) A county is not required to deliver separate documents containing information relating to citations to provisions of the Penal Code or other law and to changes of venue, as otherwise required by Subsections (a)(3) and (a)(5) of this article, if the standardized felony judgment form described by Section 4, Article 42.01, of this code is modified to require that information.

(f) Except as provided by Subsection (g) of this section, the county sheriff is responsible for ensuring that documents and information required by this section accompany defendants sentenced by district courts in the county to the Texas Department of Criminal Justice.

(g) If the presiding judge of the administrative judicial region in which the county is located determines that the county sheriff is unable to perform the duties required by Subsection (f) of this section, the presiding judge may impose those duties on:

- (1) the district clerk; or
- (2) the prosecutor of each district court in the county.

(h) If a parole panel releases on parole a person who is confined in a jail in this state, a federal correctional institution, or a correctional institution in another state, the Texas Department of Criminal Justice shall request the sheriff who would otherwise be required to transfer the person to the department to forward to the department the information described by Subsections (a) and (c) of this section. The sheriff shall comply with the request of the department. The department shall determine whether the information forwarded by the sheriff under this subsection contains a thumbprint taken from the person in the manner provided by Article 38.33 of this code and, if not, the department shall obtain a thumbprint taken in the manner provided by that article and shall forward the thumbprint to the department for inclusion with the information sent by the sheriff.

(i) A county may deliver the documents required under Subsections (a) and (c) of this section to the Texas Department of Criminal Justice by electronic means.

For purposes of this subsection, "electronic means" means the transmission of data between word processors, data processors, or similar automated information equipment over dedicated cables, commercial lines, or other similar methods of transmission.

(j) If after a county transfers a defendant or inmate to the Texas Department of Criminal Justice the charges on which the defendant or inmate was convicted and for which the defendant or inmate was transferred are dismissed, the county shall immediately notify an officer designated by the department of the dismissal.

Sec. 9. A county that transfers a defendant to the Texas Department of Criminal Justice under this article may deliver to an officer designated by the department a certified copy of a final order of a state or federal court that dismisses as frivolous or malicious a lawsuit brought by the inmate while the inmate was confined in the county jail awaiting transfer to the department following conviction of a felony or revocation of community supervision, parole, or mandatory supervision. The county may deliver the copy to the department at the time of the transfer of the inmate or at any time after the transfer of the inmate.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1973, 63rd Leg., ch. 91 (H.B. 403), § 2, effective August 27, 1973; am. Acts 1977, 65th Leg., ch. 806 (H.B. 39), § 1, effective August 29, 1977; am. Acts 1981, 67th Leg., ch. 291 (S.B. 265), § 117, effective September 1, 1981; am. Acts 1983, 68th Leg., ch. 40 (S.B. 218), § 1, effective April 26, 1983; am. Acts 1983, 68th Leg., ch. 810 (H.B. 859), § 1, effective September 1, 1983; am. Acts 1985, 69th Leg., ch. 344 (S.B. 845), § 3, effective January 1, 1986; am. Acts 1987, 70th Leg., ch. 1049 (S.B. 245), § 53, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 33 (S.B. 192), § 2, effective April 26, 1989; am. Acts 1989, 71st Leg., ch. 785 (H.B. 2335), § 4.12, effective September 1, 1989; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 10 (H.B. 93), § 11.05, effective August 29, 1991; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 5.03, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 321 (H.B. 2162), § 3.001, effective September 1, 1995; am. Acts 1995, 74th Leg., ch. 723 (H.B. 253), § 1, effective September 1, 1995; am. Acts 1999, 76th Leg., ch. 655 (H.B. 261), § 1, effective June 18, 1999; am. Acts 1999, 76th Leg., ch. 1188 (S.B. 365), § 1.42, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 29, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 214 (H.B. 261), § 1, effective May 22, 2001; am. Acts 2001, 77th Leg., ch. 453 (H.B. 1658), § 1, effective June 8, 2001; am. Acts 2003, 78th Leg., ch. 14 (H.B. 1236), § 1, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 4.005, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1308 (S.B. 909), § 4, effective June 15, 2007; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), §§ 25.023, 25.024, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 980 (H.B. 3671), § 1, effective September 1, 2009; am. Acts 2015, 84th Leg., ch. 282 (H.B. 904), § 1, effective September 1, 2015; am. Acts 2015, 84th Leg., ch. 770 (H.B. 2299), §§ 2.15, 2.16, effective January 1, 2017; am. Acts 2019, 86th Leg., ch. 469 (H.B. 4173), § 2.15, effective January 1, 2021; am. Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 1, effective June 14, 2019; am. Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 4, effective September 1, 2019.

Art. 42.19. Interstate Corrections Compact.

ARTICLE I.

PURPOSE AND POLICY

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment, and rehabilitation of various types of offenders, declare

that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment, and rehabilitation of offenders with the most economical use of human and material resources.

ARTICLE II.

DEFINITIONS

As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the commonwealth of Puerto Rico.

(b) "Sending state" means a state party to this compact in which conviction or court commitment was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

(d) "Inmate" means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution.

(e) "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates as defined in (d) above may lawfully be confined.

ARTICLE III.

CONTRACTS

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs, or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities, and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV.

PROCEDURES AND RIGHTS

(a) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, such official may direct that the confinement be within an institution within the territory of such other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state. However, the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state who are in institutions pursuant to this compact including a conduct record of each inmate and shall certify such record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of the inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which the inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearing as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made.

The record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this paragraph (f), the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate and the sending and receiving states shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to this compact shall have any rights and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V.

ACT NOT REVIEWABLE IN RECEIVING STATE: EXTRADITION

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, or detention for such offense. The duly accredited officer of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution escaped from is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI.

FEDERAL AID

Any state party to this compact may accept federal aid for use in connection with any institution or program, the

use of which is or may be affected by this compact or any contract pursuant thereto. Any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision. However, if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII.

ENTRY INTO FORCE

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of such states upon similar action by such state.

ARTICLE VIII.

WITHDRAWAL AND TERMINATION

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the compact and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in the statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawal state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

ARTICLE IX.

OTHER ARRANGEMENTS UNAFFECTED

Nothing contained in this compact shall be construed to abrogate or impair an agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation, or treatment of inmates, nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X.

CONSTRUCTION AND SEVERABILITY

(a) The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating 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 participating therein, 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.

(b) Powers. The director of the Texas Department of Criminal Justice is authorized and directed to do all things necessary or incidental to the carrying out of the compact in every particular.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 24 (S.B. 126), § 1, effective January 1, 1986; am. Acts 1987, 70th Leg., ch. 167 (S.B. 892), § 5.01(a 9), effective September 1, 1987 (renumbered from art. 42.18); am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.031, effective September 1, 2009.

CHAPTER 42A

Community Supervision

Subchapter B. Placement on Community Supervision

Article
42A.051. Authority to Grant Community Supervision, Impose or Modify Conditions, or Discharge Defendant.

Subchapter C. Deferred Adjudication Community Supervision

42A.104. Conditions of Deferred Adjudication Community Supervision; Imposition of Fine.

Subchapter F. Presentence and Postsentence Reports and Evaluations

42A.253. Contents of Presentence Report.
42A.256. Release of Information to Supervision Officer; Confidentiality of Report.

Subchapter H. Mandatory Conditions Generally

42A.351. Educational Skill Level.

Subchapter K. Conditions Applicable to Certain Other Offenses and Offenders

42A.506. Community Supervision for Defendant with Mental Impairment.

Subchapter L. State Jail Felony Community Supervision

42A.560. Medical Release.
42A.561. Medical Release.

Subchapter B

Placement on Community Supervision

Art. 42A.051. Authority to Grant Community Supervision, Impose or Modify Conditions, or Discharge Defendant.

(a) Unless the judge has transferred jurisdiction of the case to another court under Article 42A.151, only the court in which the defendant was tried may:

- (1) grant community supervision;
- (2) impose conditions; or
- (3) discharge the defendant.

(b) The judge of the court having jurisdiction of the case may, at any time during the period of community supervision, modify the conditions of community supervision. Except as provided by Article 42A.052(a), only the judge may modify the conditions.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 1.01, effective January 1, 2017.

Subchapter C

Deferred Adjudication Community Supervision

Art. 42A.104. Conditions of Deferred Adjudication Community Supervision; Imposition of Fine.

(a) The judge may impose a fine applicable to the offense and require any reasonable condition of deferred adjudication community supervision that a judge could impose on a defendant placed on community supervision for a conviction that was probated and suspended, including:

- (1) confinement; and
- (2) mental health treatment under Article 42A.506.

(b) The provisions of Subchapter L specifying whether a defendant convicted of a state jail felony is to be confined in a county jail or state jail felony facility and establishing the minimum and maximum terms of confinement as a condition of community supervision apply in the same manner to a defendant placed on deferred adjudication community supervision after pleading guilty or nolo contendere to a state jail felony.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 1.01, effective January 1, 2017.

Subchapter F

Presentence and Postsentence Reports and Evaluations

Art. 42A.253. Contents of Presentence Report.

(a) A presentence report must be in writing and include:

- (1) the circumstances of the offense with which the defendant is charged;
- (2) the amount of restitution necessary to adequately compensate a victim of the offense;
- (3) the criminal and social history of the defendant;
- (4) a proposed supervision plan describing programs and sanctions that the community supervision and corrections department will provide the defendant if the judge suspends the imposition of the sentence or grants deferred adjudication community supervision;
- (5) if the defendant is charged with a state jail felony, recommendations for conditions of community supervision that the community supervision and corrections department considers advisable or appropriate based on the circumstances of the offense and other factors addressed in the report;
- (6) the results of a psychological evaluation of the defendant that determines, at a minimum, the defendant's IQ and adaptive behavior score if the defendant:
 - (A) is convicted of a felony offense; and
 - (B) appears to the judge, through the judge's own observation or on the suggestion of a party, to have a mental impairment;
- (7) information regarding whether the defendant is a current or former member of the state military forces or whether the defendant currently serves or has previously served in the armed forces of the United States in an active-duty status and, if available, a copy of the

defendant's military discharge papers and military records;

(8) if the defendant has served in the armed forces of the United States in an active-duty status, a determination as to whether the defendant was deployed to a combat zone and whether the defendant may suffer from post-traumatic stress disorder or a traumatic brain injury; and

(9) any other information relating to the defendant or the offense as requested by the judge.

(b) A presentence report is not required to contain a sentencing recommendation.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 1.01, effective January 1, 2017.

Art. 42A.256. Release of Information to Supervision Officer; Confidentiality of Report.

(a) The judge by order may direct that any information and records that are not privileged and that are relevant to a presentence or postsentence report be released to a supervision officer conducting a presentence investigation under this subchapter or preparing a postsentence report under Article 42A.259. The judge may also issue a subpoena to obtain that information.

(b) A presentence or postsentence report and all information obtained in connection with a presentence investigation or postsentence report are confidential and may be released only as:

(1) provided by:

- (A) Subsection (c);
- (B) Article 42A.255;
- (C) Article 42A.257;
- (D) Article 42A.259; or
- (E) Section 614.017, Health and Safety Code; or

(2) directed by the judge for the effective supervision of the defendant.

(c) If the defendant is a sex offender, a supervision officer may release information in a presentence or postsentence report concerning the social and criminal history of the defendant to a person who:

(1) is licensed or certified in this state to provide mental health or medical services, including a:

- (A) physician;
- (B) psychiatrist;
- (C) psychologist;
- (D) licensed professional counselor;
- (E) licensed marriage and family therapist; or
- (F) certified social worker; and

(2) provides mental health or medical services for the rehabilitation of the defendant.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 1.01, effective January 1, 2017.

Subchapter H

Mandatory Conditions Generally

Art. 42A.351. Educational Skill Level.

(a) If the judge or jury places a defendant on community supervision, the judge shall require the defendant to demonstrate to the court whether the defendant has an educational skill level that is equal to or greater than the

average educational skill level of students who have completed the sixth grade in public schools in this state.

(b) If the judge determines that the defendant has not attained the educational skill level described by Subsection (a), the judge shall require as a condition of community supervision that the defendant attain that level of educational skill, unless the judge also determines that the defendant lacks the intellectual capacity or the learning ability to ever achieve that level of educational skill.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 1.01, effective January 1, 2017.

Subchapter K

Conditions Applicable to Certain Other Offenses and Offenders

Art. 42A.506. Community Supervision for Defendant with Mental Impairment.

If the judge places a defendant on community supervision and the defendant is determined to be a person with mental illness or a person with an intellectual disability, as provided by Article 16.22 or Chapter 46B or in a psychological evaluation conducted under Article 42A.253(a)(6), the judge may require the defendant as a condition of community supervision to submit to outpatient or inpatient mental health or intellectual disability treatment if:

(1) the defendant's:

- (A) mental impairment is chronic in nature; or
- (B) ability to function independently will continue to deteriorate if the defendant does not receive mental health or intellectual disability services; and

(2) the judge determines, in consultation with a local mental health or intellectual disability services provider, that mental health or intellectual disability services, as appropriate, are available for the defendant through:

(A) the Department of State Health Services or the Department of Aging and Disability Services under Section 534.053, Health and Safety Code; or

(B) another mental health or intellectual disability services provider.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 1.01, effective January 1, 2017.

Subchapter L

State Jail Felony Community Supervision

Art. 42A.560. Medical Release.

(a) If a defendant is convicted of a state jail felony and the sentence is executed, the judge sentencing the defendant may release the defendant to a medically suitable placement if the judge determines that the defendant does not constitute a threat to public safety and the Texas Correctional Office on Offenders with Medical or Mental Impairments:

(1) in coordination with the Correctional Managed Health Care Committee, prepares a case summary and medical report that identifies the defendant as:

- (A) being a person who is elderly or terminally ill or a person with a physical disability;
- (B) being a person with mental illness or an intellectual disability; or
- (C) having a condition requiring long-term care; and

(2) in cooperation with the community supervision and corrections department serving the sentencing court, prepares for the defendant a medically recommended intensive supervision and continuity of care plan that:

- (A) ensures appropriate supervision of the defendant by the community supervision and corrections department; and
- (B) requires the defendant to remain under the care of a physician at and reside in a medically suitable placement.

(b) The Texas Correctional Office on Offenders with Medical or Mental Impairments shall submit to a judge who releases a defendant to an appropriate medical care facility under Subsection (a) a quarterly status report concerning the defendant's medical and treatment status.

(c) If a defendant released to a medically suitable placement under Subsection (a) violates the terms of that release, the judge may dispose of the matter as provided by Articles 42A.556 and 42A.558(a).

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 1.01, effective January 1, 2017.

Art. 42A.561. Medical Release.

(a) If a defendant is convicted of a state jail felony and the sentence is executed, the judge sentencing the defendant may release the defendant to a medical care facility or medical treatment program if the Texas Correctional Office on Offenders with Medical or Mental Impairments:

- (1) identifies the defendant as:
 - (A) being a person who is elderly or terminally ill or a person with a physical disability;
 - (B) being a person with mental illness or an intellectual disability; or
 - (C) having a condition requiring long-term care; and
- (2) in cooperation with the community supervision and corrections department serving the sentencing court, prepares for the defendant a medically recommended intensive supervision plan that:

- (A) ensures appropriate supervision of the defendant; and
- (B) requires the defendant to remain under the care of a physician at the facility or in the program.

(b) If a defendant released to a medical care facility or medical treatment program under Subsection (a) violates the terms of that release, the judge may dispose of the matter as provided by Articles 42A.556 and 42A.558(a).

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 1.01, effective January 1, 2017.

CHAPTER 43

Execution of Judgment

Article 43.091.	Waiver of Payment of Fines and Costs for Certain Defendants and for Children. [Effective until January 1, 2020]
43.091.	Waiver of Payment of Fines and Costs for Certain Defendants and for Children. [Effective January 1, 2020]
43.10.	Manual Labor.
43.13.	Discharge of Defendant.

Art. 43.09. Fine Discharged.

(a) When a defendant is convicted of a misdemeanor and the defendant's punishment is assessed at a pecuniary fine or is confined in a jail after conviction of a felony for which a fine is imposed, if the defendant is unable to pay the fine and costs adjudged against the defendant, the defendant may for such time as will satisfy the judgment be put to work in the county jail industries program, in the workhouse, or on the county farm, or public improvements and maintenance projects of the county or a political subdivision located in whole or in part in the county, as provided in Article 43.10; or if there is no such county jail industries program, workhouse, farm, or improvements and maintenance projects, the defendant shall be confined in jail for a sufficient length of time to discharge the full amount of fine and costs adjudged against the defendant; rating such confinement at \$100 for each day and rating such labor at \$100 for each day; provided, however, that the defendant may pay the pecuniary fine assessed against the defendant at any time while the defendant is serving at work in the county jail industries program, in the workhouse, or on the county farm, or on the public improvements and maintenance projects of the county or a political subdivision located in whole or in part in the county, or while the defendant is serving the defendant's jail sentence, and in such instances the defendant is entitled to the credit earned under this subsection during the time that the defendant has served and the defendant shall only be required to pay the balance of the pecuniary fine assessed against the defendant. A defendant who performs labor under this article during a day in which the defendant is confined is entitled to both the credit for confinement and the credit for labor provided by this article.

(b) In its discretion, the court may order that for each day's confinement served by a defendant under this article, the defendant receive credit toward payment of the pecuniary fine and credit toward payment of costs adjudged against the defendant. Additionally, the court may order that the defendant receive credit under this article for each day's confinement served by the defendant as punishment for the offense.

(c) In its discretion, the court may order that a defendant serving concurrent, but not consecutive, sentences for two or more misdemeanors may, for each day served, receive credit toward the satisfaction of costs and fines imposed for each separate offense.

(d) Notwithstanding any other provision of this article, in its discretion, the court or the sheriff of the county may grant an additional two days credit for each day served to any inmate participating in an approved work program under this article or a rehabilitation, restitution, or education program.

(e) A court in a county that operates an electronic monitoring program or contracts with a private vendor to operate an electronic monitoring program under Section 351.904, Local Government Code, or that is served by a community supervision and corrections department that operates an electronic monitoring program approved by the community justice assistance division of the Texas Department of Criminal Justice, may require a defendant who is unable to pay a fine or costs to discharge all or part of the fine or costs by participating in the program. A defendant who participates in an electronic monitoring program under this subsection discharges fines and costs in the same manner as if the defendant were confined in county jail.

(f) A court may require a defendant who is unable to pay a fine or costs to discharge all or part of the fine or costs by performing community service.

(g) In the court's order requiring a defendant to perform community service under Subsection (f), the court must specify:

(1) the number of hours of community service the defendant is required to perform;

(2) whether the community supervision and corrections department or a court-related services office will perform the administrative duties required by the placement of the defendant in the community service program; and

(3) the date by which the defendant must submit to the court documentation verifying the defendant's completion of the community service.

(h) The court may order the defendant to perform community service under Subsection (f):

(1) by attending:

(A) a work and job skills training program;

(B) a preparatory class for the high school equivalency examination administered under Section 7.111, Education Code;

(C) an alcohol or drug abuse program;

(D) a rehabilitation program;

(E) a counseling program, including a self-improvement program;

(F) a mentoring program; or

(G) any similar activity; or

(2) for:

(A) a governmental entity;

(B) a nonprofit organization or another organization that provides services to the general public that enhance social welfare and the general well-being of the community, as determined by the court; or

(C) an educational institution.

(h-1) An entity that accepts a defendant under Subsection (f) to perform community service must agree to supervise, either on-site or remotely, the defendant in the performance of the defendant's community service and report on the defendant's community service to the district probation department or court-related services office.

(i) The court may require bail of a defendant to ensure the defendant's faithful performance of community service under Subsection (f) of this article and may attach conditions to the bail as it determines are proper.

(j) A court may not order a defendant to perform more than 16 hours per week of community service under

Subsection (f) unless the court determines that requiring the defendant to perform additional hours does not impose an undue hardship on the defendant or the defendant's dependents.

(k) A defendant is considered to have discharged \$100 of fines or costs for each eight hours of community service performed under Subsection (f) of this article.

(l) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, an employee of a community corrections and supervision department, restitution center, or officer or employee of a political subdivision other than a county or an entity that accepts a defendant under this article to perform community service is not liable for damages arising from an act or failure to act in connection with manual labor performed by an inmate or community service performed by a defendant under this article if the act or failure to act:

(1) was performed pursuant to confinement or other court order; and

(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

(m) [Repealed by Acts 2007, 80th Leg., ch. 1263 (H.B. 3060), § 22, effective September 1, 2007.]

(n) This article does not apply to a court governed by Chapter 45.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1981, 67th Leg., ch. 143 (S.B. 430), § 1, effective May 14, 1981; am. Acts 1987, 70th Leg., ch. 347 (H.B. 631), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 753 (H.B. 1312), § 1, effective September 1, 1989; am. Acts 1989, 71st Leg., ch. 785 (H.B. 2335), § 4.13, effective September 1, 1989; am. Acts 1989, 71st Leg., ch. 1040 (H.B. 1779), §§ 3, 4, effective August 28, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 4.06, effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 900 (H.B. 154), § 1, effective August 26, 1991; am. Acts 1993, 73rd Leg., ch. 578 (H.B. 1056), § 2, effective June 11, 1993; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 5.04, effective September 1, 1993; am. Acts 1999, 76th Leg., ch. 1545 (S.B. 1230), § 3, effective September 1, 1999; am. Acts 2007, 80th Leg., ch. 1263 (H.B. 3060), §§ 14, 22, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 854 (S.B. 2340), § 2, effective June 19, 2009; am. Acts 2017, 85th Leg., ch. 977 (H.B. 351), § 7, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 1127 (S.B. 1913), § 6, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 4.010, effective September 1, 2019.

Art. 43.091. Waiver of Payment of Fines and Costs for Certain Defendants and for Children. [Effective until January 1, 2020]

A court may waive payment of all or part of a fine or costs imposed on a defendant if the court determines that:

(1) the defendant is indigent or does not have sufficient resources or income to pay all or part of the fine or costs or was, at the time the offense was committed, a child as defined by Article 45.058(h); and

(2) each alternative method of discharging the fine or cost under Article 43.09 or 42.15 would impose an undue hardship on the defendant.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1111 (H.B. 2410), § 2, effective September 1, 2001; am. Acts 2007, 80th Leg., ch. 1263 (H.B. 3060), § 15, effective September 1, 2007; am. Acts 2013, 83rd Leg., ch. 1320 (S.B. 395), § 2, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1407 (S.B. 393), § 2, effective September 1, 2013; am. Acts 2017, 85th Leg., ch. 977 (H.B. 351),

§ 8, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 1127 (S.B. 1913), § 7, effective September 1, 2017.

Art. 43.091. Waiver of Payment of Fines and Costs for Certain Defendants and for Children. [Effective January 1, 2020]

(a) A court may waive payment of all or part of a fine imposed on a defendant if the court determines that:

(1) the defendant is indigent or does not have sufficient resources or income to pay all or part of the fine or was, at the time the offense was committed, a child as defined by Article 45.058(h); and

(2) each alternative method of discharging the fine under Article 43.09 or 42.15 would impose an undue hardship on the defendant.

(b) A determination of undue hardship made under Subsection (a)(2) is in the court's discretion. In making that determination, the court may consider, as applicable, the defendant's:

(1) significant physical or mental impairment or disability;

(2) pregnancy and childbirth;

(3) substantial family commitments or responsibilities, including child or dependent care;

(4) work responsibilities and hours;

(5) transportation limitations;

(6) homelessness or housing insecurity; and

(7) any other factor the court determines relevant.

(c) A court may waive payment of all or part of the costs imposed on a defendant if the court determines that the defendant:

(1) is indigent or does not have sufficient resources or income to pay all or part of the costs; or

(2) was, at the time the offense was committed, a child as defined by Article 45.058(h).

(d) This subsection applies only to a defendant placed on community supervision, including deferred adjudication community supervision, whose fine or costs are wholly or partly waived under this article. At any time during the defendant's period of community supervision, the court, on the court's own motion or by motion of the attorney representing the state, may reconsider the waiver of the fine or costs. After providing written notice to the defendant and an opportunity for the defendant to present information relevant to the defendant's ability to pay, the court may order the defendant to pay all or part of the waived amount of the fine or costs only if the court determines that the defendant has sufficient resources or income to pay that amount.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1111 (H.B. 2410), § 2, effective September 1, 2001; am. Acts 2007, 80th Leg., ch. 1263 (H.B. 3060), § 15, effective September 1, 2007; am. Acts 2013, 83rd Leg., ch. 1320 (S.B. 395), § 2, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1407 (S.B. 393), § 2, effective September 1, 2013; am. Acts 2017, 85th Leg., ch. 977 (H.B. 351), § 8, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 1127 (S.B. 1913), § 7, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 1352 (S.B. 346), § 3.07, effective January 1, 2020.

Art. 43.10. Manual Labor.

Where the punishment assessed in a conviction for a misdemeanor is confinement in jail for more than one day or is only a pecuniary fine and the defendant is unable to

pay the fine and costs adjudged against the defendant, or where the defendant is sentenced to jail for a felony or is confined in jail after conviction of a felony, the defendant shall be required to work in the county jail industries program or shall be required to do manual labor in accordance with the following rules and regulations:

1. Each commissioners court may provide for the erection of a workhouse and the establishment of a county farm in connection therewith for the purpose of utilizing the labor of defendants under this article;

2. Such farms and workhouses shall be under the control and management of the sheriff, and the sheriff may adopt such rules and regulations not inconsistent with the rules and regulations of the Commission on Jail Standards and with the laws as the sheriff deems necessary;

3. Such overseers and guards may be employed by the sheriff under the authority of the commissioners court as may be necessary to prevent escapes and to enforce such labor, and they shall be paid out of the county treasury such compensation as the commissioners court may prescribe;

4. They shall be put to labor upon public works and maintenance projects, including public works and maintenance projects for a political subdivision located in whole or in part in the county. They may be put to labor upon maintenance projects for a cemetery that the commissioners court uses public funds, county employees, or county equipment to maintain under Section 713.028, Health and Safety Code. They may also be put to labor providing maintenance and related services to a nonprofit organization that qualifies for a tax exemption under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code, and is organized as a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), provided that, at the sheriff's request, the commissioners court determines that the nonprofit organization provides a public service to the county or to a political subdivision located in whole or in part in the county;

5. A defendant who from age, disease, or other physical or mental disability is unable to do manual labor shall not be required to work. The defendant's inability to do manual labor may be determined by a physician appointed for that purpose by the county judge or the commissioners court, who shall be paid for such service such compensation as said court may allow; and

6. For each day of manual labor, in addition to any other credits allowed by law, a defendant is entitled to have one day deducted from each sentence the defendant is serving.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1981, 67th Leg., ch. 708 (H.B. 647), § 1, effective August 31, 1981; am. Acts 1989, 71st Leg., ch. 753 (H.B. 1312), § 2, effective September 1, 1989; am. Acts 1989, 71st Leg., ch. 785 (H.B. 2335), § 4.14, effective September 1, 1989; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 10 (H.B. 93), § 14.09, effective October 1, 1991; am. Acts 1991, 72nd Leg., ch. 900 (H.B. 154), § 2, effective August 26, 1991; am. Acts 1993, 73rd Leg., ch. 578 (H.B. 1056), § 3, effective June 11, 1993; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 5.04, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 3.19, effective September 1, 1995; am. Acts 1995, 74th Leg., ch.

321 (H.B. 2162), § 3.015, effective September 1, 1995; am. Acts 2005, 79th Leg., ch. 853 (S.B. 951), § 2, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 1187 (H.B. 129), § 1, effective June 18, 2005; am. Acts 2009, 81st Leg., ch. 854 (S.B. 2340), § 3, effective June 19, 2009.

Art. 43.13. Discharge of Defendant.

(a) A defendant who has remained in jail the length of time required by the judgment and sentence shall be discharged. The sheriff shall return the copy of the judgment and sentence, or the *capias* under which the defendant was imprisoned, to the proper court, stating how it was executed.

(b) A defendant convicted of a misdemeanor and sentenced to a term of confinement discharges the defendant's sentence at any time beginning at 6 a.m. and ending at 5 p.m. on the day of discharge.

(c) Except as provided by Subsections (d) and (e), the sheriff or other county jail administrator shall release a defendant at any time beginning at 6 a.m. and ending at 5 p.m. on the day the defendant discharges the defendant's sentence.

(d) The sheriff or other county jail administrator may:

(1) credit a defendant with not more than 18 hours of time served; and

(2) release the defendant at any time beginning at 6 a.m. and ending at 5 p.m. on the day preceding the day on which the defendant discharges the defendant's sentence.

(e) A sheriff or other county jail administrator may release a defendant from county jail after 5 p.m. and before 6 a.m. if the defendant:

(1) agrees to or requests a release after 5 p.m. and before 6 a.m.;

(2) is subject to an arrest warrant issued by another county and is being released for purposes of executing that arrest warrant;

(3) is being transferred to the custody of another state, a unit of the federal government, or a facility operated by or under contract with the Texas Department of Criminal Justice; or

(4) is being admitted to an inpatient mental health facility or a state supported living center for court-ordered mental health or intellectual disability services.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1997, 75th Leg., ch. 714 (H.B. 126), § 1, effective September 1, 1997; am. Acts 2019, 86th Leg., ch. 401 (S.B. 1700), § 1, effective September 1, 2019.

Justice and Corporation Courts

CHAPTER 45

Justice and Municipal Courts

Subchapter B

Procedures for Justice and Municipal Courts

Article	
45.049.	Community Service in Satisfaction of Fine or Costs.
45.0491.	[2 Versions: As amended by Acts 2017, 85th Leg., ch. 977] Waiver of Payment of Fines

Article	and Costs for Certain Defendants and for Children.
45.0491.	[2 Versions: As amended by Acts 2017, 85th Leg., ch. 1127] Waiver of Payment of Fines and Costs for Certain Defendants and for Children. [Effective until January 1, 2020]
45.0491.	Waiver of Payment of Fines and Costs for Certain Defendants and for Children. [Effective January 1, 2020]
45.0492.	Community Service in Satisfaction of Fine or Costs for Certain Juvenile Defendants.
45.051.	Suspension of Sentence and Deferral of Final Disposition. [Effective until January 1, 2020]
45.051.	Suspension of Sentence and Deferral of Final Disposition. [Effective January 1, 2020]

Art. 45.049. Community Service in Satisfaction of Fine or Costs.

(a) A justice or judge may require a defendant who fails to pay a previously assessed fine or costs, or who is determined by the court to have insufficient resources or income to pay a fine or costs, to discharge all or part of the fine or costs by performing community service. A defendant may discharge an obligation to perform community service under this article by paying at any time the fine and costs assessed.

(b) In the justice's or judge's order requiring a defendant to perform community service under this article, the justice or judge must specify:

(1) the number of hours of community service the defendant is required to perform; and

(2) the date by which the defendant must submit to the court documentation verifying the defendant's completion of the community service.

(c) The justice or judge may order the defendant to perform community service under this article:

(1) by attending:

(A) a work and job skills training program;

(B) a preparatory class for the high school equivalency examination administered under Section 7.111, Education Code;

(C) an alcohol or drug abuse program;

(D) a rehabilitation program;

(E) a counseling program, including a self-improvement program;

(F) a mentoring program; or

(G) any similar activity; or

(2) for:

(A) a governmental entity;

(B) a nonprofit organization or another organization that provides services to the general public that enhance social welfare and the general well-being of the community, as determined by the justice or judge; or

(C) an educational institution.

(c-1) An entity that accepts a defendant under this article to perform community service must agree to supervise, either on-site or remotely, the defendant in the performance of the defendant's community service and report on the defendant's community service to the justice or judge who ordered the service.

(d) A justice or judge may not order a defendant to perform more than 16 hours per week of community service under this article unless the justice or judge determines that requiring the defendant to perform additional hours does not impose an undue hardship on the defendant or the defendant's dependents.

(e) A defendant is considered to have discharged not less than \$100 of fines or costs for each eight hours of community service performed under this article.

(f) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, justice of the peace, municipal court judge, or officer or employee of a political subdivision other than a county or an entity that accepts a defendant under this article to perform community service is not liable for damages arising from an act or failure to act in connection with community service performed by a defendant under this article if the act or failure to act:

(1) was performed pursuant to court order; and

(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

(g) This subsection applies only to a defendant who is charged with a traffic offense or an offense under Section 106.05, Alcoholic Beverage Code, and is a resident of this state. If under Article 45.051(b)(10), Code of Criminal Procedure, the judge requires the defendant to perform community service as a condition of the deferral, the defendant is entitled to elect whether to perform the required service in:

(1) the county in which the court is located; or

(2) the county in which the defendant resides, but only if the applicable entity agrees to:

(A) supervise, either on-site or remotely, the defendant in the performance of the defendant's community service; and

(B) report to the court on the defendant's community service.

(h) This subsection applies only to a defendant charged with an offense under Section 106.05, Alcoholic Beverage Code, who, under Subsection (g), elects to perform the required community service in the county in which the defendant resides. The community service must comply with Sections 106.071(d) and (e), Alcoholic Beverage Code, except that if the educational programs or services described by Section 106.071(e) are not available in the county of the defendant's residence, the court may order community service that it considers appropriate for rehabilitative purposes.

(i) A community supervision and corrections department or a court-related services office may provide the administrative and other services necessary for supervision of a defendant required to perform community service under this article.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 298 (H.B. 930), § 1, effective May 27, 1993; am. Acts 1999, 76th Leg., ch. 1545 (S.B. 1230), § 49, effective September 1, 1999 (renumbered from art. 45.521); am. Acts 2003, 78th Leg., ch. 209 (H.B. 2424), § 66(a), effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 1113 (H.B. 3692), § 5, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 1263 (H.B. 3060), § 17, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 27.001(2), effective September 1, 2009; am. Acts 2017, 85th Leg., ch. 977 (H.B. 351),

§ 16, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 1127 (S.B. 1913), § 15, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 4.011, effective September 1, 2019.

Art. 45.0491. [2 Versions: As amended by Acts 2017, 85th Leg., ch. 977] Waiver of Payment of Fines and Costs for Certain Defendants and for Children.

A municipal court, regardless of whether the court is a court of record, or a justice court may waive payment of all or part of a fine or costs imposed on a defendant if the court determines that:

(1) the defendant is indigent or does not have sufficient resources or income to pay all or part of the fine or costs or was, at the time the offense was committed, a child as defined by Article 45.058(h); and

(2) discharging the fine or costs under Article 45.049 or as otherwise authorized by this chapter would impose an undue hardship on the defendant.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1263 (H.B. 3060), § 18, effective September 1, 2007; am. Acts 2013, 83rd Leg., ch. 1320 (S.B. 395), § 4, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1407 (S.B. 393), § 6, effective September 1, 2013; am. Acts 2017, 85th Leg., ch. 977 (H.B. 351), § 17, effective September 1, 2017.

Art. 45.0491. [2 Versions: As amended by Acts 2017, 85th Leg., ch. 1127] Waiver of Payment of Fines and Costs for Certain Defendants and for Children. [Effective until January 1, 2020]

(a) A municipal court, regardless of whether the court is a court of record, or a justice court may waive payment of all or part of a fine or costs imposed on a defendant if the court determines that:

(1) the defendant is indigent or does not have sufficient resources or income to pay all or part of the fine or costs or was, at the time the offense was committed, a child as defined by Article 45.058(h); and

(2) discharging the fine or costs under Article 45.049 or as otherwise authorized by this chapter would impose an undue hardship on the defendant.

(b) A defendant is presumed to be indigent or to not have sufficient resources or income to pay all or part of the fine or costs if the defendant:

(1) is in the conservatorship of the Department of Family and Protective Services, or was in the conservatorship of that department at the time of the offense; or

(2) is designated as a homeless child or youth or an unaccompanied youth, as those terms are defined by 42 U.S.C. Section 11434a, or was so designated at the time of the offense.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1263 (H.B. 3060), § 18, effective September 1, 2007; am. Acts 2013, 83rd Leg., ch. 1320 (S.B. 395), § 4, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1407 (S.B. 393), § 6, effective September 1, 2013; am. Acts 2017, 85th Leg., ch. 1127 (S.B. 1913), § 16, effective September 1, 2017.

Art. 45.0491. Waiver of Payment of Fines and Costs for Certain Defendants and for Children. [Effective January 1, 2020]

(a) A municipal court, regardless of whether the court is a court of record, or a justice court may waive payment of

all or part of a fine imposed on a defendant if the court determines that:

(1) the defendant is indigent or does not have sufficient resources or income to pay all or part of the fine or was, at the time the offense was committed, a child as defined by Article 45.058(h); and

(2) discharging the fine under Article 45.049 or as otherwise authorized by this chapter would impose an undue hardship on the defendant.

(b) A defendant is presumed to be indigent or to not have sufficient resources or income to pay all or part of the fine or costs for purposes of Subsection (a) or (d) if the defendant:

(1) is in the conservatorship of the Department of Family and Protective Services, or was in the conservatorship of that department at the time of the offense; or

(2) is designated as a homeless child or youth or an unaccompanied youth, as those terms are defined by 42 U.S.C. Section 11434a, or was so designated at the time of the offense.

(c) A determination of undue hardship made under Subsection (a)(2) is in the court's discretion. In making that determination, the court may consider, as applicable, the defendant's:

(1) significant physical or mental impairment or disability;

(2) pregnancy and childbirth;

(3) substantial family commitments or responsibilities, including child or dependent care;

(4) work responsibilities and hours;

(5) transportation limitations;

(6) homelessness or housing insecurity; and

(7) any other factors the court determines relevant.

(d) A municipal court, regardless of whether the court is a court of record, or a justice court may waive payment of all or part of the costs imposed on a defendant if the court determines that the defendant:

(1) is indigent or does not have sufficient resources or income to pay all or part of the costs; or

(2) was, at the time the offense was committed, a child as defined by Article 45.058(h).

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1263 (H.B. 3060), § 18, effective September 1, 2007; am. Acts 2013, 83rd Leg., ch. 1320 (S.B. 395), § 4, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1407 (S.B. 393), § 6, effective September 1, 2013; am. Acts 2019, 86th Leg., ch. 1352 (S.B. 346), § 3.12, effective January 1, 2020.

Art. 45.0492. Community Service in Satisfaction of Fine or Costs for Certain Juvenile Defendants.

(a) This article applies only to a defendant younger than 17 years of age who is assessed a fine or costs for a Class C misdemeanor occurring in a building or on the grounds of the primary or secondary school at which the defendant was enrolled at the time of the offense.

(b) A justice or judge may require a defendant described by Subsection (a) to discharge all or part of the fine or costs by performing community service. A defendant may discharge an obligation to perform community service under this article by paying at any time the fine and costs assessed.

(c) In the justice's or judge's order requiring a defendant to perform community service under this article, the justice or judge must specify:

(1) the number of hours of community service the defendant is required to perform; and

(2) the date by which the defendant must submit to the court documentation verifying the defendant's completion of the community service.

(d) The justice or judge may order the defendant to perform community service under this article:

(1) by attending:

(A) a work and job skills training program;

(B) a preparatory class for the high school equivalency examination administered under Section 7.111, Education Code;

(C) an alcohol or drug abuse program;

(D) a rehabilitation program;

(E) a counseling program, including a self-improvement program;

(F) a mentoring program;

(G) a tutoring program; or

(H) any similar activity; or

(2) for:

(A) a governmental entity;

(B) a nonprofit organization or another organization that provides services to the general public that enhance social welfare and the general well-being of the community, as determined by the justice or judge; or

(C) an educational institution.

(d-1) An entity that accepts a defendant under this article to perform community service must agree to supervise, either on-site or remotely, the defendant in the performance of the defendant's community service and report on the defendant's community service to the justice or judge who ordered the service.

(e) [Repealed by Acts 2017, 85th Leg., ch. 977 (H.B. 351), § 31 and ch. 1127 (S.B. 1913), § 27, effective September 1, 2017.]

(f) A justice or judge may not order a defendant to perform more than 16 hours of community service per week under this article unless the justice or judge determines that requiring the defendant to perform additional hours does not impose an undue hardship on the defendant or the defendant's family. For purposes of this subsection, "family" has the meaning assigned by Section 71.003, Family Code.

(g) A defendant is considered to have discharged not less than \$100 of fines or costs for each eight hours of community service performed under this article.

(h) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, justice of the peace, municipal court judge, or officer or employee of a political subdivision other than a county or an entity that accepts a defendant under this article to perform community service is not liable for damages arising from an act or failure to act in connection with community service performed by a defendant under this article if the act or failure to act:

(1) was performed pursuant to court order; and

(2) was not intentional, grossly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

(i) A local juvenile probation department or a court-related services office may provide the administrative and

other services necessary for supervision of a defendant required to perform community service under this article.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 227 (H.B. 350), § 1, effective September 1, 2011; am. Acts 2017, 85th Leg., ch. 977 (H.B. 351), §§ 18, 19, 31, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 1127 (S.B. 1913), §§ 17, 18, 27, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 4.012(a), effective September 1, 2019.

Art. 45.051. Suspension of Sentence and Deferral of Final Disposition. [Effective until January 1, 2020]

(a) On a plea of guilty or nolo contendere by a defendant or on a finding of guilt in a misdemeanor case punishable by fine only and payment of all court costs, the judge may defer further proceedings without entering an adjudication of guilt and place the defendant on probation for a period not to exceed 180 days. In issuing the order of deferral, the judge may impose a special expense fee on the defendant in an amount not to exceed the amount of the fine that could be imposed on the defendant as punishment for the offense. The special expense fee may be collected at any time before the date on which the period of probation ends. The judge may elect not to impose the special expense fee for good cause shown by the defendant. If the judge orders the collection of a special expense fee, the judge shall require that the amount of the special expense fee be credited toward the payment of the amount of the fine imposed by the judge. An order of deferral under this subsection terminates any liability under a bond given for the charge.

(a-1) [2 Versions; As amended by 2011 Acts, 82nd R.S. Ch. 227 (H.B. 350)] Notwithstanding any other provision of law, as an alternative to requiring a defendant charged with one or more offenses to make payment of all court costs as required by Subsection (a), the judge may:

- (1) allow the defendant to enter into an agreement for payment of those costs in installments during the defendant's period of probation;
- (2) require an eligible defendant to discharge all or part of those costs by performing community service or attending a tutoring program under Article 45.049 or 45.0492; or
- (3) take any combination of actions authorized by Subdivision (1) or (2).

(a-1) [2 Versions; As amended by 2011 Acts, 82nd R.S. Ch. 777 (H.B. 1964)] Notwithstanding any other provision of law, as an alternative to requiring a defendant charged with one or more offenses to make payment of all court costs as required by Subsection (a), the judge may:

- (1) allow the defendant to enter into an agreement for payment of those costs in installments during the defendant's period of probation;
- (2) require an eligible defendant to discharge all or part of those costs by performing community service under Article 45.049 or 45.0492; or
- (3) take any combination of actions authorized by Subdivision (1) or (2).

(b) During the deferral period, the judge may require the defendant to:

- (1) post a bond in the amount of the fine assessed to secure payment of the fine;

(2) pay restitution to the victim of the offense in an amount not to exceed the fine assessed;

(3) submit to professional counseling;

(4) submit to diagnostic testing for alcohol or a controlled substance or drug;

(5) submit to a psychosocial assessment;

(6) participate in an alcohol or drug abuse treatment or education program, such as:

(A) a drug education program that is designed to educate persons on the dangers of drug abuse and is approved by the Department of State Health Services in accordance with Section 521.374, Transportation Code; or

(B) an alcohol awareness program described by Section 106.115, Alcoholic Beverage Code;

(7) pay the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court as court costs;

(8) complete a driving safety course approved under Chapter 1001, Education Code, or another course as directed by the judge;

(9) present to the court satisfactory evidence that the defendant has complied with each requirement imposed by the judge under this article; and

(10) comply with any other reasonable condition.

(b-1) If the defendant is younger than 25 years of age and the offense committed by the defendant is a traffic offense classified as a moving violation:

(1) Subsection (b)(8) does not apply;

(2) during the deferral period, the judge:

(A) shall require the defendant to complete a driving safety course approved under Chapter 1001, Education Code; and

(B) may require the defendant to complete an additional driving safety course designed for drivers younger than 25 years of age and approved under Section 1001.111, Education Code; and

(3) if the defendant holds a provisional license, during the deferral period the judge shall require that the defendant be examined by the Department of Public Safety as required by Section 521.161(b)(2), Transportation Code; a defendant is not exempt from the examination regardless of whether the defendant was examined previously.

(b-2) A person examined as required by Subsection (b-1)(3) must pay a \$10 examination fee.

(b-3) The fee collected under Subsection (b-2) must be deposited to the credit of a special account in the general revenue fund and may be used only by the Department of Public Safety for the administration of Chapter 521, Transportation Code.

(c) On determining that the defendant has complied with the requirements imposed by the judge under this article, the judge shall dismiss the complaint, and it shall be clearly noted in the docket that the complaint is dismissed and that there is not a final conviction.

(c-1) If the defendant fails to present within the deferral period satisfactory evidence of compliance with the requirements imposed by the judge under this article, the court shall:

- (1) notify the defendant in writing, mailed to the address on file with the court or appearing on the notice to appear, of that failure; and

(2) require the defendant to appear at the time and place stated in the notice to show cause why the order of deferral should not be revoked.

(c-2) On the defendant's showing of good cause for failure to present satisfactory evidence of compliance with the requirements imposed by the judge under this article, the court may allow an additional period during which the defendant may present evidence of the defendant's compliance with the requirements.

(d) If on the date of a show cause hearing under Subsection (c-1) or, if applicable, by the conclusion of an additional period provided under Subsection (c-2) the defendant does not present satisfactory evidence that the defendant complied with the requirements imposed, the judge may impose the fine assessed or impose a lesser fine. The imposition of the fine or lesser fine constitutes a final conviction of the defendant. This subsection does not apply to a defendant required under Subsection (b-1) to complete a driving safety course approved under Chapter 1001, Education Code, or an examination under Section 521.161(b)(2), Transportation Code.

(d-1) If the defendant was required to complete a driving safety course or an examination under Subsection (b-1) and on the date of a show cause hearing under Subsection (c-1) or, if applicable, by the conclusion of an additional period provided under Subsection (c-2) the defendant does not present satisfactory evidence that the defendant completed that course or examination, the judge shall impose the fine assessed. The imposition of the fine constitutes a final conviction of the defendant.

(e) Records relating to a complaint dismissed as provided by this article may be expunged under Article 55.01. If a complaint is dismissed under this article, there is not a final conviction and the complaint may not be used against the person for any purpose.

(f) This article does not apply to:

(1) an offense to which Section 542.404, Transportation Code, applies; or

(2) a violation of a state law or local ordinance relating to motor vehicle control, other than a parking violation, committed by a person who:

(A) holds a commercial driver's license; or

(B) held a commercial driver's license when the offense was committed.

(g) If a judge requires a defendant under Subsection (b) to attend an alcohol awareness program or drug education program as described by Subdivision (6) of that subsection, unless the judge determines that the defendant is indigent and unable to pay the cost, the judge shall require the defendant to pay the cost of attending the program. The judge may allow the defendant to pay the cost of attending the program in installments during the deferral period.

HISTORY: Enacted by Acts 1981, 67th Leg., ch. 318 (S.B. 914), § 1, effective September 1, 1981; am. Acts 1987, 70th Leg., ch. 226 (S.B. 1422), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 399 (S.B. 980), § 1, effective June 14, 1989; am. Acts 1991, 72nd Leg., ch. 775 (H.B. 1342), § 19, effective September 1, 1991; am. Acts 1991, 72nd Leg., ch. 835 (S.B. 757), § 4, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 5.07, effective September 1, 1993; am. Acts 1999, 76th Leg., ch. 532 (S.B. 185), § 1, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 1387 (H.B. 1603), § 1, effective September 1, 1999;

am. Acts 1999, 76th Leg., ch. 1545 (S.B. 1230), § 50, effective September 1, 1999 (renumbered from art. 45.54); am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 3.002, effective September 1, 2001; am. Acts 2003, 78th Leg., 3rd C.S., ch. 8 (H.B. 2), §§ 4.01, 4.03, effective January 11, 2004; am. Acts 2003, 78th Leg., ch. 991 (S.B. 1904), § 12, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1182 (S.B. 631), § 1, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 90 (S.B. 1005), § 1, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 281 (H.B. 2702), § 3.01, effective June 14, 2005; am. Acts 2005, 79th Leg., ch. 357 (S.B. 1257), § 6, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 508 (S.B. 545), § 1, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 714 (H.B. 2267), § 1, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 3.001, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 1121 (H.B. 1544), § 2, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 227 (H.B. 350), § 2, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 777 (H.B. 1964), § 2, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 914 (S.B. 1330), § 1, effective January 1, 2012; am. Acts 2015, 84th Leg., ch. 1004 (H.B. 642), § 4, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 977 (H.B. 351), § 21, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 1127 (S.B. 1913), § 20, effective September 1, 2017.

Art. 45.051. Suspension of Sentence and Deferral of Final Disposition. [Effective January 1, 2020]

(a) On a plea of guilty or nolo contendere by a defendant or on a finding of guilt in a misdemeanor case punishable by fine only and payment of all court costs, the judge may defer further proceedings without entering an adjudication of guilt and place the defendant on probation for a period not to exceed 180 days. In issuing the order of deferral, the judge may impose a fine on the defendant in an amount not to exceed the amount of the fine that could be imposed on the defendant as punishment for the offense. The fine may be collected at any time before the date on which the period of probation ends. The judge may elect not to impose the fine for good cause shown by the defendant. If the judge orders the collection of a fine under this subsection, the judge shall require that the amount of the fine be credited toward the payment of the amount of any fine imposed by the judge as punishment for the offense. An order of deferral under this subsection terminates any liability under a bond given for the charge.

(a-1) Notwithstanding any other provision of law, as an alternative to requiring a defendant charged with one or more offenses to make payment of all fines and court costs as required by Subsection (a), the judge may:

(1) allow the defendant to enter into an agreement for payment of those fines and costs in installments during the defendant's period of probation;

(2) require an eligible defendant to discharge all or part of those fines and costs by performing community service or attending a tutoring program under Article 45.049 or under Article 45.0492, as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011;

(3) waive all or part of those fines and costs under Article 45.0491; or

(4) take any combination of actions authorized by Subdivision (1), (2), or (3).

(b) During the deferral period, the judge may require the defendant to:

(1) post a bond in the amount of the fine assessed as punishment for the offense to secure payment of the fine;

(2) pay restitution to the victim of the offense in an amount not to exceed the fine assessed as punishment for the offense;

(3) submit to professional counseling;

(4) submit to diagnostic testing for alcohol or a controlled substance or drug;

(5) submit to a psychosocial assessment;

(6) participate in an alcohol or drug abuse treatment or education program, such as:

(A) a drug education program that is designed to educate persons on the dangers of drug abuse and is approved by the Department of State Health Services in accordance with Section 521.374, Transportation Code; or

(B) an alcohol awareness program described by Section 106.115, Alcoholic Beverage Code;

(7) pay as reimbursement fees the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court as court costs;

(8) complete a driving safety course approved under Chapter 1001, Education Code, or another course as directed by the judge;

(9) present to the court satisfactory evidence that the defendant has complied with each requirement imposed by the judge under this article; and

(10) comply with any other reasonable condition.

(b-1) If the defendant is younger than 25 years of age and the offense committed by the defendant is a traffic offense classified as a moving violation:

(1) Subsection (b)(8) does not apply;

(2) during the deferral period, the judge:

(A) shall require the defendant to complete a driving safety course approved under Chapter 1001, Education Code; and

(B) may require the defendant to complete an additional driving safety course designed for drivers younger than 25 years of age and approved under Section 1001.111, Education Code; and

(3) if the defendant holds a provisional license, during the deferral period the judge shall require that the defendant be examined by the Department of Public Safety as required by Section 521.161(b)(2), Transportation Code; a defendant is not exempt from the examination regardless of whether the defendant was examined previously.

(b-2) A person examined as required by Subsection (b-1)(3) must pay a \$10 reimbursement fee for the examination.

(b-3) The reimbursement fee collected under Subsection (b-2) must be deposited to the credit of a special account in the general revenue fund and may be used only by the Department of Public Safety for the administration of Chapter 521, Transportation Code.

(c) On determining that the defendant has complied with the requirements imposed by the judge under this article, the judge shall dismiss the complaint, and it shall be clearly noted in the docket that the complaint is dismissed and that there is not a final conviction.

(c-1) If the defendant fails to present within the deferral period satisfactory evidence of compliance with the requirements imposed by the judge under this article, the court shall:

(1) notify the defendant in writing, mailed to the address on file with the court or appearing on the notice to appear, of that failure; and

(2) require the defendant to appear at the time and place stated in the notice to show cause why the order of deferral should not be revoked.

(c-2) On the defendant's showing of good cause for failure to present satisfactory evidence of compliance with the requirements imposed by the judge under this article, the court may allow an additional period during which the defendant may present evidence of the defendant's compliance with the requirements.

(d) If on the date of a show cause hearing under Subsection (c-1) or, if applicable, by the conclusion of an additional period provided under Subsection (c-2) the defendant does not present satisfactory evidence that the defendant complied with the requirements imposed, the judge may impose the fine assessed or impose a lesser fine. The imposition of the fine or lesser fine constitutes a final conviction of the defendant. This subsection does not apply to a defendant required under Subsection (b-1) to complete a driving safety course approved under Chapter 1001, Education Code, or an examination under Section 521.161(b)(2), Transportation Code.

(d-1) If the defendant was required to complete a driving safety course or an examination under Subsection (b-1) and on the date of a show cause hearing under Subsection (c-1) or, if applicable, by the conclusion of an additional period provided under Subsection (c-2) the defendant does not present satisfactory evidence that the defendant completed that course or examination, the judge shall impose the fine assessed. The imposition of the fine constitutes a final conviction of the defendant.

(e) Records relating to a complaint dismissed as provided by this article may be expunged under Article 55.01. If a complaint is dismissed under this article, there is not a final conviction and the complaint may not be used against the person for any purpose.

(f) This article does not apply to:

(1) an offense to which Section 542.404, Transportation Code, applies; or

(2) a violation of a state law or local ordinance relating to motor vehicle control, other than a parking violation, committed by a person who:

(A) holds a commercial driver's license; or

(B) held a commercial driver's license when the offense was committed.

(g) If a judge requires a defendant under Subsection (b) to attend an alcohol awareness program or drug education program as described by Subdivision (6) of that subsection, unless the judge determines that the defendant is indigent and unable to pay the cost, the judge shall require the defendant to pay a reimbursement fee for the cost of attending the program. The judge may allow the defendant to pay the fee in installments during the deferral period.

HISTORY: Enacted by Acts 1981, 67th Leg., ch. 318 (S.B. 914), § 1, effective September 1, 1981; am. Acts 1987, 70th Leg., ch. 226 (S.B. 1422), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 399 (S.B. 980), § 1, effective June 14, 1989; am. Acts 1991, 72nd Leg., ch. 775 (H.B. 1342), § 19, effective September 1, 1991; am. Acts 1991, 72nd Leg., ch. 835 (S.B. 757), § 4, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067),

§ 5.07, effective September 1, 1993; am. Acts 1999, 76th Leg., ch. 532 (S.B. 185), § 1, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 1387 (H.B. 1603), § 1, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 1545 (S.B. 1230), § 50, effective September 1, 1999 (renumbered from art. 45.54); am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 3.002, effective September 1, 2001; am. Acts 2003, 78th Leg., 3rd C.S., ch. 8 (H.B. 2), §§ 4.01, 4.03, effective January 11, 2004; am. Acts 2003, 78th Leg., ch. 991 (S.B. 1904), § 12, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1182 (S.B. 631), § 1, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 90 (S.B. 1005), § 1, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 281 (H.B. 2702), § 3.01, effective June 14, 2005; am. Acts 2005, 79th Leg., ch. 357 (S.B. 1257), § 6, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 508 (S.B. 545), § 1, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 714 (H.B. 2267), § 1, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 3.001, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 1121 (H.B. 1544), § 2, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 227 (H.B. 350), § 2, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 777 (H.B. 1964), § 2, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 914 (S.B. 1330), § 1, effective January 1, 2012; am. Acts 2015, 84th Leg., ch. 1004 (H.B. 642), § 4, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 977 (H.B. 351), § 21, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 1127 (S.B. 1913), § 20, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 1352 (S.B. 346), §§ 2.19, 2.20, effective January 1, 2020.

Miscellaneous Proceedings

CHAPTER 46

Miscellaneous Provisions Relating to Mental Illness and Intellectual Disability

Article	
46.01.	[Repealed].
46.02.	Incompetency to Stand Trial [Repealed].
46.03.	Insanity Defense [Repealed in Part; Renumbered in Part].
46.04.	Transportation to a Mental Health Facility or Residential Care Facility.
46.05.	Competency to Be Executed.

Art. 46.01. [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 561 (S.B. 421), § 8, effective September 1, 1999.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1967, 60th Leg., ch. 299 (H.B. 955), § 2, effective August 28, 1967.

Art. 46.02. Incompetency to Stand Trial [Repealed].

Repealed by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 15, effective January 1, 2004.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1967, 60th Leg., ch. 299 (H.B. 955), § 1, effective August 28, 1967; am. Acts 1967, 60th Leg., ch. 659 (S.B. 145), § 33, effective August 28, 1967; am. Acts 1969, 61st Leg., ch. 554 (H.B. 1088), § 1, effective June 10, 1969; am. Acts 1969, 61st Leg., ch. 833 (S.B. 569), § 1, effective June 18, 1969; am. Acts 1971, 62nd Leg., ch. 995 (H.B. 1016), §§ 1, 2, effective August 30, 1971; am. Acts 1973, 63rd Leg., ch. 275 (S.B. 893), § 1, effective June 11, 1973; am. Acts 1973, 63rd Leg., ch. 468 (H.B. 727), § 1, effective August 27, 1973; am. Acts 1975, 64th Leg., ch. 415 (S.B. 901), § 1, effective June 19, 1975; am. Acts 1977, 65th Leg., ch. 596 (H.B. 951), § 1, effective September 1, 1977; am. Acts 1981, 67th Leg., ch. 291 (S.B. 265), § 148, effective September 1, 1981; am. Acts 1983, 68th Leg., ch. 54 (S.B. 302),

§§ 1, 2, effective August 29, 1983; am. Acts 1983, 68th Leg., ch. 772 (H.B. 500), §§ 1—6, effective June 14, 1989; am. Acts 1999, 76th Leg., ch. 561 (S.B. 421), §§ 1—7, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 828 (H.B. 1071), §§ 3, 4, effective September 1, 2001.

Art. 46.03. Insanity Defense [Repealed in Part; Renumbered in Part].

Secs. 1 to 3. [Repealed by Acts 2005, 79th Leg., ch. 831 (H.B. 837), § 1, effective September 1, 2005.]

Sec. 4. (a) to (c) [Repealed by Acts 2005, 79th Leg., ch. 831 (H.B. 837), § 1, effective September 1, 2005.]

(d) (1) to (7) [Repealed by Acts 2005, 79th Leg., ch. 831 (H.B. 837), § 1, effective September 1, 2005.]

(8) [Renumbered to Tex. Code Crim. Proc § 46C.003 by Acts 2011, 82nd Leg., ch. 787 (H.B. 2124), § 1, effective June 17, 2011.]

HISTORY: Enacted by Acts 1975, 64th Leg., ch. 415 (S.B. 901), § 2, effective June 19, 1975; am. Acts 1977, 65th Leg., ch. 596 (H.B. 951), § 2, effective September 1, 1977; am. Acts 1983, 68th Leg., ch. 454 (S.B. 7), §§ 2, 3, effective August 29, 1983; am. Acts 1989, 71st Leg., ch. 393 (S.B. 754), §§ 7—9, effective June 14, 1989; am. Acts 2001, 77th Leg., ch. 985 (H.B. 434), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 5, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 485 (H.B. 291), § 1, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 1, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 787 (H.B. 2124), § 1, effective June 17, 2011.

Art. 46.04. Transportation to a Mental Health Facility or Residential Care Facility.

Sec. 1. Persons Accompanying Transport.

(a) A patient transported from a jail or detention facility to a mental health facility or a residential care facility shall be transported by a special officer for mental health assignment certified under Section 1701.404, Occupations Code, or by a sheriff or constable.

(b) The court ordering the transport shall require appropriate medical personnel to accompany the person transporting the patient, at the expense of the county from which the patient is transported, if there is reasonable cause to believe the patient will require medical assistance or will require the administration of medication during the transportation.

(c) A female patient must be accompanied by a female attendant.

Sec. 2. Requirements for Transport. — The transportation of a patient from a jail or detention facility to a mental health facility or residential care facility must meet the following requirements:

(1) the patient must be transported directly to the facility within a reasonable amount of time and without undue delay;

(2) a vehicle used to transport the patient must be adequately heated in cold weather and adequately ventilated in warm weather;

(3) a special diet or other medical precautions recommended by the patient's physician must be followed;

(4) the person transporting the patient shall give the patient reasonable opportunities to get food and water and to use a bathroom; and

(5) the patient may not be transported with a state prisoner.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1512 (S.B. 539), § 6, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 14.736, effective September 1, 2001.

Art. 46.05. Competency to Be Executed.

(a) A person who is incompetent to be executed may not be executed.

(b) The trial court retains jurisdiction over motions filed by or for a defendant under this article.

(c) A motion filed under this article must identify the proceeding in which the defendant was convicted, give the date of the final judgment, set forth the fact that an execution date has been set if the date has been set, and clearly set forth alleged facts in support of the assertion that the defendant is presently incompetent to be executed. The defendant shall attach affidavits, records, or other evidence supporting the defendant’s allegations or shall state why those items are not attached. The defendant shall identify any previous proceedings in which the defendant challenged the defendant’s competency in relation to the conviction and sentence in question, including any challenge to the defendant’s competency to be executed, competency to stand trial, or sanity at the time of the offense. The motion must be verified by the oath of some person on the defendant’s behalf.

(d) On receipt of a motion filed under this article, the trial court shall determine whether the defendant has raised a substantial doubt of the defendant’s competency to be executed on the basis of:

(1) the motion, any attached documents, and any responsive pleadings; and

(2) if applicable, the presumption of competency under Subsection (e).

(e) If a defendant is determined to have previously filed a motion under this article, and has previously been determined to be competent to be executed, the previous adjudication creates a presumption of competency and the defendant is not entitled to a hearing on the subsequent motion filed under this article, unless the defendant makes a prima facie showing of a substantial change in circumstances sufficient to raise a significant question as to the defendant’s competency to be executed at the time of filing the subsequent motion under this article.

(f) If the trial court determines that the defendant has made a substantial showing of incompetency, the court shall order at least two mental health experts to examine the defendant using the standard described by Subsection (h) to determine whether the defendant is incompetent to be executed.

(g) If the trial court does not determine that the defendant has made a substantial showing of incompetency, the court shall deny the motion and may set an execution date as otherwise provided by law.

(h) A defendant is incompetent to be executed if the defendant does not understand:

(1) that he or she is to be executed and that the execution is imminent; and

(2) the reason he or she is being executed.

(i) Mental health experts who examine a defendant under this article shall provide within a time ordered by the trial court copies of their reports to the attorney representing the state, the attorney representing the defendant, and the court.

(j) By filing a motion under this article, the defendant waives any claim of privilege with respect to, and consents to the release of, all mental health and medical records relevant to whether the defendant is incompetent to be executed.

(k) The trial court shall determine whether, on the basis of reports provided under Subsection (i), the motion, any attached documents, any responsive pleadings, and any evidence introduced in the final competency hearing, the defendant has established by a preponderance of the evidence that the defendant is incompetent to be executed. If the court makes a finding that the defendant is not incompetent to be executed, the court may set an execution date as otherwise provided by law.

(l) Following the trial court’s determination under Subsection (k) and on motion of a party, the clerk shall send immediately to the court of criminal appeals in accordance with Section 8(d), Article 11.071, the appropriate documents for that court’s review and entry of a judgment of whether to adopt the trial court’s order, findings, or recommendations issued under Subsection (g) or (k). The court of criminal appeals also shall determine whether any existing execution date should be withdrawn and a stay of execution issued while that court is conducting its review or, if a stay is not issued during the review, after entry of its judgment.

(l-1) Notwithstanding Subsection (l), the court of criminal appeals may not review any finding of the defendant’s competency made by a trial court as a result of a motion filed under this article if the motion is filed on or after the 20th day before the defendant’s scheduled execution date.

(m) If a stay of execution is issued by the court of criminal appeals, the trial court periodically shall order that the defendant be reexamined by mental health experts to determine whether the defendant is no longer incompetent to be executed.

(n) If the court of criminal appeals enters a judgment that a defendant is not incompetent to be executed, the court may withdraw any stay of execution issued under Subsection (l), and the trial court may set an execution date as otherwise provided by law.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 654 (H.B. 245), § 1, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 21.001(13), effective September 1, 2001 (renumbered from art. 46.04); am. Acts 2007, 80th Leg., ch. 677 (H.B. 1545), § 1, effective September 1, 2007.

CHAPTER 46B

Incompetency to Stand Trial

Subchapter A. General Provisions

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46B.0021.	Facility Designation.
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Article 46B.007.	Admissibility of Statements and Certain Other Evidence.
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Subchapter A

General Provisions

Art. 46B.001. Definitions.

In this chapter:

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

(3) "Competency restoration" means the treatment or education process for restoring a person's ability to consult with the person's attorney with a reasonable degree of rational understanding, including a rational and factual understanding of the court proceedings and charges against the person.

(4) "Developmental period" means the period of a person's life from birth through 17 years of age.

(5) "Electronic broadcast system" means a two-way electronic communication of image and sound between the defendant and the court and includes secure Internet videoconferencing.

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

(7) "Inpatient mental health facility" has the meaning assigned by Section 571.003, Health and Safety Code.

(8) “Intellectual disability” means significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.

(9) “Local mental health authority” has the meaning assigned by Section 571.003, Health and Safety Code.

(10) “Local intellectual and developmental disability authority” has the meaning assigned by Section 531.002, Health and Safety Code.

(11) “Mental health facility” has the meaning assigned by Section 571.003, Health and Safety Code.

(12) “Mental illness” means an illness, disease, or condition, other than epilepsy, dementia, substance abuse, or intellectual disability, that grossly impairs:

(A) a person’s thought, perception of reality, emotional process, or judgment; or

(B) behavior as demonstrated by recent disturbed behavior.

(13) “Residential care facility” has the meaning assigned by Section 591.003, Health and Safety Code.

(14) “Subaverage general intellectual functioning” means a measured intelligence two or more standard deviations below the age-group mean, using a standardized psychometric instrument.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 1, effective September 1, 2005; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.006, effective April 2, 2015; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 5, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 2, effective June 14, 2019; am. Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 5, effective September 1, 2019.

Art. 46B.002. Applicability.

This chapter applies to a defendant charged with a felony or with a misdemeanor punishable by confinement.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004.

Art. 46B.0021. Facility Designation.

The commission may designate for the commitment of a defendant under this chapter only a facility operated by the commission or under a contract with the commission for that purpose.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 3, effective June 14, 2019.

Art. 46B.0021. Facility Designation.

The commission may designate for the commitment of a defendant under this chapter only a facility operated by the commission or under a contract with the commission for that purpose.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 6, effective September 1, 2019.

Art. 46B.003. Incompetency; Presumptions.

(a) A person is incompetent to stand trial if the person does not have:

(1) sufficient present ability to consult with the person’s lawyer with a reasonable degree of rational understanding; or

(2) a rational as well as factual understanding of the proceedings against the person.

(b) A defendant is presumed competent to stand trial and shall be found competent to stand trial unless proved incompetent by a preponderance of the evidence.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004.

Art. 46B.004. Raising Issue of Incompetency to Stand Trial.

(a) Either party may suggest by motion, or the trial court may suggest on its own motion, that the defendant may be incompetent to stand trial. A motion suggesting that the defendant may be incompetent to stand trial may be supported by affidavits setting out the facts on which the suggestion is made.

(b) If evidence suggesting the defendant may be incompetent to stand trial comes to the attention of the court, the court on its own motion shall suggest that the defendant may be incompetent to stand trial.

(c) On suggestion that the defendant may be incompetent to stand trial, the court shall determine by informal inquiry whether there is some evidence from any source that would support a finding that the defendant may be incompetent to stand trial.

(c-1) A suggestion of incompetency is the threshold requirement for an informal inquiry under Subsection (c) and may consist solely of a representation from any credible source that the defendant may be incompetent. A further evidentiary showing is not required to initiate the inquiry, and the court is not required to have a bona fide doubt about the competency of the defendant. Evidence suggesting the need for an informal inquiry may be based on observations made in relation to one or more of the factors described by Article 46B.024 or on any other indication that the defendant is incompetent within the meaning of Article 46B.003.

(d) If the court determines there is evidence to support a finding of incompetency, the court, except as provided by Subsection (e) and Article 46B.005(d), shall stay all other proceedings in the case.

(e) At any time during the proceedings under this chapter after the issue of the defendant’s incompetency to stand trial is first raised, the court on the motion of the attorney representing the state may dismiss all charges pending against the defendant, regardless of whether there is any evidence to support a finding of the defendant’s incompetency under Subsection (d) or whether the court has made a finding of incompetency under this chapter. If the court dismisses the charges against the defendant, the court may not continue the proceedings under this chapter, except that, if there is evidence to support a finding of the defendant’s incompetency under Subsection (d), the court may proceed under Subchapter F. If the court does not elect to proceed under Subchapter F, the court shall discharge the defendant.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 2, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 2, effective September 1, 2011.

Art. 46B.005. Determining Incompetency to Stand Trial.

(a) If after an informal inquiry the court determines

that evidence exists to support a finding of incompetency, the court shall order an examination under Subchapter B to determine whether the defendant is incompetent to stand trial in a criminal case.

(b) Except as provided by Subsection (c), the court shall hold a trial under Subchapter C before determining whether the defendant is incompetent to stand trial on the merits.

(c) A trial under this chapter is not required if:

(1) neither party's counsel requests a trial on the issue of incompetency;

(2) neither party's counsel opposes a finding of incompetency; and

(3) the court does not, on its own motion, determine that a trial is necessary to determine incompetency.

(d) If the issue of the defendant's incompetency to stand trial is raised after the trial on the merits begins, the court may determine the issue at any time before the sentence is pronounced. If the determination is delayed until after the return of a verdict, the court shall make the determination as soon as reasonably possible after the return. If a verdict of not guilty is returned, the court may not determine the issue of incompetency.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 3, effective September 1, 2005.

Art. 46B.006. Appointment of and Representation by Counsel.

(a) A defendant is entitled to representation by counsel before any court-ordered competency evaluation and during any proceeding at which it is suggested that the defendant may be incompetent to stand trial.

(b) If the defendant is indigent and the court has not appointed counsel to represent the defendant, the court shall appoint counsel as necessary to comply with Subsection (a).

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004.

Art. 46B.007. Admissibility of Statements and Certain Other Evidence.

A statement made by a defendant during an examination or trial on the defendant's incompetency, the testimony of an expert based on that statement, and evidence obtained as a result of that statement may not be admitted in evidence against the defendant in any criminal proceeding, other than at:

(1) a trial on the defendant's incompetency; or

(2) any proceeding at which the defendant first introduces into evidence a statement, testimony, or evidence described by this article.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 3, effective September 1, 2005.

Art. 46B.008. Rules of Evidence.

Notwithstanding Rule 101, Texas Rules of Evidence, the Texas Rules of Evidence apply to a trial under Subchapter C or other proceeding under this chapter whether the proceeding is before a jury or before the court.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 3, effective September 1, 2005.

Art. 46B.009. Time Credits.

A court sentencing a person convicted of a criminal offense shall credit to the term of the person's sentence each of the following periods for which the person may be confined in a mental health facility, residential care facility, or jail:

(1) any period of confinement that occurs pending a determination under Subchapter C as to the defendant's competency to stand trial; and

(2) any period of confinement that occurs between the date of any initial determination of the defendant's incompetency under that subchapter and the date the person is transported to jail following a final judicial determination that the person has been restored to competency.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 3, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 2, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 718 (H.B. 748), § 2, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 3, effective September 1, 2011.

Art. 46B.0095. Maximum Period of Commitment or Program Participation Determined by Maximum Term for Offense.

(a) A defendant may not, under Subchapter D or E or any other provision of this chapter, be committed to a mental hospital or other inpatient or residential facility or to a jail-based competency restoration program, ordered to participate in an outpatient competency restoration or treatment program, or subjected to any combination of inpatient treatment, outpatient competency restoration or treatment program participation, or jail-based competency restoration under this chapter for a cumulative period that exceeds the maximum term provided by law for the offense for which the defendant was to be tried, except that if the defendant is charged with a misdemeanor and has been ordered only to participate in an outpatient competency restoration or treatment program under Subchapter D or E, the maximum period of restoration is two years.

(b) On expiration of the maximum restoration period under Subsection (a), the mental hospital, facility, or program provider identified in the most recent order of commitment or order of outpatient competency restoration or treatment program participation under this chapter shall assess the defendant to determine if civil proceedings under Subtitle C or D, Title 7, Health and Safety Code, are appropriate. The defendant may be confined for an additional period in a mental hospital or other facility or may be ordered to participate for an additional period in an outpatient treatment program, as appropriate, only pursuant to civil proceedings conducted under Subtitle C or D, Title 7, Health and Safety Code, by a court with probate jurisdiction.

(c) The cumulative period described by Subsection (a):

(1) begins on the date the initial order of commitment or initial order for outpatient competency restoration or

treatment program participation is entered under this chapter; and

(2) in addition to any inpatient or outpatient competency restoration periods or program participation periods described by Subsection (a), includes any time that, following the entry of an order described by Subdivision (1), the defendant is confined in a correctional facility, as defined by Section 1.07, Penal Code, or is otherwise in the custody of the sheriff during or while awaiting, as applicable:

(A) the defendant's transfer to:

(i) a mental hospital or other inpatient or residential facility; or

(ii) a jail-based competency restoration program;

(B) the defendant's release on bail to participate in an outpatient competency restoration or treatment program; or

(C) a criminal trial following any temporary restoration of the defendant's competency to stand trial.

(d) The court shall credit to the cumulative period described by Subsection (a) any time that a defendant, following arrest for the offense for which the defendant was to be tried, is confined in a correctional facility, as defined by Section 1.07, Penal Code, before the initial order of commitment or initial order for outpatient competency restoration or treatment program participation is entered under this chapter.

(e) In addition to the time credit awarded under Subsection (d), the court may credit to the cumulative period described by Subsection (a) any good conduct time the defendant may have been granted under Article 42.032 in relation to the defendant's confinement as described by Subsection (d).

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 2, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 718 (H.B. 748), § 3, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 4, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 3.010(a), (b), (c), and (d), effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 627 (S.B. 1326), §§ 1, 3, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), §§ 6, 7, effective September 1, 2017.

Art. 46B.010. Mandatory Dismissal of Misdemeanor Charges.

If a court orders that a defendant charged with a misdemeanor punishable by confinement be committed to a mental hospital or other inpatient or residential facility or to a jail-based competency restoration program, that the defendant participate in an outpatient competency restoration or treatment program, or that the defendant be subjected to any combination of inpatient treatment, outpatient competency restoration or treatment program participation, or jail-based competency restoration under this chapter, and the defendant is not tried before the expiration of the maximum period of restoration described by Article 46B.0095:

(1) on the motion of the attorney representing the state, the court shall dismiss the charge; or

(2) on the motion of the attorney representing the defendant and notice to the attorney representing the state, the court:

(A) shall set the matter to be heard not later than the 10th day after the date of filing of the motion; and

(B) may dismiss the charge on a finding that the defendant was not tried before the expiration of the maximum period of restoration.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 2, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 718 (H.B. 748), § 4, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 5, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 627 (S.B. 1326), § 2, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 8, effective September 1, 2017.

Art. 46B.011. Appeals.

Neither the state nor the defendant is entitled to make an interlocutory appeal relating to a determination or ruling under Article 46B.005.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 3, effective September 1, 2005.

Art. 46B.012. Compliance with Chapter.

The failure of a person to comply with this chapter does not provide a defendant with a right to dismissal of charges.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004.

Art. 46B.013. Use of Electronic Broadcast System in Certain Proceedings Under This Chapter.

(a) A hearing may be conducted using an electronic broadcast system as permitted by this chapter and in accordance with the other provisions of this code if:

(1) written consent to the use of an electronic broadcast system is filed with the court by:

(A) the defendant or the attorney representing the defendant; and

(B) the attorney representing the state;

(2) the electronic broadcast system provides for a simultaneous, compressed full motion video, and interactive communication of image and sound between the judge, the attorney representing the state, the attorney representing the defendant, and the defendant; and

(3) on request of the defendant or the attorney representing the defendant, the defendant and the attorney representing the defendant are able to communicate privately without being recorded or heard by the judge or the attorney representing the state.

(b) On the motion of the defendant, the attorney representing the defendant, or the attorney representing the state or on the court's own motion, the court may terminate an appearance made through an electronic broadcast system at any time during the appearance and require an appearance by the defendant in open court.

(c) A recording of the communication shall be made and preserved until any appellate proceedings have been concluded. The defendant may obtain a copy of the recording on payment of a reasonable amount to cover the costs of reproduction or, if the defendant is indigent, the court shall provide a copy to the defendant without charging a cost for the copy.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 4, effective September 1, 2005.

Subchapter B

Examination

Art. 46B.021. Appointment of Experts.

(a) On a suggestion that the defendant may be incompetent to stand trial, the court may appoint one or more disinterested experts to:

- (1) examine the defendant and report to the court on the competency or incompetency of the defendant; and
- (2) testify as to the issue of competency or incompetency of the defendant at any trial or hearing involving that issue.

(b) On a determination that evidence exists to support a finding of incompetency to stand trial, the court shall appoint one or more experts to perform the duties described by Subsection (a).

(c) An expert involved in the treatment of the defendant may not be appointed to examine the defendant under this article.

(d) The movant or other party as directed by the court shall provide to experts appointed under this article information relevant to a determination of the defendant's competency, including copies of the indictment or information, any supporting documents used to establish probable cause in the case, and previous mental health evaluation and treatment records.

(e) The court may appoint as experts under this chapter qualified psychiatrists or psychologists employed by the local mental health authority or local intellectual and developmental disability authority. The local mental health authority or local intellectual and developmental disability authority is entitled to compensation and reimbursement as provided by Article 46B.027.

(f) If a defendant wishes to be examined by an expert of the defendant's own choice, the court on timely request shall provide the expert with reasonable opportunity to examine the defendant.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.007, effective April 2, 2015.

Art. 46B.022. Experts: Qualifications.

(a) To qualify for appointment under this subchapter as an expert, a psychiatrist or psychologist must:

- (1) as appropriate, be a physician licensed in this state or be a psychologist licensed in this state who has a doctoral degree in psychology; and
- (2) have the following certification or training:
 - (A) as appropriate, certification by:
 - (i) the American Board of Psychiatry and Neurology with added or special qualifications in forensic psychiatry; or
 - (ii) the American Board of Professional Psychology in forensic psychology; or
 - (B) training consisting of:
 - (i) at least 24 hours of specialized forensic training relating to incompetency or insanity evaluations; and

(ii) at least eight hours of continuing education relating to forensic evaluations, completed in the 12 months preceding the appointment.

(b) In addition to meeting qualifications required by Subsection (a), to be appointed as an expert a psychiatrist or psychologist must have completed six hours of required continuing education in courses in forensic psychiatry or psychology, as appropriate, in either of the reporting periods in the 24 months preceding the appointment.

(c) A court may appoint as an expert a psychiatrist or psychologist who does not meet the requirements of Subsections (a) and (b) only if exigent circumstances require the court to base the appointment on professional training or experience of the expert that directly provides the expert with a specialized expertise to examine the defendant that would not ordinarily be possessed by a psychiatrist or psychologist who meets the requirements of Subsections (a) and (b).

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 6, effective September 1, 2011.

Art. 46B.023. Custody Status.

During an examination under this subchapter, except as otherwise ordered by the court, the defendant shall be maintained under the same custody or status as the defendant was maintained under immediately before the examination began.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004.

Art. 46B.024. Factors Considered in Examination.

During an examination under this subchapter and in any report based on that examination, an expert shall consider, in addition to other issues determined relevant by the expert, the following:

- (1) the capacity of the defendant during criminal proceedings to:
 - (A) rationally understand the charges against the defendant and the potential consequences of the pending criminal proceedings;
 - (B) disclose to counsel pertinent facts, events, and states of mind;
 - (C) engage in a reasoned choice of legal strategies and options;
 - (D) understand the adversarial nature of criminal proceedings;
 - (E) exhibit appropriate courtroom behavior; and
 - (F) testify;
- (2) as supported by current indications and the defendant's personal history, whether the defendant:
 - (A) is a person with mental illness; or
 - (B) is a person with an intellectual disability;
- (3) whether the identified condition has lasted or is expected to last continuously for at least one year;
- (4) the degree of impairment resulting from the mental illness or intellectual disability, if existent, and the specific impact on the defendant's capacity to engage with counsel in a reasonable and rational manner; and
- (5) if the defendant is taking psychoactive or other medication:

(A) whether the medication is necessary to maintain the defendant's competency; and

(B) the effect, if any, of the medication on the defendant's appearance, demeanor, or ability to participate in the proceedings.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 7, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.008, effective April 2, 2015.

Art. 46B.025. Expert's Report.

(a) An expert's report to the court must state an opinion on a defendant's competency or incompetency to stand trial or explain why the expert is unable to state such an opinion and must also:

(1) identify and address specific issues referred to the expert for evaluation;

(2) document that the expert explained to the defendant the purpose of the evaluation, the persons to whom a report on the evaluation is provided, and the limits on rules of confidentiality applying to the relationship between the expert and the defendant;

(3) in specific terms, describe procedures, techniques, and tests used in the examination, the purpose of each procedure, technique, or test, and the conclusions reached; and

(4) state the expert's clinical observations, findings, and opinions on each specific issue referred to the expert by the court, state the specific criteria supporting the expert's diagnosis, and state specifically any issues on which the expert could not provide an opinion.

(a-1) The expert's opinion on the defendant's competency or incompetency may not be based solely on the defendant's refusal to communicate during the examination.

(b) If in the opinion of an expert appointed under Article 46B.021 the defendant is incompetent to proceed, the expert shall state in the report:

(1) the symptoms, exact nature, severity, and expected duration of the deficits resulting from the defendant's mental illness or intellectual disability, if any, and the impact of the identified condition on the factors listed in Article 46B.024;

(2) an estimate of the period needed to restore the defendant's competency, including whether the defendant is likely to be restored to competency in the foreseeable future; and

(3) prospective treatment options, if any, appropriate for the defendant.

(c) An expert's report may not state the expert's opinion on the defendant's sanity at the time of the alleged offense, if in the opinion of the expert the defendant is incompetent to proceed.

(d) The court shall direct an expert to provide the expert's report to the court and the appropriate parties in the form approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments under Section 614.0032(b), Health and Safety Code.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 1269 (H.B. 2194), § 1, effective June 18, 2005; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 8, effective September 1, 2011; am.

Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.009, effective April 2, 2015.

Art. 46B.026. Report Deadline.

(a) Except as provided by Subsection (b), an expert examining the defendant shall provide the report on the defendant's competency or incompetency to stand trial to the court, the attorney representing the state, and the attorney representing the defendant not later than the 30th day after the date on which the expert was ordered to examine the defendant and prepare the report.

(b) For good cause shown, the court may permit an expert to complete the examination and report and provide the report to the court and attorneys at a date later than the date required by Subsection (a).

(c) [Repealed by Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 35(1), effective September 1, 2017.]

(d) The court shall submit to the Office of Court Administration of the Texas Judicial System on a monthly basis the number of reports provided to the court under this article.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 1269 (H.B. 2194), § 2, effective June 18, 2005; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), §§ 9, 35(1), effective September 1, 2017.

Art. 46B.027. Compensation of Experts; Reimbursement of Facilities.

(a) For any appointment under this chapter, the county in which the indictment was returned or information was filed shall pay for services described by Articles 46B.021(a)(1) and (2). If those services are provided by an expert who is an employee of the local mental health authority or local intellectual and developmental disability authority, the county shall pay the authority for the services.

(b) The county in which the indictment was returned or information was filed shall reimburse a facility that accepts a defendant for examination under this chapter for expenses incurred that are reasonably necessary and incidental to the proper examination of the defendant.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.010, effective April 2, 2015.

Subchapter C

Incompetency Trial

Art. 46B.051. Trial Before Judge or Jury.

(a) If a court holds a trial to determine whether the defendant is incompetent to stand trial, on the request of either party or the motion of the court, a jury shall make the determination.

(b) The court shall make the determination of incompetency if a jury determination is not required by Subsection (a).

(c) If a jury determination is required by Subsection (a), a jury that has not been selected to determine the guilt or innocence of the defendant must determine the issue of incompetency.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 6, effective September 1, 2005.

Art. 46B.052. Jury Verdict.

(a) If a jury determination of the issue of incompetency to stand trial is required by Article 46B.051(a), the court shall require the jury to state in its verdict whether the defendant is incompetent to stand trial.

(b) The verdict must be concurred in by each juror.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004.

Art. 46B.053. Procedure After Finding of Competency.

If the court or jury determines that the defendant is competent to stand trial, the court shall continue the trial on the merits. If a jury determines that the defendant is competent and the trial on the merits is to be held before a jury, the court shall continue the trial with another jury selected for that purpose.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 7, effective September 1, 2005.

Art. 46B.054. Uncontested Incompetency.

If the court finds that evidence exists to support a finding of incompetency to stand trial and the court and the counsel for each party agree that the defendant is incompetent to stand trial, the court shall proceed in the same manner as if a jury had been impaneled and had found the defendant incompetent to stand trial.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 7, effective September 1, 2005.

Art. 46B.055. Procedure After Finding of Incompetency.

If the defendant is found incompetent to stand trial, the court shall proceed under Subchapter D.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004.

Subchapter D

Procedures After Determination of Incompetency

Art. 46B.071. Options on Determination of Incompetency.

(a) Except as provided by Subsection (b), on a determination that a defendant is incompetent to stand trial, the court shall:

(1) if the defendant is charged with an offense punishable as a Class B misdemeanor:

(A) release the defendant on bail under Article 46B.0711; or

(B) commit the defendant to:

(i) a jail-based competency restoration program under Article 46B.073(e); or

(ii) a mental health facility or residential care facility under Article 46B.073(f); or

(2) if the defendant is charged with an offense punishable as a Class A misdemeanor or any higher category of offense:

(A) release the defendant on bail under Article 46B.072; or

(B) commit the defendant to a facility or a jail-based competency restoration program under Article 46B.073(c) or (d).

(b) On a determination that a defendant is incompetent to stand trial and is unlikely to be restored to competency in the foreseeable future, the court shall:

(1) proceed under Subchapter E or F; or

(2) release the defendant on bail as permitted under Chapter 17.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 9, effective September 1, 2011; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 10, effective September 1, 2017.

Art. 46B.0711. Release on Bail for Class B Misdemeanor.

(a) This article applies only to a defendant who is subject to an initial restoration period based on Article 46B.071.

(b) Subject to conditions reasonably related to ensuring public safety and the effectiveness of the defendant's treatment, if the court determines that a defendant charged with an offense punishable as a Class B misdemeanor and found incompetent to stand trial is not a danger to others and may be safely treated on an outpatient basis with the specific objective of attaining competency to stand trial, and an appropriate outpatient competency restoration program is available for the defendant, the court shall:

(1) release the defendant on bail or continue the defendant's release on bail; and

(2) order the defendant to participate in an outpatient competency restoration program for a period not to exceed 60 days.

(c) Notwithstanding Subsection (b), the court may order a defendant to participate in an outpatient competency restoration program under this article only if:

(1) the court receives and approves a comprehensive plan that:

(A) provides for the treatment of the defendant for purposes of competency restoration; and

(B) identifies the person who will be responsible for providing that treatment to the defendant; and

(2) the court finds that the treatment proposed by the plan will be available to and will be provided to the defendant.

(d) An order issued under this article may require the defendant to participate in:

(1) as appropriate, an outpatient competency restoration program administered by a community center or an outpatient competency restoration program administered by any other entity that provides competency restoration services; and

(2) an appropriate prescribed regimen of medical, psychiatric, or psychological care or treatment.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 11, effective September 1, 2017.

Art. 46B.072. Release on Bail for Felony or Class A Misdemeanor.

(a) This article applies only to a defendant who is subject to an initial restoration period based on Article 46B.071.

(a-1) Subject to conditions reasonably related to ensuring public safety and the effectiveness of the defendant's treatment, if the court determines that a defendant charged with an offense punishable as a felony or a Class A misdemeanor and found incompetent to stand trial is not a danger to others and may be safely treated on an outpatient basis with the specific objective of attaining competency to stand trial, and an appropriate outpatient competency restoration program is available for the defendant, the court:

(1) may release on bail a defendant found incompetent to stand trial with respect to an offense punishable as a felony or may continue the defendant's release on bail; and

(2) shall release on bail a defendant found incompetent to stand trial with respect to an offense punishable as a Class A misdemeanor or shall continue the defendant's release on bail.

(b) The court shall order a defendant released on bail under Subsection (a-1) to participate in an outpatient competency restoration program for a period not to exceed 120 days.

(c) Notwithstanding Subsection (a-1), the court may order a defendant to participate in an outpatient competency restoration program under this article only if:

(1) the court receives and approves a comprehensive plan that:

(A) provides for the treatment of the defendant for purposes of competency restoration; and

(B) identifies the person who will be responsible for providing that treatment to the defendant; and

(2) the court finds that the treatment proposed by the plan will be available to and will be provided to the defendant.

(d) An order issued under this article may require the defendant to participate in:

(1) as appropriate, an outpatient competency restoration program administered by a community center or an outpatient competency restoration program administered by any other entity that provides outpatient competency restoration services; and

(2) an appropriate prescribed regimen of medical, psychiatric, or psychological care or treatment, including care or treatment involving the administration of psychoactive medication, including those required under Article 46B.086.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 3, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 10, effective September 1, 2011; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), §§ 12, 13, effective September 1, 2017.

Art. 46B.073. Commitment for Restoration to Competency.

(a) This article applies only to a defendant not released on bail who is subject to an initial restoration period based on Article 46B.071.

(b) For purposes of further examination and competency restoration services with the specific objective of the defendant attaining competency to stand trial, the court shall commit a defendant described by Subsection (a) to a mental health facility, residential care facility, or jail-based competency restoration program for the applicable period as follows:

(1) a period of not more than 60 days, if the defendant is charged with an offense punishable as a misdemeanor; or

(2) a period of not more than 120 days, if the defendant is charged with an offense punishable as a felony.

(c) If the defendant is charged with an offense listed in Article 17.032(a) or if the indictment alleges an affirmative finding under Article 42A.054(c) or (d), the court shall enter an order committing the defendant for competency restoration services to a facility designated by the commission.

(d) If the defendant is not charged with an offense described by Subsection (c) and the indictment does not allege an affirmative finding under Article 42A.054(c) or (d), the court shall enter an order committing the defendant to a mental health facility or residential care facility determined to be appropriate by the local mental health authority or local intellectual and developmental disability authority or to a jail-based competency restoration program. A defendant may be committed to a jail-based competency restoration program only if the program provider determines the defendant will begin to receive competency restoration services within 72 hours of arriving at the program.

(e) Except as provided by Subsection (f), a defendant charged with an offense punishable as a Class B misdemeanor may be committed under this subchapter only to a jail-based competency restoration program.

(f) A defendant charged with an offense punishable as a Class B misdemeanor may be committed to a mental health facility or residential care facility described by Subsection (d) only if a jail-based competency restoration program is not available or a licensed or qualified mental health professional determines that a jail-based competency restoration program is not appropriate.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 9, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 4, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 11, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 797 (S.B. 1475), § 1, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.011, effective April 2, 2015; am. Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 2.20, effective January 1, 2017; am. Acts 2015, 84th Leg., ch. 946 (S.B. 277), § 1.15(b), effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 14, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 4, effective June 14, 2019; am. Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 7, effective September 1, 2019.

Art. 46B.074. Competent Testimony Required.

(a) A defendant may be committed to a jail-based competency restoration program, mental health facility, or residential care facility under this subchapter only on competent medical or psychiatric testimony provided by an expert qualified under Article 46B.022.

(b) The court may allow an expert to substitute the expert's report under Article 46B.025 for any testimony by the expert that may be required under this article.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 10, effective September 1, 2005; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 15, effective September 1, 2017.

Art. 46B.075. Transfer of Defendant to Facility or Program.

An order issued under Article 46B.0711, 46B.072, or 46B.073 must place the defendant in the custody of the sheriff or sheriff's deputy for transportation to the facility or program, as applicable, in which the defendant is to receive competency restoration services.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 5, effective September 1, 2007; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 16, effective September 1, 2017.

Art. 46B.0755. Procedures on Credible Evidence of Immediate Restoration.

(a) Notwithstanding any other provision of this subchapter, if the court receives credible evidence indicating that the defendant has been restored to competency at any time after the defendant's incompetency trial under Subchapter C but before the defendant is transported under Article 46B.075 to the facility or program, as applicable, the court may appoint disinterested experts to reexamine the defendant in accordance with Subchapter B. The court is not required to appoint the same expert or experts who performed the initial examination of the defendant under that subchapter.

(b) If after a reexamination of the defendant the applicable expert's report states an opinion that the defendant remains incompetent, the court's order under Article 46B.0711, 46B.072, or 46B.073 remains in effect, and the defendant shall be transported to the facility or program as required by Article 46B.075. If after a reexamination of the defendant the applicable expert's report states an opinion that the defendant has been restored to competency, the court shall withdraw its order under Article 46B.0711, 46B.072, or 46B.073 and proceed under Subsection (c) or (d).

(c) The court shall find the defendant competent to stand trial and proceed in the same manner as if the defendant had been found restored to competency at a hearing if:

- (1) both parties agree that the defendant is competent to stand trial; and
- (2) the court concurs.

(d) The court shall hold a hearing to determine whether the defendant has been restored to competency if any party fails to agree or if the court fails to concur that the defendant is competent to stand trial. If a court holds a hearing under this subsection, on the request of the counsel for either party or the motion of the court, a jury shall make the competency determination. For purposes of the hearing, incompetency is presumed, and the defendant's competency must be proved by a preponderance of the evidence. If after the hearing the defendant is again found to be incompetent to stand trial, the court shall

issue a new order under Article 46B.0711, 46B.072, or 46B.073, as appropriate based on the defendant's current condition.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 12, effective September 1, 2011; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 17, effective September 1, 2017.

Art. 46B.076. Court's Order.

(a) If the defendant is found incompetent to stand trial, not later than the date of the order of commitment or of release on bail, as applicable, the court shall send a copy of the order to the applicable facility or program. The court shall also provide to the facility or program copies of the following made available to the court during the incompetency trial:

- (1) reports of each expert;
- (2) psychiatric, psychological, or social work reports that relate to the mental condition of the defendant;
- (3) documents provided by the attorney representing the state or the attorney representing the defendant that relate to the defendant's current or past mental condition;
- (4) copies of the indictment or information and any supporting documents used to establish probable cause in the case;
- (5) the defendant's criminal history record; and
- (6) the addresses of the attorney representing the state and the attorney representing the defendant.

(b) The court shall order that the transcript of all medical testimony received by the jury or court be promptly prepared by the court reporter and forwarded to the applicable facility or program.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 11, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 5, effective September 1, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.012, effective April 2, 2015; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 18, effective September 1, 2017.

Art. 46B.077. Individual Treatment Program.

(a) The facility or jail-based competency restoration program to which the defendant is committed or the outpatient competency restoration program to which the defendant is released on bail shall:

- (1) develop an individual program of treatment;
- (2) assess and evaluate whether the defendant is likely to be restored to competency in the foreseeable future; and
- (3) report to the court and to the local mental health authority or to the local intellectual and developmental disability authority on the defendant's progress toward achieving competency.

(b) If the defendant is committed to an inpatient mental health facility, residential care facility, or jail-based competency restoration program, the facility or program shall report to the court at least once during the commitment period.

(c) If the defendant is released to an outpatient competency restoration program, the program shall report to the court:

- (1) not later than the 14th day after the date on which the defendant's competency restoration services begin; and

(2) until the defendant is no longer released to the program, at least once during each 30-day period following the date of the report required by Subdivision (1).

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 6, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 13, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.013, effective April 2, 2015; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 19, effective September 1, 2017.

Art. 46B.078. Charges Subsequently Dismissed.

If the charges pending against a defendant are dismissed, the court that issued the order under Article 46B.0711, 46B.072, or 46B.073 shall send a copy of the order of dismissal to the sheriff of the county in which the court is located and to the head of the facility, the provider of the jail-based competency restoration program, or the provider of the outpatient competency restoration program, as appropriate. On receipt of the copy of the order, the facility or program shall discharge the defendant into the care of the sheriff or sheriff's deputy for transportation in the manner described by Article 46B.082.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 7, effective September 1, 2007; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 20, effective September 1, 2017.

Art. 46B.079. Notice and Report to Court.

(a) The head of the facility, the provider of the jail-based competency restoration program, or the provider of the outpatient competency restoration program, as appropriate, not later than the 15th day before the date on which the initial restoration period is to expire according to the terms of the order or under Article 46B.0095 or other applicable provisions of this chapter, shall notify the applicable court that the period is about to expire.

(b) The head of the facility or jail-based competency restoration program provider shall promptly notify the court when the head of the facility or program provider believes that:

- (1) the defendant is clinically ready and can be safely transferred to a competency restoration program for education services but has not yet attained competency to stand trial;
- (2) the defendant has attained competency to stand trial; or
- (3) the defendant is not likely to attain competency in the foreseeable future.

(b-1) The outpatient competency restoration program provider shall promptly notify the court when the program provider believes that:

- (1) the defendant has attained competency to stand trial; or
- (2) the defendant is not likely to attain competency in the foreseeable future.

(c) When the head of the facility or program provider gives notice to the court under Subsection (a), (b), or (b-1), the head of the facility or program provider also shall file a final report with the court stating the reason for the proposed discharge or transfer under this chapter and including a list of the types and dosages of medications prescribed for the defendant while the defendant was

receiving competency restoration services in the facility or through the program. The court shall provide to the attorney representing the defendant and the attorney representing the state copies of a report based on notice under this article, other than notice under Subsection (b)(1), to enable any objection to the findings of the report to be made in a timely manner as required under Article 46B.084(a-1).

(d) If the head of the facility or program provider notifies the court that the initial restoration period is about to expire, the notice may contain a request for an extension of the period for an additional period of 60 days and an explanation for the basis of the request. An explanation provided under this subsection must include a description of any evidence indicating a reduction in the severity of the defendant's symptoms or impairment.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 12, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 7, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 14, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 994 (H.B. 211), § 1, effective June 19, 2015; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 21, effective September 1, 2017.

Art. 46B.080. Extension of Order.

(a) On a request of the head of a facility or a program provider that is made under Article 46B.079(d) and notwithstanding any other provision of this subchapter, the court may enter an order extending the initial restoration period for an additional period of 60 days.

(b) The court may enter an order under Subsection (a) only if the court determines that:

- (1) the defendant has not attained competency; and
- (2) an extension of the initial restoration period will likely enable the facility or program to restore the defendant to competency within the period of the extension.

(c) The court may grant only one 60-day extension under this article in connection with the specific offense with which the defendant is charged.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 12, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 7, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 15, effective September 1, 2011; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 22, effective September 1, 2017.

Art. 46B.0805. Competency Restoration Education Services.

(a) On notification from the head of a facility or a jail-based competency restoration program provider under Article 46B.079(b)(1), the court shall order the defendant to receive competency restoration education services in a jail-based competency restoration program or an outpatient competency restoration program, as appropriate and if available.

(b) If a defendant for whom an order is entered under Subsection (a) was committed for competency restoration to a facility other than a jail-based competency restoration program, the court shall send a copy of that order to:

- (1) the sheriff of the county in which the court is located;

(2) the head of the facility to which the defendant was committed for competency restoration; and

(3) the local mental health authority or local intellectual and developmental disability authority, as appropriate.

(c) As soon as practicable but not later than the 10th day after the date of receipt of a copy of an order under Subsection (b)(2), the applicable facility shall discharge the defendant into the care of the sheriff of the county in which the court is located or into the care of the sheriff's deputy. The sheriff or sheriff's deputy shall transport the defendant to the jail-based competency restoration program or outpatient competency restoration program, as appropriate.

(d) A jail-based competency restoration program or outpatient competency restoration program that receives a defendant under this article shall give to the court:

(1) notice regarding the defendant's entry into the program for purposes of receiving competency restoration education services; and

(2) subsequent notice as otherwise required under Article 46B.079.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 23, effective September 1, 2017.

Art. 46B.081. Return to Court.

Subject to Article 46B.082(b), a defendant committed or released on bail under this subchapter shall be returned to the applicable court as soon as practicable after notice to the court is provided under Article 46B.079(a), (b)(2), (b)(3), or (b-1), but not later than the date of expiration of the period for restoration specified by the court under Article 46B.0711, 46B.072, or 46B.073.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 13, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 7, effective September 1, 2007; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 24, effective September 1, 2017.

Art. 46B.082. Transportation of Defendant to Court.

(a) On notification from the court under Article 46B.078, the sheriff of the county in which the court is located or the sheriff's deputy shall transport the defendant to the court.

(b) If before the 15th day after the date on which the court received notification under Article 46B.079(a), (b)(2), (b)(3), or (b-1) a defendant committed to a facility or jail-based competency restoration program or ordered to participate in an outpatient competency restoration program has not been transported to the court that issued the order under Article 46B.0711, 46B.072, or 46B.073, as applicable, the head of the facility or provider of the jail-based competency restoration program to which the defendant is committed or the provider of the outpatient competency restoration program in which the defendant is participating shall cause the defendant to be promptly transported to the court and placed in the custody of the sheriff of the county in which the court is located. The county in which the court is located shall reimburse the Health and Human Services Commission or program

provider, as appropriate, for the mileage and per diem expenses of the personnel required to transport the defendant, calculated in accordance with rates provided in the General Appropriations Act for state employees.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 7, effective September 1, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.014, effective April 2, 2015; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 25, effective September 1, 2017.

Art. 46B.0825. Administration of Medication While in Custody of Sheriff.

(a) A sheriff or sheriff's deputy having custody of a defendant for transportation as required by Article 46B.0805 or 46B.082 or during proceedings described by Article 46B.084 shall, according to information available at the time and unless directed otherwise by a physician treating the defendant, ensure that the defendant is provided with the types and dosages of medication prescribed for the defendant.

(b) To the extent funds are appropriated for that purpose, a sheriff is entitled to reimbursement from the state for providing the medication required by Subsection (a).

(c) If the sheriff determines that funds are not available from the state to reimburse the sheriff as provided by Subsection (b), the sheriff is not required to comply with Subsection (a).

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 23, effective September 1, 2017.

Art. 46B.083. Supporting Commitment Information Provided by Facility or Program.

(a) If the head of the facility, the jail-based competency restoration program provider, or the outpatient competency restoration program provider believes that the defendant is a person with mental illness and meets the criteria for court-ordered mental health services under Subtitle C, Title 7, Health and Safety Code, the head of the facility or the program provider shall have submitted to the court a certificate of medical examination for mental illness.

(b) If the head of the facility, the jail-based competency restoration program provider, or the outpatient competency restoration program provider believes that the defendant is a person with an intellectual disability, the head of the facility or the program provider shall have submitted to the court an affidavit stating the conclusions reached as a result of the examination.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 14, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 7, effective September 1, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.015, effective April 2, 2015; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 26, effective September 1, 2017.

Art. 46B.0831. Determination Whether Defendant Is Manifestly Dangerous.

A defendant committed to a maximum security unit by the commission may be assessed, at any time before the defendant is restored to competency, by the review board established under Section 46B.105 to determine whether

the defendant is manifestly dangerous. If the review board determines the defendant is not manifestly dangerous, the commission shall transfer the defendant to a non-maximum security facility designated by the commission.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 5, effective June 14, 2019.

Art. 46B.0831. Determination Whether Defendant Is Manifestly Dangerous.

A defendant committed to a maximum security unit by the commission may be assessed, at any time before the defendant is restored to competency, by the review board established under Section 46B.105 to determine whether the defendant is manifestly dangerous. If the review board determines the defendant is not manifestly dangerous, the commission shall transfer the defendant to a non-maximum security facility designated by the commission.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 8, effective September 1, 2019.

Art. 46B.084. Proceedings on Return of Defendant to Court.

(a) (1) Not later than the next business day following the return of a defendant to the court, the court shall notify the attorney representing the state and the attorney for the defendant regarding the return. Within three business days of the date that notice is received under this subsection or, on a showing of good cause, a later date specified by the court, the attorney for the defendant shall meet and confer with the defendant to evaluate whether there is any suggestion that the defendant has not yet regained competency.

(2) Notwithstanding Subdivision (1), in a county with a population of less than one million or in a county with a population of four million or more, as soon as practicable following the date of the defendant's return to the court, the court shall provide the notice required by that subdivision to the attorney representing the state and the attorney for the defendant, and the attorney for the defendant shall meet and confer with the defendant as soon as practicable after the date of receipt of that notice.

(a-1) (1) Following the defendant's return to the court, the court shall make a determination with regard to the defendant's competency to stand trial. The court may make the determination based only on the most recent report that is filed under Article 46B.079(c) and based on notice under that article, other than notice under Subsection (b)(1) of that article, and on other medical information or personal history information relating to the defendant. A party may object in writing or in open court to the findings of the most recent report not later than the 15th day after the date on which the court received the applicable notice under Article 46B.079. The court shall make the determination not later than the 20th day after the date on which the court received the applicable notice under Article 46B.079, or not later than the fifth day after the date of the defendant's return to court, whichever occurs first, regardless of whether a party objects to the report as described by this subsection and the issue is set for hearing under Subsection (b).

(2) Notwithstanding Subdivision (1), in a county with a population of less than one million or in a county with a population of four million or more, the court shall make the determination described by that subdivision not later than the 20th day after the date on which the court received notification under Article 46B.079, regardless of whether a party objects to the report as described by that subdivision and the issue is set for a hearing under Subsection (b).

(b) If a party objects under Subsection (a-1), the issue shall be set for a hearing. The hearing is before the court, except that on motion by the defendant, the defense counsel, the prosecuting attorney, or the court, the hearing shall be held before a jury.

(b-1) If the hearing is before the court, the hearing may be conducted by means of an electronic broadcast system as provided by Article 46B.013. Notwithstanding any other provision of this chapter, the defendant is not required to be returned to the court with respect to any hearing that is conducted under this article in the manner described by this subsection.

(c) [Repealed by Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 21, effective September 1, 2007.]

(d) (1) If the defendant is found competent to stand trial, on the court's own motion criminal proceedings in the case against the defendant shall be resumed not later than the 14th day after the date of the court's determination under this article that the defendant's competency has been restored.

(2) Notwithstanding Subdivision (1), in a county with a population of less than one million or in a county with a population of four million or more, on the court's own motion criminal proceedings in the case against the defendant shall be resumed as soon as practicable after the date of the court's determination under this article that the defendant's competency has been restored.

(d-1) This article does not require the criminal case to be finally resolved within any specific period.

(e) If the defendant is found incompetent to stand trial and if all charges pending against the defendant are not dismissed, the court shall proceed under Subchapter E.

(f) If the defendant is found incompetent to stand trial and if all charges pending against the defendant are dismissed, the court shall proceed under Subchapter F.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 15, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), §§ 8, 21, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 16, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 994 (H.B. 211), § 2, effective June 19, 2015; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 27, effective September 1, 2017.

Art. 46B.085. Subsequent Restoration Periods and Extensions of Those Periods Prohibited.

(a) The court may order only one initial period of restoration and one extension under this subchapter in connection with the same offense.

(b) After an initial restoration period and an extension are ordered as described by Subsection (a), any subsequent court orders for treatment must be issued under Subchapter E or F.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 16, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 9, effective September 1, 2007.

Art. 46B.086. Court-Ordered Medications.

(a) This article applies only to a defendant:

(1) who is determined under this chapter to be incompetent to stand trial;

(2) who either:

(A) remains confined in a correctional facility, as defined by Section 1.07, Penal Code, for a period exceeding 72 hours while awaiting transfer to an inpatient mental health facility, a residential care facility, or an outpatient competency restoration program;

(B) is committed to an inpatient mental health facility, a residential care facility, or a jail-based competency restoration program for the purpose of competency restoration;

(C) is confined in a correctional facility while awaiting further criminal proceedings following competency restoration; or

(D) is subject to Article 46B.072, if the court has made the determinations required by Subsection (a-1) of that article;

(3) for whom a correctional facility or jail-based competency restoration program that employs or contracts with a licensed psychiatrist, an inpatient mental health facility, a residential care facility, or an outpatient competency restoration program provider has prepared a continuity of care plan that requires the defendant to take psychoactive medications; and

(4) who, after a hearing held under Section 574.106 or 592.156, Health and Safety Code, if applicable, has been found to not meet the criteria prescribed by Sections 574.106(a) and (a-1) or 592.156(a) and (b), Health and Safety Code, for court-ordered administration of psychoactive medications.

(b) If a defendant described by Subsection (a) refuses to take psychoactive medications as required by the defendant's continuity of care plan, the director of the facility or the program provider, as applicable, shall notify the court in which the criminal proceedings are pending of that fact not later than the end of the next business day following the refusal. The court shall promptly notify the attorney representing the state and the attorney representing the defendant of the defendant's refusal. The attorney representing the state may file a written motion to compel medication. The motion to compel medication must be filed not later than the 15th day after the date a judge issues an order stating that the defendant does not meet the criteria for court-ordered administration of psychoactive medications under Section 574.106 or 592.156, Health and Safety Code, except that, for a defendant in an outpatient competency restoration program, the motion may be filed at any time.

(c) The court, after notice and after a hearing held not later than the 10th day after the motion to compel medication is filed, may authorize the director of the facility or the program provider, as applicable, to have the medication administered to the defendant, by reasonable force if necessary. A hearing under this subsection may be

conducted using an electronic broadcast system as provided by Article 46B.013.

(d) The court may issue an order under this article only if the order is supported by the testimony of two physicians, one of whom is the physician at or with the applicable facility or program who is prescribing the medication as a component of the defendant's continuity of care plan and another who is not otherwise involved in proceedings against the defendant. The court may require either or both physicians to examine the defendant and report on the examination to the court.

(e) The court may issue an order under this article if the court finds by clear and convincing evidence that:

(1) the prescribed medication is medically appropriate, is in the best medical interest of the defendant, and does not present side effects that cause harm to the defendant that is greater than the medical benefit to the defendant;

(2) the state has a clear and compelling interest in the defendant obtaining and maintaining competency to stand trial;

(3) no other less invasive means of obtaining and maintaining the defendant's competency exists; and

(4) the prescribed medication will not unduly prejudice the defendant's rights or use of defensive theories at trial.

(f) A statement made by a defendant to a physician during an examination under Subsection (d) may not be admitted against the defendant in any criminal proceeding, other than at:

(1) a hearing on the defendant's incompetency; or

(2) any proceeding at which the defendant first introduces into evidence the contents of the statement.

(g) For a defendant described by Subsection (a)(2)(A), an order issued under this article:

(1) authorizes the initiation of any appropriate mental health treatment for the defendant awaiting transfer; and

(2) does not constitute authorization to retain the defendant in a correctional facility for competency restoration treatment.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 717 (S.B. 465), § 8, effective June 17, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 9, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 624 (H.B. 1233), § 4, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 17, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 4, effective September 1, 2013; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 28, effective September 1, 2017.

Art. 46B.090. Jail-Based Restoration of Competency Pilot Program.

(a) In this article, "department" means the Department of State Health Services.

(a-1) If the legislature appropriates to the department the funding necessary for the department to operate a jail-based restoration of competency pilot program as described by this article, the department shall develop and implement the pilot program in one or two counties in this state that choose to participate in the pilot program. In developing the pilot program, the department shall coordinate and allow for input from each participating county.

(b) The department shall contract with a provider of jail-based competency restoration services to provide services under the pilot program if the department develops a pilot program under this article.

(c) Not later than November 1, 2013, the commissioner of the department shall adopt rules as necessary to implement the pilot program. In adopting rules under this article, the commissioner shall specify the types of information the department must collect during the operation of the pilot program for use in evaluating the outcome of the pilot program.

(d), (e) [Repealed by Acts 2015, 84th Leg., ch. 946 (S.B. 277), § 1.15(d), effective September 1, 2015.]

(f) To contract with the department under Subsection (b), a provider of jail-based competency restoration services must demonstrate to the department that:

(1) the provider:

(A) has previously provided jail-based competency restoration services for one or more years; or

(B) is a local mental health authority that has previously provided competency restoration services;

(2) the provider's jail-based competency restoration program:

(A) uses a multidisciplinary treatment team to provide clinical treatment that is:

(i) directed toward the specific objective of restoring the defendant's competency to stand trial; and

(ii) similar to the clinical treatment provided as part of a competency restoration program at an inpatient mental health facility;

(B) employs or contracts for the services of at least one psychiatrist; and

(C) provides weekly treatment hours commensurate to the treatment hours provided as part of a competency restoration program at an inpatient mental health facility;

(3) the provider is certified by a nationwide nonprofit organization that accredits health care organizations and programs, such as the Joint Commission on Health Care Staffing Services, or the provider is a local mental health authority in good standing with the department; and

(4) the provider has a demonstrated history of successful jail-based competency restoration outcomes or, if the provider is a local mental health authority, a demonstrated history of successful competency restoration outcomes.

(g) A contract under Subsection (b) must require the designated provider to collect and submit to the department the information specified by rules adopted under Subsection (c).

(h) The designated provider shall enter into a contract with the participating county or counties. The contract must require the participating county or counties to:

(1) ensure the safety of defendants who participate in the jail-based restoration of competency pilot program;

(2) designate a separate space in the jail for the provider to conduct the pilot program;

(3) provide the same basic care to the participants as is provided to other inmates of a jail; and

(4) supply clinically appropriate psychoactive medications to the mental health service provider for pur-

poses of administering court-ordered medication to the participants in accordance with Article 46B.086 of this code and Section 574.106, Health and Safety Code.

(i) The psychiatrist for the provider shall conduct at least two full psychiatric evaluations of the defendant during the period the defendant receives competency restoration services in the jail. The psychiatrist must conduct one evaluation not later than the 21st day and one evaluation not later than the 55th day after the date the defendant begins to participate in the pilot program. The psychiatrist shall submit to the court a report concerning each evaluation required under this subsection.

(j) If at any time during a defendant's participation in the jail-based restoration of competency pilot program the psychiatrist for the provider determines that the defendant has attained competency to stand trial:

(1) the psychiatrist for the provider shall promptly issue and send to the court a report demonstrating that fact; and

(2) the court shall consider that report as the report of an expert stating an opinion that the defendant has been restored to competency for purposes of Article 46B.0755(a) or (b).

(k) If at any time during a defendant's participation in the jail-based restoration of competency pilot program the psychiatrist for the provider determines that the defendant's competency to stand trial is unlikely to be restored in the foreseeable future:

(1) the psychiatrist for the provider shall promptly issue and send to the court a report demonstrating that fact; and

(2) the court shall:

(A) proceed under Subchapter E or F and order the transfer of the defendant, without unnecessary delay, to the first available facility that is appropriate for that defendant, as provided under Subchapter E or F, as applicable; or

(B) release the defendant on bail as permitted under Chapter 17.

(l) If the psychiatrist for the provider determines that a defendant ordered to participate in the pilot program has not been restored to competency by the end of the 60th day after the date the defendant began to receive services in the pilot program:

(1) for a defendant charged with a felony, the defendant shall be transferred, without unnecessary delay and for the remainder of the period prescribed by Article 46B.073(b), to the first available facility that is appropriate for that defendant as provided by Article 46B.073(c) or (d); and

(2) for a defendant charged with a misdemeanor, the court may:

(A) order a single extension under Article 46B.080 and the transfer of the defendant without unnecessary delay to the appropriate mental health facility or residential care facility as provided by Article 46B.073(d) for the remainder of the period under the extension;

(B) proceed under Subchapter E or F;

(C) release the defendant on bail as permitted under Chapter 17; or

(D) dismiss the charges in accordance with Article 46B.010.

(m) Unless otherwise provided by this article, the provisions of this chapter, including the maximum periods prescribed by Article 46B.0095, apply to a defendant receiving competency restoration services under the pilot program in the same manner as those provisions apply to any other defendant who is subject to proceedings under this chapter.

(n) If the department develops and implements a jail-based restoration of competency pilot program under this article, not later than December 1, 2018, the commissioner of the department shall submit a report concerning the pilot program to the presiding officers of the standing committees of the senate and house of representatives having primary jurisdiction over health and human services issues and over criminal justice issues. The report must include the information collected by the department during the pilot program and the commissioner's evaluation of the outcome of the program as of the date the report is submitted.

(o) [Repealed.]

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 797 (S.B. 1475), § 2, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.016, effective April 2, 2015; am. Acts 2015, 84th Leg., ch. 946 (S.B. 277), §§ 1.15(c), 1.15(d), effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 748 (S.B. 1326), §§ 29, 35(2), effective September 1, 2017.

Art. 46B.091. Jail-Based Competency Restoration Program Implemented by County.

(a) In this article:

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

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

(b) A county or counties jointly may develop and implement a jail-based competency restoration program.

(c) A county that implements a program under this article shall contract with a provider of jail-based competency restoration services that is a local mental health authority or local behavioral health authority that is in good standing with the commission, which may include an authority that is in good standing with the commission and subcontracts with a provider of jail-based competency restoration services.

(d) A jail-based competency restoration program must:

(1) provide jail-based competency restoration services through the use of a multidisciplinary treatment team that are:

(A) directed toward the specific objective of restoring the defendant's competency to stand trial; and

(B) similar to other competency restoration programs;

(2) employ or contract for the services of at least one psychiatrist;

(3) provide jail-based competency restoration services through licensed or qualified mental health professionals;

(4) provide weekly competency restoration hours commensurate to the hours provided as part of a competency restoration program at an inpatient mental health facility;

(5) operate in the jail in a designated space that is separate from the space used for the general population of the jail;

(6) ensure coordination of general health care;

(7) provide mental health treatment and substance use disorder treatment to defendants, as necessary, for competency restoration; and

(8) supply clinically appropriate psychoactive medications for purposes of administering court-ordered medication to defendants as applicable and in accordance with Article 46B.086 of this code or Section 574.106, Health and Safety Code.

(e) The executive commissioner shall adopt rules as necessary for a county to develop and implement a program under this article. The commission shall, as part of the rulemaking process, establish contract monitoring and oversight requirements for a local mental health authority or local behavioral health authority that contracts with a county to provide jail-based competency restoration services under this article. The contract monitoring and oversight requirements must be consistent with local mental health authority or local behavioral health authority performance contract monitoring and oversight requirements, as applicable.

(f) The commission may inspect on behalf of the state any aspect of a program implemented under this article.

(g) A psychiatrist or psychologist for the provider shall conduct at least two full psychiatric or psychological evaluations of the defendant during the period the defendant receives competency restoration services in the jail. The psychiatrist or psychologist must conduct one evaluation not later than the 21st day and one evaluation not later than the 55th day after the date the defendant is committed to the program. The psychiatrist or psychologist shall submit to the court a report concerning each evaluation required under this subsection.

(h) If at any time during a defendant's commitment to a program implemented under this article the psychiatrist or psychologist for the provider determines that the defendant has attained competency to stand trial:

(1) the psychiatrist or psychologist for the provider shall promptly issue and send to the court a report demonstrating that fact; and

(2) the court shall consider that report as the report of an expert stating an opinion that the defendant has been restored to competency for purposes of Article 46B.0755(a) or (b).

(i) If at any time during a defendant's commitment to a program implemented under this article the psychiatrist or psychologist for the provider determines that the defendant's competency to stand trial is unlikely to be restored in the foreseeable future:

(1) the psychiatrist or psychologist for the provider shall promptly issue and send to the court a report demonstrating that fact; and

(2) the court shall:

(A) proceed under Subchapter E or F and order the transfer of the defendant, without unnecessary delay, to the first available facility that is appropriate for that defendant, as provided under Subchapter E or F, as applicable; or

(B) release the defendant on bail as permitted under Chapter 17.

(j) If the psychiatrist or psychologist for the provider determines that a defendant committed to a program implemented under this article has not been restored to competency by the end of the 60th day after the date the defendant began to receive services in the program:

(1) for a defendant charged with a felony, the defendant shall be transferred, without unnecessary delay and for the remainder of the period prescribed by Article 46B.073(b), to the first available facility that is appropriate for that defendant as provided by Article 46B.073(c) or (d); and

(2) for a defendant charged with a misdemeanor, the court may:

(A) order a single extension under Article 46B.080 and, notwithstanding Articles 46B.073(e) and (f), the transfer of the defendant without unnecessary delay to the appropriate mental health facility or residential care facility as provided by Article 46B.073(d) for the remainder of the period under the extension;

(B) proceed under Subchapter E or F;

(C) release the defendant on bail as permitted under Chapter 17; or

(D) dismiss the charges in accordance with Article 46B.010.

(k) Unless otherwise provided by this article, the provisions of this chapter, including the maximum periods prescribed by Article 46B.0095, apply to a defendant receiving competency restoration services, including competency restoration education services, under a program implemented under this article in the same manner as those provisions apply to any other defendant who is subject to proceedings under this chapter.

(l) This article does not affect the responsibility of a county to ensure the safety of a defendant who is committed to the program and to provide the same adequate care to the defendant as is provided to other inmates of the jail in which the defendant is located.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 30, effective September 1, 2017.

Subchapter E

Civil Commitment: Charges Pending

Art. 46B.101. Applicability.

This subchapter applies to a defendant against whom a court is required to proceed according to Article 46B.084(e) or according to the court's appropriate determination under Article 46B.071.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 18, effective September 1, 2011.

Art. 46B.102. Civil Commitment Hearing: Mental Illness.

(a) If it appears to the court that the defendant may be a person with mental illness, the court shall hold a hearing to determine whether the defendant should be court-ordered to mental health services under Subtitle C, Title 7, Health and Safety Code.

(b) Proceedings for commitment of the defendant to court-ordered mental health services are governed by

Subtitle C, Title 7, Health and Safety Code, to the extent that Subtitle C applies and does not conflict with this chapter, except that the criminal court shall conduct the proceedings whether or not the criminal court is also the county court.

(c) If the court enters an order committing the defendant to a mental health facility, the defendant shall be:

(1) treated in conformity with Subtitle C, Title 7, Health and Safety Code, except as otherwise provided by this chapter; and

(2) released in conformity with Article 46B.107.

(d) In proceedings conducted under this subchapter for a defendant described by Subsection (a):

(1) an application for court-ordered temporary or extended mental health services may not be required;

(2) the provisions of Subtitle C, Title 7, Health and Safety Code, relating to notice of hearing do not apply; and

(3) appeals from the criminal court proceedings are to the court of appeals as in the proceedings for court-ordered inpatient mental health services under Subtitle C, Title 7, Health and Safety Code.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 18, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 10, effective September 1, 2007.

Art. 46B.103. Civil Commitment Hearing: Intellectual Disability.

(a) If it appears to the court that the defendant may be a person with an intellectual disability, the court shall hold a hearing to determine whether the defendant is a person with an intellectual disability.

(b) Proceedings for commitment of the defendant to a residential care facility are governed by Subtitle D, Title 7, Health and Safety Code, to the extent that Subtitle D applies and does not conflict with this chapter, except that the criminal court shall conduct the proceedings whether or not the criminal court is also a county court.

(c) If the court enters an order committing the defendant to a residential care facility, the defendant shall be:

(1) treated and released in accordance with Subtitle D, Title 7, Health and Safety Code, except as otherwise provided by this chapter; and

(2) released in conformity with Article 46B.107.

(d) In the proceedings conducted under this subchapter for a defendant described by Subsection (a):

(1) an application to have the defendant declared a person with an intellectual disability may not be required;

(2) the provisions of Subtitle D, Title 7, Health and Safety Code, relating to notice of hearing do not apply; and

(3) appeals from the criminal court proceedings are to the court of appeals as in the proceedings for commitment to a residential care facility under Subtitle D, Title 7, Health and Safety Code.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 19, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 11, effective September 1, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 6.017, 6.018, effective April 2, 2015.

Art. 46B.104. Civil Commitment Placement: Finding of Violence.

A defendant committed to a facility as a result of proceedings initiated under this chapter shall be committed to the facility designated by the commission if:

- (1) the defendant is charged with an offense listed in Article 17.032(a); or
- (2) the indictment charging the offense alleges an affirmative finding under Article 42A.054(c) or (d).

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 20, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 12, effective September 1, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.019, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 6, effective June 14, 2019; am. Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 9, effective September 1, 2019.

Art. 46B.105. Transfer Following Civil Commitment Placement.

(a) Unless a defendant committed to a maximum security unit by the commission is determined to be manifestly dangerous by a review board established under Subsection (b), not later than the 60th day after the date the defendant arrives at the maximum security unit, the defendant shall be transferred to:

- (1) a unit of an inpatient mental health facility other than a maximum security unit;
- (2) a residential care facility; or
- (3) a program designated by a local mental health authority or a local intellectual and developmental disability authority.

(b) The executive commissioner shall appoint a review board of five members, including one psychiatrist licensed to practice medicine in this state and two persons who work directly with persons with mental illness or an intellectual disability, to determine whether the defendant is manifestly dangerous and, as a result of the danger the defendant presents, requires continued placement in a maximum security unit.

(c) The review board may not make a determination as to the defendant's need for treatment.

(d) A finding that the defendant is not manifestly dangerous is not a medical determination that the defendant no longer meets the criteria for involuntary civil commitment under Subtitle C or D, Title 7, Health and Safety Code.

(e) If the superintendent of the facility at which the maximum security unit is located disagrees with the determination, the matter shall be referred to the executive commissioner. The executive commissioner shall decide whether the defendant is manifestly dangerous.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 21, effective September 1, 2005; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.020, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 7, effective June 14, 2019; am. Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 10, effective September 1, 2019.

Art. 46B.106. Civil Commitment Placement: No Finding of Violence.

(a) A defendant committed to a facility as a result of the proceedings initiated under this chapter, other than a

defendant described by Article 46B.104, shall be committed to:

- (1) a facility designated by the commission; or
- (2) an outpatient treatment program.

(b) A facility or outpatient treatment program may not refuse to accept a placement ordered under this article on the grounds that criminal charges against the defendant are pending.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 22, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 13, effective September 1, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.021, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 8, effective June 14, 2019; am. Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 11, effective September 1, 2019.

Art. 46B.107. Release of Defendant After Civil Commitment.

(a) The release of a defendant committed under this chapter from the commission, an outpatient treatment program, or another facility is subject to disapproval by the committing court if the court or the attorney representing the state has notified the head of the facility or outpatient treatment provider, as applicable, to which the defendant has been committed that a criminal charge remains pending against the defendant.

(b) If the head of the facility or outpatient treatment provider to which a defendant has been committed under this chapter determines that the defendant should be released from the facility, the head of the facility or outpatient treatment provider shall notify the committing court and the sheriff of the county from which the defendant was committed in writing of the release not later than the 14th day before the date on which the facility or outpatient treatment provider intends to release the defendant.

(c) The head of the facility or outpatient treatment provider shall provide with the notice a written statement that states an opinion as to whether the defendant to be released has attained competency to stand trial.

(d) The court shall, on receiving notice from the head of a facility or outpatient treatment provider of intent to release the defendant under Subsection (b), hold a hearing to determine whether release is appropriate under the applicable criteria in Subtitle C or D, Title 7, Health and Safety Code. The court may, on motion of the attorney representing the state or on its own motion, hold a hearing to determine whether release is appropriate under the applicable criteria in Subtitle C or D, Title 7, Health and Safety Code, regardless of whether the court receives notice that the head of a facility or outpatient treatment provider provides notice of intent to release the defendant under Subsection (b). The court may conduct the hearing:

- (1) at the facility; or
- (2) by means of an electronic broadcast system as provided by Article 46B.013.

(e) If the court determines that release is not appropriate, the court shall enter an order directing the head of the facility or the outpatient treatment provider to not release the defendant.

(f) If an order is entered under Subsection (e), any subsequent proceeding to release the defendant is subject to this article.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), §§ 23, 24, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 14, effective September 1, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.022, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 9, effective June 14, 2019; am. Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 12, effective September 1, 2019.

Art. 46B.108. Redetermination of Competency.

(a) If criminal charges against a defendant found incompetent to stand trial have not been dismissed, the trial court at any time may determine whether the defendant has been restored to competency.

(b) An inquiry into restoration of competency under this subchapter may be made at the request of the head of the mental health facility, outpatient treatment provider, or residential care facility to which the defendant has been committed, the defendant, the attorney representing the defendant, or the attorney representing the state, or may be made on the court's own motion.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 25, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 15, effective September 1, 2007.

Art. 46B.109. Request by Head of Facility or Outpatient Treatment Provider.

(a) The head of a facility or outpatient treatment provider to which a defendant has been committed as a result of a finding of incompetency to stand trial may request the court to determine that the defendant has been restored to competency.

(b) The head of the facility or outpatient treatment provider shall provide with the request a written statement that in their opinion the defendant is competent to stand trial.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 16, effective September 1, 2007.

Art. 46B.110. Motion by Defendant, Attorney Representing Defendant, or Attorney Representing State.

(a) The defendant, the attorney representing the defendant, or the attorney representing the state may move that the court determine that the defendant has been restored to competency.

(b) A motion for a determination of competency may be accompanied by affidavits supporting the moving party's assertion that the defendant is competent.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 26, effective September 1, 2005.

Art. 46B.111. Appointment of Examiners.

On the filing of a request or motion to determine that the defendant has been restored to competency or on the court's decision on its own motion to inquire into restoration of competency, the court may appoint disinterested experts to examine the defendant in accordance with Subchapter B.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004.

Art. 46B.112. Determination of Restoration with Agreement.

On the filing of a request or motion to determine that the defendant has been restored to competency or on the court's decision on its own motion to inquire into restoration of competency, the court shall find the defendant competent to stand trial and proceed in the same manner as if the defendant had been found restored to competency at a hearing if:

- (1) both parties agree that the defendant is competent to stand trial; and
- (2) the court concurs.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004.

Art. 46B.113. Determination of Restoration Without Agreement.

(a) The court shall hold a hearing on a request by the head of a facility or outpatient treatment provider to which a defendant has been committed as a result of a finding of incompetency to stand trial to determine whether the defendant has been restored to competency.

(b) The court may hold a hearing on a motion to determine whether the defendant has been restored to competency or on the court's decision on its own motion to inquire into restoration of competency, and shall hold a hearing if a motion and any supporting material establish good reason to believe the defendant may have been restored to competency.

(c) If a court holds a hearing under this article, on the request of the counsel for either party or the motion of the court, a jury shall make the competency determination. If the competency determination will be made by the court rather than a jury, the court may conduct the hearing:

- (1) at the facility; or
- (2) by means of an electronic broadcast system as provided by Article 46B.013.

(d) If the head of a facility or outpatient treatment provider to which the defendant was committed as a result of a finding of incompetency to stand trial has provided an opinion that the defendant has regained competency, competency is presumed at a hearing under this subchapter and continuing incompetency must be proved by a preponderance of the evidence.

(e) If the head of a facility or outpatient treatment provider has not provided an opinion described by Subsection (d), incompetency is presumed at a hearing under this subchapter and the defendant's competency must be proved by a preponderance of the evidence.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 27, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 17, effective September 1, 2007.

Art. 46B.114. Transportation of Defendant to Court.

If the hearing is not conducted at the facility to which the defendant has been committed under this chapter or conducted by means of an electronic broadcast system as

described by this subchapter, an order setting a hearing to determine whether the defendant has been restored to competency shall direct that, as soon as practicable but not earlier than 72 hours before the date the hearing is scheduled, the defendant be placed in the custody of the sheriff of the county in which the committing court is located or the sheriff's designee for transportation to the court. The sheriff or the sheriff's designee may not take custody of the defendant under this article until 72 hours before the date the hearing is scheduled.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 28, effective September 1, 2005.

Art. 46B.115. Subsequent Redeterminations of Competency.

(a) If the court has made a determination that a defendant has not been restored to competency under this subchapter, a subsequent request or motion for a redetermination of competency filed before the 91st day after the date of that determination must:

- (1) explain why the person making the request or motion believes another inquiry into restoration is appropriate; and
- (2) provide support for the belief.

(b) The court may hold a hearing on a request or motion under this article only if the court first finds reason to believe the defendant's condition has materially changed since the prior determination that the defendant was not restored to competency.

(c) If the competency determination will be made by the court, the court may conduct the hearing at the facility to which the defendant has been committed under this chapter or may conduct the hearing by means of an electronic broadcast system as provided by Article 46B.013.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 29, effective September 1, 2005.

Art. 46B.116. Disposition on Determination of Competency.

If the defendant is found competent to stand trial, the proceedings on the criminal charge may proceed.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004.

Art. 46B.117. Disposition on Determination of Incompetency.

If a defendant under order of commitment to a facility or outpatient treatment program is found to not have been restored to competency to stand trial, the court shall remand the defendant pursuant to that order of commitment, and, if applicable, order the defendant placed in the custody of the sheriff or the sheriff's designee for transportation back to the facility or outpatient treatment program.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 30, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 18, effective September 1, 2007.

Subchapter F

Civil Commitment: Charges Dismissed

Art. 46B.151. Court Determination Related to Civil Commitment.

(a) If a court is required by Article 46B.084(f) or by its appropriate determination under Article 46B.071 to proceed under this subchapter, or if the court is permitted by Article 46B.004(e) to proceed under this subchapter, the court shall determine whether there is evidence to support a finding that the defendant is either a person with mental illness or a person with an intellectual disability.

(b) If it appears to the court that there is evidence to support a finding of mental illness or an intellectual disability, the court shall enter an order transferring the defendant to the appropriate court for civil commitment proceedings and stating that all charges pending against the defendant in that court have been dismissed. The court may order the defendant:

- (1) detained in jail or any other suitable place pending the prompt initiation and prosecution by the attorney for the state or other person designated by the court of appropriate civil proceedings to determine whether the defendant will be committed to a mental health facility or residential care facility; or
- (2) placed in the care of a responsible person on satisfactory security being given for the defendant's proper care and protection.

(c) Notwithstanding Subsection (b), a defendant placed in a facility of the commission pending civil hearing under this article may be detained in that facility only with the consent of the head of the facility and pursuant to an order of protective custody issued under Subtitle C, Title 7, Health and Safety Code.

(d) If the court does not detain or place the defendant under Subsection (b), the court shall release the defendant.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), §§ 32, 33, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 19, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.023, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 10, effective June 14, 2019; am. Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 13, effective September 1, 2019.

Subchapter G

Provisions Applicable to Subchapters E and F

Art. 46B.171. Transcripts and Other Records.

(a) The court shall order that:

- (1) a transcript of all medical testimony received in both the criminal proceedings and the civil commitment proceedings under Subchapter E or F be prepared as soon as possible by the court reporters; and
- (2) copies of documents listed in Article 46B.076 accompany the defendant to the mental health facility, outpatient treatment program, or residential care facility.

(b) On the request of the defendant or the attorney representing the defendant, a mental health facility, an

outpatient treatment program, or a residential care facility shall provide to the defendant or the attorney copies of the facility's records regarding the defendant.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 34, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 19, effective September 1, 2007.

CHAPTER 46C

Insanity Defense

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Subchapter A

General Provisions

Art. 46C.001. Definitions.

In this chapter:

- (1) "Commission" means the Health and Human Services Commission.
- (2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.
- (3) "Mental illness" has the meaning assigned by Section 571.003, Health and Safety Code.
- (4) "Mental retardation" has the meaning assigned by Section 591.003, Health and Safety Code.
- (5) "Residential care facility" has the meaning assigned by Section 591.003, Health and Safety Code.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; am. Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 11, effective June 14, 2019; am. Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 14, effective September 1, 2019.

Art. 46C.0011. Facility Designation.

The commission may designate for the commitment of a defendant under this chapter only a facility operated by the commission or under a contract with the commission for that purpose.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 12, effective June 14, 2019.

Art. 46C.0011. Facility Designation.

The commission may designate for the commitment of a defendant under this chapter only a facility operated by the commission or under a contract with the commission for that purpose.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 15, effective September 1, 2019.

Art. 46C.002. Maximum Period of Commitment Determined by Maximum Term for Offense.

(a) A person acquitted by reason of insanity may not be committed to a mental hospital or other inpatient or residential care facility or ordered to receive outpatient or community-based treatment and supervision under Subchapter F for a cumulative period that exceeds the maximum term provided by law for the offense for which the acquitted person was tried.

(b) On expiration of that maximum term, the acquitted person may be further confined in a mental hospital or other inpatient or residential care facility or ordered to receive outpatient or community-based treatment and supervision only under civil commitment proceedings.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.003. Victim Notification of Release. [Effective until January 1, 2021]

If the court issues an order that requires the release of an acquitted person on discharge or on a regimen of outpatient care, the clerk of the court issuing the order, using the information provided on any victim impact statement received by the court under Article 56.03 or other information made available to the court, shall notify the victim or the victim's guardian or close relative of the release. Notwithstanding Article 56.03(f), the clerk of the court may inspect a victim impact statement for the purpose of notification under this article. On request, a victim assistance coordinator may provide the clerk of the court with information or other assistance necessary for the clerk to comply with this article.

HISTORY: Enacted by Acts 1975, 64th Leg., ch. 415 (S.B. 901), § 2, effective June 19, 1975; am. Acts 1977, 65th Leg., ch. 596 (H.B. 951), § 2, effective September 1, 1977; am. Acts 1983, 68th Leg., ch. 454 (S.B. 7), §§ 2, 3, effective August 29, 1983; am. Acts 1989, 71st Leg., ch. 393 (S.B. 754), §§ 7–9, effective June 14, 1989; am. Acts 2001, 77th Leg., ch. 985 (H.B. 434), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 5, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 485 (H.B. 291), § 1, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 1, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 787 (H.B. 2124), § 1, effective June 17, 2011 (renumbered from Art. 46.03, Art. 4(d)(8)); am. Acts 2013, 83rd Leg., ch. 1276 (H.B. 1435), § 1, effective September 1, 2013.

Art. 46C.003. Victim Notification of Release. [Effective January 1, 2021]

If the court issues an order that requires the release of an acquitted person on discharge or on a regimen of outpatient care, the clerk of the court issuing the order, using the information provided on any victim impact statement received by the court under Subchapter D,

Chapter 56A or other information made available to the court, shall notify the victim or the victim's guardian or close relative of the release. Notwithstanding Article 56A.156, the clerk of the court may inspect a victim impact statement for the purpose of notification under this article. On request, a victim assistance coordinator may provide the clerk of the court with information or other assistance necessary for the clerk to comply with this article.

HISTORY: Enacted by Acts 1975, 64th Leg., ch. 415 (S.B. 901), § 2, effective June 19, 1975; am. Acts 1977, 65th Leg., ch. 596 (H.B. 951), § 2, effective September 1, 1977; am. Acts 1983, 68th Leg., ch. 454 (S.B. 7), §§ 2, 3, effective August 29, 1983; am. Acts 1989, 71st Leg., ch. 393 (S.B. 754), §§ 7–9, effective June 14, 1989; am. Acts 2001, 77th Leg., ch. 985 (H.B. 434), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 5, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 485 (H.B. 291), § 1, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 1, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 787 (H.B. 2124), § 1, effective June 17, 2011 (renumbered from Art. 46.03, Art. 4(d)(8)); am. Acts 2013, 83rd Leg., ch. 1276 (H.B. 1435), § 1, effective September 1, 2013; am. Acts 2019, 86th Leg., ch. 469 (H.B. 4173), § 2.18, effective January 1, 2021.

Arts. 46C.004 to 46C.050. [Reserved for expansion].

Subchapter B

Raising the Insanity Defense

Art. 46C.051. Notice of Intent to Raise Insanity Defense.

(a) A defendant planning to offer evidence of the insanity defense must file with the court a notice of the defendant's intention to offer that evidence.

(b) The notice must:

- (1) contain a certification that a copy of the notice has been served on the attorney representing the state; and
- (2) be filed at least 20 days before the date the case is set for trial, except as described by Subsection (c).

(c) If before the 20-day period the court sets a pretrial hearing, the defendant shall give notice at the hearing.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.052. Effect of Failure to Give Notice.

Unless notice is timely filed under Article 46C.051, evidence on the insanity defense is not admissible unless the court finds that good cause exists for failure to give notice.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Arts. 46C.053 to 46C.100. [Reserved for expansion].

Subchapter C

Court-Ordered Examination and Report

Art. 46C.101. Appointment of Experts.

(a) If notice of intention to raise the insanity defense is filed under Article 46C.051, the court may, on its own

motion or motion by the defendant, the defendant's counsel, or the attorney representing the state, appoint one or more disinterested experts to:

- (1) examine the defendant with regard to the insanity defense; and
- (2) testify as to the issue of insanity at any trial or hearing involving that issue.

(b) The court shall advise an expert appointed under this article of the facts and circumstances of the offense with which the defendant is charged and the elements of the insanity defense.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.102. Experts: Qualifications.

(a) The court may appoint qualified psychiatrists or psychologists as experts under this chapter. To qualify for appointment under this subchapter as an expert, a psychiatrist or psychologist must:

- (1) as appropriate, be a physician licensed in this state or be a psychologist licensed in this state who has a doctoral degree in psychology; and
- (2) have the following certification or experience or training:

(A) as appropriate, certification by:

(i) the American Board of Psychiatry and Neurology with added or special qualifications in forensic psychiatry; or

(ii) the American Board of Professional Psychology in forensic psychology; or

(B) experience or training consisting of:

(i) at least 24 hours of specialized forensic training relating to incompetency or insanity evaluations;

(ii) at least five years of experience in performing criminal forensic evaluations for courts; and

(iii) eight or more hours of continuing education relating to forensic evaluations, completed in the 12 months preceding the appointment and documented with the court.

(b) In addition to meeting qualifications required by Subsection (a), to be appointed as an expert a psychiatrist or psychologist must have completed six hours of required continuing education in courses in forensic psychiatry or psychology, as appropriate, in the 24 months preceding the appointment.

(c) A court may appoint as an expert a psychiatrist or psychologist who does not meet the requirements of Subsections (a) and (b) only if exigent circumstances require the court to base the appointment on professional training or experience of the expert that directly provides the expert with a specialized expertise to examine the defendant that would not ordinarily be possessed by a psychiatrist or psychologist who meets the requirements of Subsections (a) and (b).

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.103. Competency to Stand Trial: Concurrent Appointment.

(a) An expert appointed under this subchapter to examine the defendant with regard to the insanity defense also

may be appointed by the court to examine the defendant with regard to the defendant's competency to stand trial under Chapter 46B, if the expert files with the court separate written reports concerning the defendant's competency to stand trial and the insanity defense.

(b) Notwithstanding Subsection (a), an expert may not examine the defendant for purposes of determining the defendant's sanity and may not file a report regarding the defendant's sanity if in the opinion of the expert the defendant is incompetent to proceed.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.104. Order Compelling Defendant to Submit to Examination.

(a) For the purposes described by this chapter, the court may order any defendant to submit to examination, including a defendant who is free on bail. If the defendant fails or refuses to submit to examination, the court may order the defendant to custody for examination for a reasonable period not to exceed 21 days. Custody ordered by the court under this subsection may include custody at a facility operated by the commission.

(b) If a defendant who has been ordered to a facility operated by the commission for examination remains in the facility for a period that exceeds 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the facility for the mileage and per diem expenses of the personnel required to transport the defendant, calculated in accordance with the state travel rules in effect at that time.

(c) The court may not order a defendant to a facility operated by the commission for examination without the consent of the head of that facility.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; am. Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 13, effective June 14, 2019; am. Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 16, effective September 1, 2019.

Art. 46C.105. Reports Submitted by Experts.

(a) A written report of the examination shall be submitted to the court not later than the 30th day after the date of the order of examination. The court shall provide copies of the report to the defense counsel and the attorney representing the state.

(b) The report must include a description of the procedures used in the examination and the examiner's observations and findings pertaining to the insanity defense.

(c) The examiner shall submit a separate report stating the examiner's observations and findings concerning:

(1) whether the defendant is presently a person with a mental illness and requires court-ordered mental health services under Subtitle C, Title 7, Health and Safety Code; or

(2) whether the defendant is presently a person with mental retardation.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.106. Compensation of Experts.

(a) The appointed experts shall be paid by the county in which the indictment was returned or information was filed.

(b) The county in which the indictment was returned or information was filed shall reimburse a facility operated by the commission that accepts a defendant for examination under this subchapter for expenses incurred that are determined by the commission to be reasonably necessary and incidental to the proper examination of the defendant.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; am. Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 14, effective June 14, 2019; am. Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 17, effective September 1, 2019.

Art. 46C.107. Examination by Expert of Defendant's Choice.

If a defendant wishes to be examined by an expert of the defendant's own choice, the court on timely request shall provide the examiner with reasonable opportunity to examine the defendant.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Arts. 46C.108 to 46C.150. [Reserved for expansion].*Subchapter D**Determination of Issue of Defendant's Sanity***Art. 46C.151. Determination of Sanity Issue by Jury.**

(a) In a case tried to a jury, the issue of the defendant's sanity shall be submitted to the jury only if the issue is supported by competent evidence. The jury shall determine the issue.

(b) If the issue of the defendant's sanity is submitted to the jury, the jury shall determine and specify in the verdict whether the defendant is guilty, not guilty, or not guilty by reason of insanity.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.152. Determination of Sanity Issue by Judge.

(a) If a jury trial is waived and if the issue is supported by competent evidence, the judge as trier of fact shall determine the issue of the defendant's sanity.

(b) The parties may, with the consent of the judge, agree to have the judge determine the issue of the defendant's sanity on the basis of introduced or stipulated competent evidence, or both.

(c) If the judge determines the issue of the defendant's sanity, the judge shall enter a finding of guilty, not guilty, or not guilty by reason of insanity.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.153. General Provisions Relating to Determination of Sanity Issue by Judge or Jury.

(a) The judge or jury shall determine that a defendant is not guilty by reason of insanity if:

(1) the prosecution has established beyond a reasonable doubt that the alleged conduct constituting the offense was committed; and

(2) the defense has established by a preponderance of the evidence that the defendant was insane at the time of the alleged conduct.

(b) The parties may, with the consent of the judge, agree to both:

(1) dismissal of the indictment or information on the ground that the defendant was insane; and

(2) entry of a judgment of dismissal due to the defendant's insanity.

(c) An entry of judgment under Subsection (b)(2) has the same effect as a judgment stating that the defendant has been found not guilty by reason of insanity.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.154. Informing Jury Regarding Consequences of Acquittal.

The court, the attorney representing the state, or the attorney for the defendant may not inform a juror or a prospective juror of the consequences to the defendant if a verdict of not guilty by reason of insanity is returned.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.155. Finding of Not Guilty by Reason of Insanity Considered Acquittal.

(a) Except as provided by Subsection (b), a defendant who is found not guilty by reason of insanity stands acquitted of the offense charged and may not be considered a person charged with an offense.

(b) A defendant who is found not guilty by reason of insanity is not considered to be acquitted for purposes of Chapter 55.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.156. Judgment.

(a) In each case in which the insanity defense is raised, the judgment must reflect whether the defendant was found guilty, not guilty, or not guilty by reason of insanity.

(b) If the defendant was found not guilty by reason of insanity, the judgment must specify the offense of which the defendant was found not guilty.

(c) If the defendant was found not guilty by reason of insanity, the judgment must reflect the finding made under Article 46C.157.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.157. Determination Regarding Dangerous Conduct of Acquitted Person.

If a defendant is found not guilty by reason of insanity, the court immediately shall determine whether the offense of which the person was acquitted involved conduct that:

(1) caused serious bodily injury to another person;

(2) placed another person in imminent danger of serious bodily injury; or

(3) consisted of a threat of serious bodily injury to another person through the use of a deadly weapon.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.158. Continuing Jurisdiction of Dangerous Acquitted Person.

If the court finds that the offense of which the person was acquitted involved conduct that caused serious bodily injury to another person, placed another person in imminent danger of serious bodily injury, or consisted of a threat of serious bodily injury to another person through the use of a deadly weapon, the court retains jurisdiction over the acquitted person until either:

- (1) the court discharges the person and terminates its jurisdiction under Article 46C.268; or
- (2) the cumulative total period of institutionalization and outpatient or community-based treatment and supervision under the court's jurisdiction equals the maximum term provided by law for the offense of which the person was acquitted by reason of insanity and the court's jurisdiction is automatically terminated under Article 46C.269.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.159. Proceedings Regarding Nondangerous Acquitted Person.

If the court finds that the offense of which the person was acquitted did not involve conduct that caused serious bodily injury to another person, placed another person in imminent danger of serious bodily injury, or consisted of a threat of serious bodily injury to another person through the use of a deadly weapon, the court shall proceed under Subchapter E.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.160. Detention Pending Further Proceedings.

(a) On a determination by the judge or jury that the defendant is not guilty by reason of insanity, pending further proceedings under this chapter, the court may order the defendant detained in jail or any other suitable place for a period not to exceed 14 days.

(b) The court may order a defendant detained in a facility of the commission under this article only with the consent of the head of the facility.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; am. Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 15, effective June 14, 2019; am. Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 18, effective September 1, 2019.

Arts. 46C.161 to 46C.200. [Reserved for expansion].

Subchapter E

Disposition Following Acquittal by Reason of Insanity: No Finding of Dangerous Conduct

Art. 46C.201. Disposition: Nondangerous Conduct.

(a) If the court determines that the offense of which the

person was acquitted did not involve conduct that caused serious bodily injury to another person, placed another person in imminent danger of serious bodily injury, or consisted of a threat of serious bodily injury to another person through the use of a deadly weapon, the court shall determine whether there is evidence to support a finding that the person is a person with a mental illness or with mental retardation.

(b) If the court determines that there is evidence to support a finding of mental illness or mental retardation, the court shall enter an order transferring the person to the appropriate court for civil commitment proceedings to determine whether the person should receive court-ordered mental health services under Subtitle C, Title 7, Health and Safety Code, or be committed to a residential care facility to receive mental retardation services under Subtitle D, Title 7, Health and Safety Code. The court may also order the person:

- (1) detained in jail or any other suitable place pending the prompt initiation and prosecution of appropriate civil proceedings by the attorney representing the state or other person designated by the court; or
- (2) placed in the care of a responsible person on satisfactory security being given for the acquitted person's proper care and protection.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.202. Detention or Release.

(a) Notwithstanding Article 46C.201(b), a person placed in a commission facility pending civil hearing as described by that subsection may be detained only with the consent of the head of the facility and under an Order of Protective Custody issued under Subtitle C or D, Title 7, Health and Safety Code.

(b) If the court does not detain or place the person under Article 46C.201(b), the court shall release the person.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; am. Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 16, effective June 14, 2019; am. Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 19, effective September 1, 2019.

Arts. 46C.203 to 46C.250. [Reserved for expansion].

Subchapter F

Disposition Following Acquittal by Reason of Insanity: Finding of Dangerous Conduct

Art. 46C.251. Commitment for Evaluation and Treatment; Report.

(a) The court shall order the acquitted person to be committed for evaluation of the person's present mental condition and for treatment to the facility designated by the commission. The period of commitment under this article may not exceed 30 days.

(b) The court shall order that:

- (1) a transcript of all medical testimony received in the criminal proceeding be prepared as soon as possible by the court reporter and the transcript be forwarded to

the facility to which the acquitted person is committed; and

(2) the following information be forwarded to the facility and to the commission:

(A) the complete name, race, and gender of the person;

(B) any known identifying number of the person, including social security number, driver's license number, or state identification number;

(C) the person's date of birth; and

(D) the offense of which the person was found not guilty by reason of insanity and a statement of the facts and circumstances surrounding the alleged offense.

(c) The court shall order that a report be filed with the court under Article 46C.252.

(d) To determine the proper disposition of the acquitted person, the court shall hold a hearing on disposition not later than the 30th day after the date of acquittal.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; am. Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 17, effective June 14, 2019; am. Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 20, effective September 1, 2019.

Art. 46C.252. Report After Evaluation.

(a) The report ordered under Article 46C.251 must be filed with the court as soon as practicable before the hearing on disposition but not later than the fourth day before that hearing.

(b) The report in general terms must describe and explain the procedure, techniques, and tests used in the examination of the person.

(c) The report must address:

(1) whether the acquitted person has a mental illness or mental retardation and, if so, whether the mental illness or mental retardation is severe;

(2) whether as a result of any severe mental illness or mental retardation the acquitted person is likely to cause serious harm to another;

(3) whether as a result of any impairment the acquitted person is subject to commitment under Subtitle C or D, Title 7, Health and Safety Code;

(4) prospective treatment and supervision options, if any, appropriate for the acquitted person; and

(5) whether any required treatment and supervision can be safely and effectively provided as outpatient or community-based treatment and supervision.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.253. Hearing on Disposition.

(a) The hearing on disposition shall be conducted in the same manner as a hearing on an application for involuntary commitment under Subtitle C or D, Title 7, Health and Safety Code, except that the use of a jury is governed by Article 46C.255.

(b) At the hearing, the court shall address:

(1) whether the person acquitted by reason of insanity has a severe mental illness or mental retardation;

(2) whether as a result of any mental illness or mental retardation the person is likely to cause serious harm to another; and

(3) whether appropriate treatment and supervision for any mental illness or mental retardation rendering the person dangerous to another can be safely and effectively provided as outpatient or community-based treatment and supervision.

(c) The court shall order the acquitted person committed for inpatient treatment or residential care under Article 46C.256 if the grounds required for that order are established.

(d) The court shall order the acquitted person to receive outpatient or community-based treatment and supervision under Article 46C.257 if the grounds required for that order are established.

(e) The court shall order the acquitted person transferred to an appropriate court for proceedings under Subtitle C or D, Title 7, Health and Safety Code, if the state fails to establish the grounds required for an order under Article 46C.256 or 46C.257 but the evidence provides a reasonable basis for believing the acquitted person is a proper subject for those proceedings.

(f) The court shall order the acquitted person discharged and immediately released if the evidence fails to establish that disposition under Subsection (c), (d), or (e) is appropriate.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.254. Effect of Stabilization on Treatment Regimen.

If an acquitted person is stabilized on a treatment regimen, including medication and other treatment modalities, rendering the person no longer likely to cause serious harm to another, inpatient treatment or residential care may be found necessary to protect the safety of others only if:

(1) the person would become likely to cause serious harm to another if the person fails to follow the treatment regimen on an Order to Receive Outpatient or Community-Based Treatment and Supervision; and

(2) under an Order to Receive Outpatient or Community-Based Treatment and Supervision either:

(A) the person is likely to fail to comply with an available regimen of outpatient or community-based treatment, as determined by the person's insight into the need for medication, the number, severity, and controllability of side effects, the availability of support and treatment programs for the person from community members, and other appropriate considerations; or

(B) a regimen of outpatient or community-based treatment will not be available to the person.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.255. Trial by Jury.

(a) The following proceedings under this chapter must be before the court, and the underlying matter determined by the court, unless the acquitted person or the state requests a jury trial or the court on its own motion sets the matter for jury trial:

(1) a hearing under Article 46C.253;

(2) a proceeding for renewal of an order under Article 46C.261;

(3) a proceeding on a request for modification or revocation of an order under Article 46C.266; and

(4) a proceeding seeking discharge of an acquitted person under Article 46C.268.

(b) The following proceedings may not be held before a jury:

(1) a proceeding to determine outpatient or community-based treatment and supervision under Article 46C.262; or

(2) a proceeding to determine modification or revocation of outpatient or community-based treatment and supervision under Article 46C.267.

(c) If a hearing is held before a jury and the jury determines that the person has a mental illness or mental retardation and is likely to cause serious harm to another, the court shall determine whether inpatient treatment or residential care is necessary to protect the safety of others.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.256. Order of Commitment to Inpatient Treatment or Residential Care.

(a) The court shall order the acquitted person committed to a mental hospital or other appropriate facility for inpatient treatment or residential care if the state establishes by clear and convincing evidence that:

(1) the person has a severe mental illness or mental retardation;

(2) the person, as a result of that mental illness or mental retardation, is likely to cause serious bodily injury to another if the person is not provided with treatment and supervision; and

(3) inpatient treatment or residential care is necessary to protect the safety of others.

(b) In determining whether inpatient treatment or residential care has been proved necessary, the court shall consider whether the evidence shows both that:

(1) an adequate regimen of outpatient or community-based treatment will be available to the person; and

(2) the person will follow that regimen.

(c) The order of commitment to inpatient treatment or residential care expires on the 181st day following the date the order is issued but is subject to renewal as provided by Article 46C.261.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.257. Order to Receive Outpatient or Community-Based Treatment and Supervision.

(a) The court shall order the acquitted person to receive outpatient or community-based treatment and supervision if:

(1) the state establishes by clear and convincing evidence that the person:

(A) has a severe mental illness or mental retardation; and

(B) as a result of that mental illness or mental retardation is likely to cause serious bodily injury to another if the person is not provided with treatment and supervision; and

(2) the state fails to establish by clear and convincing evidence that inpatient treatment or residential care is necessary to protect the safety of others.

(b) The order of commitment to outpatient or community-based treatment and supervision expires on the first anniversary of the date the order is issued but is subject to renewal as provided by Article 46C.261.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.258. Responsibility of Inpatient or Residential Care Facility.

(a) The head of the facility to which an acquitted person is committed has, during the commitment period, a continuing responsibility to determine:

(1) whether the acquitted person continues to have a severe mental illness or mental retardation and is likely to cause serious harm to another because of any severe mental illness or mental retardation; and

(2) if so, whether treatment and supervision cannot be safely and effectively provided as outpatient or community-based treatment and supervision.

(b) The head of the facility must notify the committing court and seek modification of the order of commitment if the head of the facility determines that an acquitted person no longer has a severe mental illness or mental retardation, is no longer likely to cause serious harm to another, or that treatment and supervision can be safely and effectively provided as outpatient or community-based treatment and supervision.

(c) Not later than the 60th day before the date of expiration of the order, the head of the facility shall transmit to the committing court a psychological evaluation of the acquitted person, a certificate of medical examination of the person, and any recommendation for further treatment of the person. The committing court shall make the documents available to the attorneys representing the state and the acquitted person.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.259. Status of Committed Person.

If an acquitted person is committed under this subchapter, the person's status as a patient or resident is governed by Subtitle C or D, Title 7, Health and Safety Code, except that:

(1) transfer to a nonsecure unit is governed by Article 46C.260;

(2) modification of the order to direct outpatient or community-based treatment and supervision is governed by Article 46C.262; and

(3) discharge is governed by Article 46C.268.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.260. Transfer of Committed Person to Non-Maximum Security Facility.

(a) A person committed to a facility under this subchapter shall be committed to a facility designated by the commission.

(b) A person committed under this subchapter shall be transferred to the designated facility immediately on the entry of the order of commitment.

(c) Unless a person committed to a maximum security unit by the commission is determined to be manifestly dangerous by a review board under this article, not later than the 60th day following the date of the person's arrival at the maximum security unit the person shall be transferred to a non-maximum security unit of a facility designated by the commission.

(d) The executive commissioner shall appoint a review board of five members, including one psychiatrist licensed to practice medicine in this state and two persons who work directly with persons with mental illnesses or with mental retardation, to determine whether the person is manifestly dangerous and, as a result of the danger the person presents, requires continued placement in a maximum security unit.

(e) If the head of the facility at which the maximum security unit is located disagrees with the determination, then the matter shall be referred to the executive commissioner. The executive commissioner shall decide whether the person is manifestly dangerous.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; am. Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 18, effective June 14, 2019; am. Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 21, effective September 1, 2019.

Art. 46C.261. Renewal of Orders for Inpatient Commitment or Outpatient or Community-Based Treatment and Supervision.

(a) A court that orders an acquitted person committed to inpatient treatment or orders outpatient or community-based treatment and supervision annually shall determine whether to renew the order.

(b) Not later than the 30th day before the date an order is scheduled to expire, the institution to which a person is committed, the person responsible for providing outpatient or community-based treatment and supervision, or the attorney representing the state may file a request that the order be renewed. The request must explain in detail the reasons why the person requests renewal under this article. A request to renew an order committing the person to inpatient treatment must also explain in detail why outpatient or community-based treatment and supervision is not appropriate.

(c) The request for renewal must be accompanied by a certificate of medical examination for mental illness signed by a physician who examined the person during the 30-day period preceding the date on which the request is filed.

(d) On the filing of a request for renewal under this article, the court shall:

- (1) set the matter for a hearing; and
- (2) appoint an attorney to represent the person.

(e) The court shall act on the request for renewal before the order expires.

(f) If a hearing is held, the person may be transferred from the facility to which the acquitted person was committed to a jail for purposes of participating in the hearing only if necessary but not earlier than 72 hours before the hearing begins. If the order is renewed, the person shall be

transferred back to the facility immediately on renewal of the order.

(g) If no objection is made, the court may admit into evidence the certificate of medical examination for mental illness. Admitted certificates constitute competent medical or psychiatric testimony, and the court may make its findings solely from the certificate and the detailed request for renewal.

(h) A court shall renew the order only if the court finds that the party who requested the renewal has established by clear and convincing evidence that continued mandatory supervision and treatment are appropriate. A renewed order authorizes continued inpatient commitment or outpatient or community-based treatment and supervision for not more than one year.

(i) The court, on application for renewal of an order for inpatient or residential care services, may modify the order to provide for outpatient or community-based treatment and supervision if the court finds the acquitted person has established by a preponderance of the evidence that treatment and supervision can be safely and effectively provided as outpatient or community-based treatment and supervision.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.262. Court-Ordered Outpatient or Community-Based Treatment and Supervision After Inpatient Commitment.

(a) An acquitted person, the head of the facility to which the acquitted person is committed, or the attorney representing the state may request that the court modify an order for inpatient treatment or residential care to order outpatient or community-based treatment and supervision.

(b) The court shall hold a hearing on a request made by the head of the facility to which the acquitted person is committed. A hearing under this subsection must be held not later than the 14th day after the date of the request.

(c) If a request is made by an acquitted person or the attorney representing the state, the court must act on the request not later than the 14th day after the date of the request. A hearing under this subsection is at the discretion of the court, except that the court shall hold a hearing if the request and any accompanying material provide a basis for believing modification of the order may be appropriate.

(d) If a request is made by an acquitted person not later than the 90th day after the date of a hearing on a previous request, the court is not required to act on the request except on the expiration of the order or on the expiration of the 90-day period following the date of the hearing on the previous request.

(e) The court shall rule on the request during or as soon as practicable after any hearing on the request but not later than the 14th day after the date of the request.

(f) The court shall modify the commitment order to direct outpatient or community-based treatment and supervision if at the hearing the acquitted person establishes by a preponderance of the evidence that treatment and supervision can be safely and effectively provided as

outpatient or community-based treatment and supervision.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.263. Court-Ordered Outpatient or Community-Based Treatment and Supervision.

(a) The court may order an acquitted person to participate in an outpatient or community-based regimen of treatment and supervision:

- (1) as an initial matter under Article 46C.253;
- (2) on renewal of an order of commitment under Article 46C.261; or
- (3) after a period of inpatient treatment or residential care under Article 46C.262.

(b) An acquitted person may be ordered to participate in an outpatient or community-based regimen of treatment and supervision only if:

- (1) the court receives and approves an outpatient or community-based treatment plan that comprehensively provides for the outpatient or community-based treatment and supervision; and
- (2) the court finds that the outpatient or community-based treatment and supervision provided for by the plan will be available to and provided to the acquitted person.

(c) The order may require the person to participate in a prescribed regimen of medical, psychiatric, or psychological care or treatment, and the regimen may include treatment with psychoactive medication.

(d) The court may order that supervision of the acquitted person be provided by the appropriate community supervision and corrections department or the facility administrator of a community center that provides mental health or mental retardation services.

(e) The court may order the acquitted person to participate in a supervision program funded by the Texas Correctional Office on Offenders with Medical or Mental Impairments.

(f) An order under this article must identify the person responsible for administering an ordered regimen of outpatient or community-based treatment and supervision.

(g) In determining whether an acquitted person should be ordered to receive outpatient or community-based treatment and supervision rather than inpatient care or residential treatment, the court shall have as its primary concern the protection of society.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.264. Location of Court-Ordered Outpatient or Community-Based Treatment and Supervision.

(a) The court may order the outpatient or community-based treatment and supervision to be provided in any appropriate county where the necessary resources are available.

(b) This article does not supersede any requirement under the other provisions of this subchapter to obtain the consent of a treatment and supervision provider to administer the court-ordered outpatient or community-based treatment and supervision.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.265. Supervisory Responsibility for Outpatient or Community-Based Treatment and Supervision.

(a) The person responsible for administering a regimen of outpatient or community-based treatment and supervision shall:

- (1) monitor the condition of the acquitted person; and
- (2) determine whether the acquitted person is complying with the regimen of treatment and supervision.

(b) The person responsible for administering a regimen of outpatient or community-based treatment and supervision shall notify the court ordering that treatment and supervision and the attorney representing the state if the person:

- (1) fails to comply with the regimen; and
- (2) becomes likely to cause serious harm to another.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.266. Modification or Revocation of Order for Outpatient or Community-Based Treatment and Supervision.

(a) The court, on its own motion or the motion of any interested person and after notice to the acquitted person and a hearing, may modify or revoke court-ordered outpatient or community-based treatment and supervision.

(b) At the hearing, the court without a jury shall determine whether the state has established clear and convincing evidence that:

- (1) the acquitted person failed to comply with the regimen in a manner or under circumstances indicating the person will become likely to cause serious harm to another if the person is provided continued outpatient or community-based treatment and supervision; or
- (2) the acquitted person has become likely to cause serious harm to another if provided continued outpatient or community-based treatment and supervision.

(c) On a determination under Subsection (b), the court may take any appropriate action, including:

- (1) revoking court-ordered outpatient or community-based treatment and supervision and ordering the person committed for inpatient or residential care; or
- (2) imposing additional or more stringent terms on continued outpatient or community-based treatment.

(d) An acquitted person who is the subject of a proceeding under this article is entitled to representation by counsel in the proceeding.

(e) The court shall set a date for a hearing under this article that is not later than the seventh day after the applicable motion was filed. The court may grant one or more continuances of the hearing on the motion of a party or of the court and for good cause shown.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.267. Detention Pending Proceedings to Modify or Revoke Order for Outpatient or Community-Based Treatment and Supervision.

(a) The state or the head of the facility or other person responsible for administering a regimen of outpatient or

community-based treatment and supervision may file a sworn application with the court for the detention of an acquitted person receiving court-ordered outpatient or community-based treatment and supervision. The application must state that the person meets the criteria of Article 46C.266 and provide a detailed explanation of that statement.

(b) If the court determines that the application establishes probable cause to believe the order for outpatient or community-based treatment and supervision should be revoked, the court shall issue an order to an on-duty peace officer authorizing the acquitted person to be taken into custody and brought before the court.

(c) An acquitted person taken into custody under an order of detention shall be brought before the court without unnecessary delay.

(d) When an acquitted person is brought before the court, the court shall determine whether there is probable cause to believe that the order for outpatient or community-based treatment and supervision should be revoked. On a finding that probable cause for revocation exists, the court shall order the person held in protective custody pending a determination of whether the order should be revoked.

(e) An acquitted person may be detained under an order for protective custody for a period not to exceed 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b), Health and Safety Code, for an extreme emergency.

(f) This subchapter does not affect the power of a peace officer to take an acquitted person into custody under Section 573.001, Health and Safety Code.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.268. Advance Discharge of Acquitted Person and Termination of Jurisdiction.

(a) An acquitted person, the head of the facility to which the acquitted person is committed, the person responsible for providing the outpatient or community-based treatment and supervision, or the state may request that the court discharge an acquitted person from inpatient commitment or outpatient or community-based treatment and supervision.

(b) Not later than the 14th day after the date of the request, the court shall hold a hearing on a request made by the head of the facility to which the acquitted person is committed or the person responsible for providing the outpatient or community-based treatment and supervision.

(c) If a request is made by an acquitted person, the court must act on the request not later than the 14th day after the date of the request. A hearing under this subsection is at the discretion of the court, except that the court shall hold a hearing if the request and any accompanying material indicate that modification of the order may be appropriate.

(d) If a request is made by an acquitted person not later than the 90th day after the date of a hearing on a previous request, the court is not required to act on the request except on the expiration of the order or on the expiration

of the 90-day period following the date of the hearing on the previous request.

(e) The court shall rule on the request during or shortly after any hearing that is held and in any case not later than the 14th day after the date of the request.

(f) The court shall discharge the acquitted person from all court-ordered commitment and treatment and supervision and terminate the court's jurisdiction over the person if the court finds that the acquitted person has established by a preponderance of the evidence that:

(1) the acquitted person does not have a severe mental illness or mental retardation; or

(2) the acquitted person is not likely to cause serious harm to another because of any severe mental illness or mental retardation.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.269. Termination of Court's Jurisdiction.

(a) The jurisdiction of the court over a person covered by this subchapter automatically terminates on the date when the cumulative total period of institutionalization and outpatient or community-based treatment and supervision imposed under this subchapter equals the maximum term of imprisonment provided by law for the offense of which the person was acquitted by reason of insanity.

(b) On the termination of the court's jurisdiction under this article, the person must be discharged from any inpatient treatment or residential care or outpatient or community-based treatment and supervision ordered under this subchapter.

(c) An inpatient or residential care facility to which a person has been committed under this subchapter or a person responsible for administering a regimen of outpatient or community-based treatment and supervision under this subchapter must notify the court not later than the 30th day before the court's jurisdiction over the person ends under this article.

(d) This subchapter does not affect whether a person may be ordered to receive care or treatment under Subtitle C or D, Title 7, Health and Safety Code.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.270. Appeals.

(a) An acquitted person may appeal a judgment reflecting an acquittal by reason of insanity on the basis of the following:

(1) a finding that the acquitted person committed the offense; or

(2) a finding that the offense on which the prosecution was based involved conduct that:

(A) caused serious bodily injury to another person;

(B) placed another person in imminent danger of serious bodily injury; or

(C) consisted of a threat of serious bodily injury to another person through the use of a deadly weapon.

(b) Either the acquitted person or the state may appeal from:

(1) an Order of Commitment to Inpatient Treatment or Residential Care entered under Article 46C.256;

(2) an Order to Receive Outpatient or Community-Based Treatment and Supervision entered under Article 46C.257 or 46C.262;

(3) an order renewing or refusing to renew an Order for Inpatient Commitment or Outpatient or Community-Based Treatment and Supervision entered under Article 46C.261;

(4) an order modifying or revoking an Order for Outpatient or Community-Based Treatment and Supervision entered under Article 46C.266 or refusing a request to modify or revoke that order; or

(5) an order discharging an acquitted person under Article 46C.268 or denying a request for discharge of an acquitted person.

(c) An appeal under this subchapter may not be considered moot solely due to the expiration of an order on which the appeal is based.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

CHAPTER 55

Expunction of Criminal Records

Article

55.01.

Right to Expunction.

55.02.

Procedure for Expunction.

Art. 55.01. Right to Expunction.

(a) A person who has been placed under a custodial or noncustodial arrest for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if:

(1) the person is tried for the offense for which the person was arrested and is:

(A) acquitted by the trial court, except as provided by Subsection (c); or

(B) convicted and subsequently:

(i) pardoned for a reason other than that described by Subparagraph (ii); or

(ii) pardoned or otherwise granted relief on the basis of actual innocence with respect to that offense, if the applicable pardon or court order clearly indicates on its face that the pardon or order was granted or rendered on the basis of the person's actual innocence; or

(2) the person has been released and the charge, if any, has not resulted in a final conviction and is no longer pending and there was no court-ordered community supervision under Chapter 42A for the offense, unless the offense is a Class C misdemeanor, provided that:

(A) regardless of whether any statute of limitations exists for the offense and whether any limitations period for the offense has expired, an indictment or information charging the person with the commission of a misdemeanor offense based on the person's arrest or charging the person with the commission of any felony offense arising out of the same transaction for which the person was arrested:

(i) has not been presented against the person at any time following the arrest, and:

(a) at least 180 days have elapsed from the date of arrest if the arrest for which the expunction was sought was for an offense punishable as a Class C misdemeanor and if there was no felony charge arising out of the same transaction for which the person was arrested;

(b) at least one year has elapsed from the date of arrest if the arrest for which the expunction was sought was for an offense punishable as a Class B or A misdemeanor and if there was no felony charge arising out of the same transaction for which the person was arrested;

(c) at least three years have elapsed from the date of arrest if the arrest for which the expunction was sought was for an offense punishable as a felony or if there was a felony charge arising out of the same transaction for which the person was arrested; or

(d) the attorney representing the state certifies that the applicable arrest records and files are not needed for use in any criminal investigation or prosecution, including an investigation or prosecution of another person; or

(ii) if presented at any time following the arrest, was dismissed or quashed, and the court finds that the indictment or information was dismissed or quashed because:

(a) the person completed a veterans treatment court program created under Chapter 124, Government Code, or former law, subject to Subsection (a-3);

(b) the person completed a mental health court program created under Chapter 125, Government Code, or former law, subject to Subsection (a-4);

(c) the person completed a pretrial intervention program authorized under Section 76.011, Government Code, other than a veterans treatment court program created under Chapter 124, Government Code, or former law, or a mental health court program created under Chapter 125, Government Code, or former law;

(d) the presentment had been made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of the dismissal to believe the person committed the offense; or

(e) the indictment or information was void; or
(B) prosecution of the person for the offense for which the person was arrested is no longer possible because the limitations period has expired.

(a-1) Notwithstanding any other provision of this article, a person may not expunge records and files relating to an arrest that occurs pursuant to a warrant issued under Article 42A.751(b).

(a-2) Notwithstanding any other provision of this article, a person who intentionally or knowingly absconds from the jurisdiction after being released under Chapter 17 following an arrest is not eligible under Subsection (a)(2)(A)(i)(a), (b), or (c) or Subsection (a)(2)(B) for an expunction of the records and files relating to that arrest.

(a-3) A person is eligible under Subsection (a)(2)(A)(ii)(a) for an expunction of arrest records and files only if:

(1) the person has not previously received an expunction of arrest records and files under that sub-subparagraph; and

(2) the person submits to the court an affidavit attesting to that fact.

(a-4) A person is eligible under Subsection (a)(2)(A)(ii)(b) for an expunction of arrest records and files only if:

(1) the person has not previously received an expunction of arrest records and files under that sub-subparagraph; and

(2) the person submits to the court an affidavit attesting to that fact.

(b) Except as provided by Subsection (c) and subject to Subsection (b-1), a district court, a justice court, or a municipal court of record may expunge all records and files relating to the arrest of a person under the procedure established under Article 55.02 if:

(1) the person is:

(A) tried for the offense for which the person was arrested;

(B) convicted of the offense; and

(C) acquitted by the court of criminal appeals or, if the period for granting a petition for discretionary review has expired, by a court of appeals; or

(2) an office of the attorney representing the state authorized by law to prosecute the offense for which the person was arrested recommends the expunction to the court before the person is tried for the offense, regardless of whether an indictment or information has been presented against the person in relation to the offense.

(b-1) A justice court or a municipal court of record may only expunge records and files under Subsection (b) that relate to the arrest of a person for an offense punishable by fine only.

(c) A court may not order the expunction of records and files relating to an arrest for an offense for which a person is subsequently acquitted, whether by the trial court, a court of appeals, or the court of criminal appeals, if the offense for which the person was acquitted arose out of a criminal episode, as defined by Section 3.01, Penal Code, and the person was convicted of or remains subject to prosecution for at least one other offense occurring during the criminal episode.

(d) A person is entitled to obtain the expunction of any information that identifies the person, including the person's name, address, date of birth, driver's license number, and social security number, contained in records and files relating to the person's arrest or the arrest of another person if:

(1) the expunction of identifying information is sought with respect to the arrest of the person asserting the entitlement and the person was arrested solely as a result of identifying information that was inaccurate due to a clerical error; or

(2) the expunction of identifying information is sought with respect to the arrest of a person other than the person asserting the entitlement and:

(A) the information identifying the person asserting the entitlement was falsely given by the arrested person as the arrested person's identifying information without the consent of the person asserting the entitlement; and

(B) the only reason why the identifying information of the person asserting the entitlement is contained in the applicable arrest records and files is because of the deception of the arrested person.

HISTORY: Enacted by Acts 1977, 65th Leg., ch. 747 (S.B. 471), § 1, effective August 29, 1977; am. Acts 1979, 66th Leg., ch. 604 (S.B. 374), § 1, effective August 27, 1979; am. Acts 1989, 71st Leg., ch. 803 (H.B. 526), § 1, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 14 (S.B. 404), § 284(53), effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 7.02(a), effective September 1, 1993; am. Acts 1999, 76th Leg., ch. 1236 (S.B. 840), § 1, effective August 30, 1999; am. Acts 2001, 77th Leg., ch. 945 (S.B. 1047), § 1, effective June 14, 2001; am. Acts 2001, 77th Leg., ch. 1021 (H.B. 1323), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 1236 (S.B. 1477), § 1, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 1309 (H.B. 3093), § 1, effective September 1, 2005; am. Acts 2009, 81st Leg., ch. 840 (S.B. 1940), § 5, effective June 19, 2009; am. Acts 2009, 81st Leg., ch. 1103 (H.B. 4833), § 17(b), effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 690 (H.B. 351), § 1, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 894 (S.B. 462), § 1, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 2.23, effective January 1, 2017; am. Acts 2017, 85th Leg., ch. 693 (H.B. 322), § 1, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 1062 (H.B. 3147), § 1, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 1149 (H.B. 557), § 1, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 19, effective June 14, 2019.

Art. 55.02. Procedure for Expunction.

Sec. 1. At the request of the acquitted person and after notice to the state, or at the request of the attorney for the state with the consent of the acquitted person, the trial court presiding over the case in which the person was acquitted, if the trial court is a district court, a justice court, or a municipal court of record, or a district court in the county in which the trial court is located shall enter an order of expunction for a person entitled to expunction under Article 55.01(a)(1)(A) not later than the 30th day after the date of the acquittal. On acquittal, the trial court shall advise the acquitted person of the right to expunction. The party requesting the order of expunction shall provide to the court all of the information required in a petition for expunction under Section 2(b). The attorney for the acquitted person in the case in which the person was acquitted, if the person was represented by counsel, or the attorney for the state, if the person was not represented by counsel or if the attorney for the state requested the order of expunction, shall prepare the order for the court's signature.

Sec. 1a. (a) The trial court presiding over a case in which a person is convicted and subsequently granted relief or pardoned on the basis of actual innocence of the offense of which the person was convicted, if the trial court is a district court, a justice court, or a municipal court of record, or a district court in the county in which the trial court is located shall enter an order of expunction for a person entitled to expunction under Article 55.01(a)(1)(B)(ii) not later than the 30th day after the date the court receives notice of the pardon or other grant of relief. The person shall provide to the court all of the information required in a petition for expunction under Section 2(b).

(a-1) A trial court dismissing a case following a person's successful completion of a veterans treatment court program created under Chapter 124, Government

Code, or former law, if the trial court is a district court, or a district court in the county in which the trial court is located may, with the consent of the attorney representing the state, enter an order of expunction for a person entitled to expunction under Article 55.01(a)(2)(A)(ii)(a) not later than the 30th day after the date the court dismisses the case or receives the information regarding that dismissal, as applicable. Notwithstanding any other law, a court that enters an order for expunction under this subsection may not charge any fee or assess any cost for the expunction.

(a-2) A trial court dismissing a case following a person's successful completion of a mental health court program created under Chapter 125, Government Code, or former law, if the trial court is a district court, or a district court in the county in which the trial court is located may, with the consent of the attorney representing the state, enter an order of expunction for a person entitled to expunction under Article 55.01(a)(2)(A)(ii)(b) not later than the 30th day after the date the court dismisses the case or receives the information regarding that dismissal, as applicable. Notwithstanding any other law, a court that enters an order for expunction under this subsection may not charge any fee or assess any cost for the expunction.

(b) The attorney for the state shall:

(1) prepare an expunction order under this section for the court's signature; and

(2) notify the Texas Department of Criminal Justice if the person is in the custody of the department.

(c) The court shall include in an expunction order under this section a listing of each official, agency, or other entity of this state or political subdivision of this state and each private entity that there is reason to believe has any record or file that is subject to the order. The court shall also provide in an expunction order under this section that:

(1) the Texas Department of Criminal Justice shall send to the court the documents delivered to the department under Section 8(a), Article 42.09; and

(2) the Department of Public Safety and the Texas Department of Criminal Justice shall delete or redact, as appropriate, from their public records all index references to the records and files that are subject to the expunction order.

(d) The court shall retain all documents sent to the court under Subsection (c)(1) until the statute of limitations has run for any civil case or proceeding relating to the wrongful imprisonment of the person subject to the expunction order.

Sec. 2. (a) A person who is entitled to expunction of records and files under Article 55.01(a)(1)(A), 55.01(a)(1)(B)(i), or 55.01(a)(2) or a person who is eligible for expunction of records and files under Article 55.01(b) may file an ex parte petition for expunction in a district court for the county in which:

(1) the petitioner was arrested; or

(2) the offense was alleged to have occurred.

(a-1) If the arrest for which expunction is sought is for an offense punishable by fine only, a person who is entitled to expunction of records and files under Article 55.01(a) or a person who is eligible for expunction of

records and files under Article 55.01(b) may file an ex parte petition for expunction in a justice court or a municipal court of record in the county in which:

(1) the petitioner was arrested; or

(2) the offense was alleged to have occurred.

(b) A petition filed under Subsection (a) or (a-1) must be verified and must include the following or an explanation for why one or more of the following is not included:

(1) the petitioner's:

(A) full name;

(B) sex;

(C) race;

(D) date of birth;

(E) driver's license number;

(F) social security number; and

(G) address at the time of the arrest;

(2) the offense charged against the petitioner;

(3) the date the offense charged against the petitioner was alleged to have been committed;

(4) the date the petitioner was arrested;

(5) the name of the county where the petitioner was arrested and if the arrest occurred in a municipality, the name of the municipality;

(6) the name of the agency that arrested the petitioner;

(7) the case number and court of offense; and

(8) together with the applicable physical or e-mail addresses, a list of all:

(A) law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state;

(B) central federal depositories of criminal records that the petitioner has reason to believe have records or files that are subject to expunction; and

(C) private entities that compile and disseminate for compensation criminal history record information that the petitioner has reason to believe have information related to records or files that are subject to expunction.

(c) The court shall set a hearing on the matter no sooner than thirty days from the filing of the petition and shall give to each official or agency or other governmental entity named in the petition reasonable notice of the hearing by:

(1) certified mail, return receipt requested; or

(2) secure electronic mail, electronic transmission, or facsimile transmission.

(c-1) An entity described by Subsection (c) may be represented by the attorney responsible for providing the entity with legal representation in other matters.

(d) If the court finds that the petitioner, or a person for whom an ex parte petition is filed under Subsection (e), is entitled to expunction of any records and files that are the subject of the petition, it shall enter an order directing expunction.

(e) The director of the Department of Public Safety or the director's authorized representative may file on behalf of a person described by Subsection (a) of this

section or by Section 2a an ex parte petition for expunction in a district court for the county in which:

- (1) the person was arrested; or
- (2) the offense was alleged to have occurred.

(f) An ex parte petition filed under Subsection (e) must be verified and must include the following or an explanation for why one or more of the following is not included:

- (1) the person's:
 - (A) full name;
 - (B) sex;
 - (C) race;
 - (D) date of birth;
 - (E) driver's license number;
 - (F) social security number; and
 - (G) address at the time of the arrest;
- (2) the offense charged against the person;
- (3) the date the offense charged against the person was alleged to have been committed;
- (4) the date the person was arrested;
- (5) the name of the county where the person was arrested and if the arrest occurred in a municipality, the name of the municipality;
- (6) the name of the agency that arrested the person;
- (7) the case number and court of offense; and
- (8) together with the applicable physical or e-mail addresses, a list of all:
 - (A) law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state;
 - (B) central federal depositories of criminal records that the person has reason to believe have records or files that are subject to expunction; and
 - (C) private entities that compile and disseminate for compensation criminal history record information that the person has reason to believe have information relating to records or files that are subject to expunction.

Sec. 2a. (a) A person who is entitled to expunction of information contained in records and files under Article 55.01(d) may file an application for expunction with the attorney representing the state in the prosecution of felonies in the county in which the person resides.

(b) The application must be verified, include authenticated fingerprint records of the applicant, and include the following or an explanation for why one or more of the following is not included:

- (1) the applicant's full name, sex, race, date of birth, driver's license number, social security number, and address at the time of the applicable arrest;
- (2) the following information regarding the arrest:
 - (A) the date of arrest;
 - (B) the offense charged against the person arrested;
 - (C) the name of the county or municipality in which the arrest occurred; and
 - (D) the name of the arresting agency; and
- (3) a statement, as appropriate, that the applicant:

(A) was arrested solely as a result of identifying information that was inaccurate due to a clerical error; or

(B) is not the person arrested and for whom the arrest records and files were created and did not give the arrested person consent to falsely identify himself or herself as the applicant.

(c) After verifying the allegations in an application received under Subsection (a), the attorney representing the state shall:

(1) include on the application information regarding the arrest that was requested of the applicant but was unknown by the applicant;

(2) forward a copy of the application to the district court for the county;

(3) together with the applicable physical or e-mail addresses, attach to the copy a list of all:

(A) law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state;

(B) central federal depositories of criminal records that are reasonably likely to have records or files containing information that is subject to expunction; and

(C) private entities that compile and disseminate for compensation criminal history record information that are reasonably likely to have records or files containing information that is subject to expunction; and

(4) request the court to enter an order directing expunction based on an entitlement to expunction under Article 55.01(d).

(d) On receipt of a request under Subsection (c), the court shall, without holding a hearing on the matter, enter a final order directing expunction.

Sec. 3. (a) In an order of expunction issued under this article, the court shall require any state agency that sent information concerning the arrest to a central federal depository to request the depository to return all records and files subject to the order of expunction. The person who is the subject of the expunction order or an agency protesting the expunction may appeal the court's decision in the same manner as in other civil cases.

(b) The order of expunction entered by the court shall have attached and incorporate by reference a copy of the judgment of acquittal and shall include:

(1) the following information on the person who is the subject of the expunction order:

- (A) full name;
- (B) sex;
- (C) race;
- (D) date of birth;
- (E) driver's license number; and
- (F) social security number;

(2) the offense charged against the person who is the subject of the expunction order;

(3) the date the person who is the subject of the expunction order was arrested;

(4) the case number and court of offense; and

(5) the tracking incident number (TRN) assigned to the individual incident of arrest under Article 66.251(b)(1) by the Department of Public Safety.

(c) When the order of expunction is final, the clerk of the court shall send a certified copy of the order to the Crime Records Service of the Department of Public Safety and to each official or agency or other governmental entity of this state or of any political subdivision of this state named in the order. The certified copy of the order must be sent by secure electronic mail, electronic transmission, or facsimile transmission or otherwise by certified mail, return receipt requested. In sending the order to a governmental entity named in the order, the clerk may elect to substitute hand delivery for certified mail under this subsection, but the clerk must receive a receipt for that hand-delivered order.

(c-1) The Department of Public Safety shall notify any central federal depository of criminal records by any means, including secure electronic mail, electronic transmission, or facsimile transmission, of the order with an explanation of the effect of the order and a request that the depository, as appropriate, either:

(1) destroy or return to the court the records in possession of the depository that are subject to the order, including any information with respect to the order; or

(2) comply with Section 5(f) pertaining to information contained in records and files of a person entitled to expunction under Article 55.01(d).

(c-2) The Department of Public Safety shall also provide, by secure electronic mail, electronic transmission, or facsimile transmission, notice of the order to any private entity that is named in the order or that purchases criminal history record information from the department. The notice must include an explanation of the effect of the order and a request that the entity destroy any information in the possession of the entity that is subject to the order. The department may charge to a private entity that purchases criminal history record information from the department a fee in an amount sufficient to recover costs incurred by the department in providing notice under this subsection to the entity.

(d) Any returned receipts received by the clerk from notices of the hearing and copies of the order shall be maintained in the file on the proceedings under this chapter.

Sec. 4. (a) If the state establishes that the person who is the subject of an expunction order is still subject to conviction for an offense arising out of the transaction for which the person was arrested because the statute of limitations has not run and there is reasonable cause to believe that the state may proceed against the person for the offense, the court may provide in its expunction order that the law enforcement agency and the prosecuting attorney responsible for investigating the offense may retain any records and files that are necessary to the investigation.

(a-1) The court shall provide in its expunction order that the applicable law enforcement agency and prosecuting attorney may retain the arrest records and files of any person who becomes entitled to an expunction of

those records and files based on the expiration of a period described by Article 55.01(a)(2)(A)(i)(a), (b), or (c), but without the certification of the prosecuting attorney as described by Article 55.01(a)(2)(A)(i)(d).

(a-2) In the case of a person who is the subject of an expunction order on the basis of an acquittal, the court may provide in the expunction order that the law enforcement agency and the prosecuting attorney retain records and files if:

(1) the records and files are necessary to conduct a subsequent investigation and prosecution of a person other than the person who is the subject of the expunction order; or

(2) the state establishes that the records and files are necessary for use in:

(A) another criminal case, including a prosecution, motion to adjudicate or revoke community supervision, parole revocation hearing, mandatory supervision revocation hearing, punishment hearing, or bond hearing; or

(B) a civil case, including a civil suit or suit for possession of or access to a child.

(b) Unless the person who is the subject of the expunction order is again arrested for or charged with an offense arising out of the transaction for which the person was arrested or unless the court provides for the retention of records and files under Subsection (a-1) or (a-2), the provisions of Articles 55.03 and 55.04 apply to files and records retained under this section.

Sec. 5. (a) Except as provided by Subsections (f) and (g), on receipt of the order, each official or agency or other governmental entity named in the order shall:

(1) return all records and files that are subject to the expunction order to the court or in cases other than those described by Section 1a, if removal is impracticable, obliterate all portions of the record or file that identify the person who is the subject of the order and notify the court of its action; and

(2) delete from its public records all index references to the records and files that are subject to the expunction order.

(b) Except in the case of a person who is the subject of an expunction order on the basis of an acquittal or an expunction order based on an entitlement under Article 55.01(d), the court may give the person who is the subject of the order all records and files returned to it pursuant to its order.

(c) Except in the case of a person who is the subject of an expunction order based on an entitlement under Article 55.01(d) and except as provided by Subsection (g), if an order of expunction is issued under this article, the court records concerning expunction proceedings are not open for inspection by anyone except the person who is the subject of the order unless the order permits retention of a record under Section 4 of this article and the person is again arrested for or charged with an offense arising out of the transaction for which the person was arrested or unless the court provides for the retention of records and files under Section 4(a) of this article. The clerk of the court issuing the order shall obliterate all public references to the proceeding and maintain the files or other records in an area not open to inspection.

(d) Except in the case of a person who is the subject of an expunction order on the basis of an acquittal or an expunction order based on an entitlement under Article 55.01(d) and except as provided by Subsection (g), the clerk of the court shall destroy all the files or other records maintained under Subsection (c) not earlier than the 60th day after the date the order of expunction is issued or later than the first anniversary of that date unless the records or files were released under Subsection (b).

(d-1) Not later than the 30th day before the date on which the clerk destroys files or other records under Subsection (d), the clerk shall provide notice by mail, electronic mail, or facsimile transmission to the attorney representing the state in the expunction proceeding. If the attorney representing the state in the expunction proceeding objects to the destruction not later than the 20th day after receiving notice under this subsection, the clerk may not destroy the files or other records until the first anniversary of the date the order of expunction is issued or the first business day after that date.

(e) The clerk shall certify to the court the destruction of files or other records under Subsection (d) of this section.

(f) On receipt of an order granting expunction to a person entitled to expunction under Article 55.01(d), each official, agency, or other governmental entity named in the order:

(1) shall:

(A) obliterate all portions of the record or file that identify the petitioner; and

(B) substitute for all obliterated portions of the record or file any available information that identifies the person arrested; and

(2) may not return the record or file or delete index references to the record or file.

(g) Notwithstanding any other provision in this section, an official, agency, court, or other entity may retain receipts, invoices, vouchers, or similar records of financial transactions that arose from the expunction proceeding or prosecution of the underlying criminal cause in accordance with internal financial control procedures. An official, agency, court, or other entity that retains records under this subsection shall obliterate all portions of the record or the file that identify the person who is the subject of the expunction order.

HISTORY: Enacted by Acts 1977, 65th Leg., ch. 747 (S.B. 471), § 1, effective August 29, 1977; am. Acts 1979, 66th Leg., ch. 604 (S.B. 374), § 1, effective August 27, 1979; am. Acts 1989, 71st Leg., ch. 803 (H.B. 526), §§ 2—4, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 380 (H.B. 1548), § 1, effective August 26, 1991; am. Acts 1999, 76th Leg., ch. 1236 (S.B. 840), § 2, effective August 30, 1999; am. Acts 2001, 77th Leg., ch. 945 (S.B. 1047), §§ 2, 3, effective June 14, 2001; am. Acts 2001, 77th Leg., ch. 1021 (H.B. 1323), § 2, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 339 (S.B. 566), §§ 2—4, 7, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 404 (H.B. 171), §§ 1, 2, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1126 (H.B. 2725), § 1, effective June 20, 2003; am. Acts 2003, 78th Leg., ch. 1236 (S.B. 1477), § 2, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 177 (H.B. 413), §§ 1, 2, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 4.006, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 1309 (H.B. 3093), § 2, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 120 (S.B. 1106), § 1, effective September 1,

2007; am. Acts 2007, 80th Leg., ch. 1017 (H.B. 1303), §§ 1—4, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 6.002, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 278 (H.B. 1573), §§ 3, 4, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 690 (H.B. 351), §§ 2—6, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 894 (S.B. 462), § 2, effective September 1, 2011; am. Acts 2017, 85th Leg., ch. 693 (H.B. 322), § 2, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 1058 (H.B. 2931), § 4.04, effective January 1, 2019; am. Acts 2017, 85th Leg., ch. 1062 (H.B. 3147), § 2, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 1149 (H.B. 557), §§ 2—4, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 20, effective June 14, 2019.

CHAPTER 59

Forfeiture of Contraband

Article 59.06.	Disposition of Forfeited Property. [Effective until January 1, 2021]
59.06.	Disposition of Forfeited Property. [Effective January 1, 2021]

Art. 59.06. Disposition of Forfeited Property. [Effective until January 1, 2021]

(a) Except as provided by Subsection (k), all forfeited property shall be administered by the attorney representing the state, acting as the agent of the state, in accordance with accepted accounting practices and with the provisions of any local agreement entered into between the attorney representing the state and law enforcement agencies. If a local agreement has not been executed, the property shall be sold on the 75th day after the date of the final judgment of forfeiture at public auction under the direction of the county sheriff, after notice of public auction as provided by law for other sheriff's sales. The proceeds of the sale shall be distributed as follows:

(1) to any interest holder to the extent of the interest holder's nonforfeitable interest;

(2) after any distributions under Subdivision (1), if the Title IV-D agency has filed a child support lien in the forfeiture proceeding, to the Title IV-D agency in an amount not to exceed the amount of child support arrearages identified in the lien; and

(3) the balance, if any, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f) and, after that deduction, the deduction of storage and disposal costs, to be deposited not later than the 30th day after the date of the sale in the state treasury to the credit of the general revenue fund.

(b) If a local agreement exists between the attorney representing the state and law enforcement agencies, the attorney representing the state may transfer the property to law enforcement agencies to maintain, repair, use, and operate the property for official purposes if the property is free of any interest of an interest holder. The agency receiving the forfeited property may purchase the interest of an interest holder so that the property can be released for use by the agency. The agency receiving the forfeited property may maintain, repair, use, and operate the property with money appropriated for current operations. If the property is a motor vehicle subject to registration under the motor vehicle registration laws of this state, the agency receiving the forfeited vehicle is considered to be

the purchaser and the certificate of title shall issue to the agency. A law enforcement agency to which property is transferred under this subsection at any time may transfer or loan the property to any other municipal or county agency, a groundwater conservation district governed by Chapter 36, Water Code, or a school district for the use of that agency or district. A municipal or county agency, a groundwater conservation district, or a school district to which a law enforcement agency loans a motor vehicle under this subsection shall maintain any automobile insurance coverage for the vehicle that is required by law.

(b-1) If a loan is made by a sheriff's office or by a municipal police department, the commissioners court of the county in which the sheriff has jurisdiction or the governing body of the municipality in which the department has jurisdiction, as applicable, may revoke the loan at any time by notifying the receiving agency or district, by mail, that the receiving agency or district must return the loaned vehicle to the loaning agency before the seventh day after the date the receiving agency or district receives the notice.

(b-2) An agency that loans property under this article shall:

- (1) keep a record of the loan, including the name of the agency or district to which the vehicle was loaned, the fair market value of the vehicle, and where the receiving agency or district will use the vehicle; and
- (2) update the record when the information relating to the vehicle changes.

(c) If a local agreement exists between the attorney representing the state and law enforcement agencies, all money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, shall be deposited, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f), according to the terms of the agreement into one or more of the following funds:

- (1) a special fund in the county treasury for the benefit of the office of the attorney representing the state, to be used by the attorney solely for the official purposes of his office;
- (2) a special fund in the municipal treasury if distributed to a municipal law enforcement agency, to be used solely for law enforcement purposes;
- (3) a special fund in the county treasury if distributed to a county law enforcement agency, to be used solely for law enforcement purposes; or
- (4) a special fund in the state law enforcement agency if distributed to a state law enforcement agency, to be used solely for law enforcement purposes.

(c-1) Notwithstanding Subsection (a), the attorney representing the state and special rangers of the Texas and Southwestern Cattle Raisers Association who meet the requirements of Article 2.125 may enter into a local agreement that allows the attorney representing the state to transfer proceeds from the sale of forfeited property described by Subsection (c), after the deduction of court costs as described by that subsection, to a special fund established for the special rangers. Proceeds transferred under this subsection must be used by the special rangers solely for law enforcement purposes. Any expenditures of the proceeds are subject to the audit provisions established under this article.

(c-2) Any postjudgment interest from money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, that are deposited in an interest-bearing bank account under Subsection (c) shall be used for the same purpose as the principal.

(c-3) Notwithstanding Subsection (a), with respect to forfeited property seized in connection with a violation of Chapter 481, Health and Safety Code (Texas Controlled Substances Act), by a peace officer employed by the Department of Public Safety, in a proceeding under Article 59.05 in which a default judgment is rendered in favor of the state, the attorney representing the state shall enter into a local agreement with the department that allows the attorney representing the state either to:

(1) transfer forfeited property to the department to maintain, repair, use, and operate for official purposes in the manner provided by Subsection (b); or

(2) allocate proceeds from the sale of forfeited property described by Subsection (c), after the deduction of court costs as described by that subsection, in the following proportions:

(A) 40 percent to a special fund in the department to be used solely for law enforcement purposes;

(B) 30 percent to a special fund in the county treasury for the benefit of the office of the attorney representing the state, to be used by the attorney solely for the official purposes of the attorney's office; and

(C) 30 percent to the general revenue fund.

(c-4) Notwithstanding Subsections (a) and (c-3), with respect to forfeited property seized in connection with a violation of Chapter 481, Health and Safety Code (Texas Controlled Substances Act), by the Department of Public Safety concurrently with any other law enforcement agency, in a proceeding under Article 59.05 in which a default judgment is rendered in favor of the state, the attorney representing the state may allocate property or proceeds in accordance with a memorandum of understanding between the law enforcement agencies and the attorney representing the state.

(d) Proceeds awarded under this chapter to a law enforcement agency or to the attorney representing the state may be spent by the agency or the attorney after a budget for the expenditure of the proceeds has been submitted to the commissioners court or governing body of the municipality. The budget must be detailed and clearly list and define the categories of expenditures, but may not list details that would endanger the security of an investigation or prosecution. Expenditures are subject to the audit and enforcement provisions established under this chapter. A commissioners court or governing body of a municipality may not use the existence of an award to offset or decrease total salaries, expenses, and allowances that the agency or the attorney receives from the commissioners court or governing body at or after the time the proceeds are awarded.

(d-1) The head of a law enforcement agency or an attorney representing the state may not use proceeds or property received under this chapter to:

(1) contribute to a political campaign;

(2) make a donation to any entity, except as provided by Subsection (d-2);

(3) pay expenses related to the training or education of any member of the judiciary;

(4) pay any travel expenses related to attendance at training or education seminars if the expenses violate generally applicable restrictions established by the commissioners court or governing body of the municipality, as applicable;

(5) purchase alcoholic beverages;

(6) make any expenditure not approved by the commissioners court or governing body of the municipality, as applicable, if the head of a law enforcement agency or attorney representing the state holds an elective office and:

(A) the deadline for filing an application for a place on the ballot as a candidate for reelection to that office in the general primary election has passed and the person did not file an application for a place on that ballot; or

(B) during the person's current term of office, the person was a candidate in a primary, general, or runoff election for reelection to that office and was not the prevailing candidate in that election; or

(7) increase a salary, expense, or allowance for an employee of the law enforcement agency or attorney representing the state who is budgeted by the commissioners court or governing body of the municipality unless the commissioners court or governing body first approves the increase.

(d-2) The head of a law enforcement agency or an attorney representing the state may use as an official purpose of the agency or attorney proceeds or property received under this chapter to make a donation to an entity that assists in:

(1) the detection, investigation, or prosecution of:

(A) criminal offenses; or

(B) instances of abuse, as defined by Section 261.001, Family Code;

(2) the provision of:

(A) mental health, drug, or rehabilitation services; or

(B) services for victims or witnesses of criminal offenses or instances of abuse described by Subdivision (1); or

(3) the provision of training or education related to duties or services described by Subdivision (1) or (2).

(d-3) Except as otherwise provided by this article, an expenditure of proceeds or property received under this chapter is considered to be for a law enforcement purpose if the expenditure is made for an activity of a law enforcement agency that relates to the criminal and civil enforcement of the laws of this state, including an expenditure made for:

(1) equipment, including vehicles, computers, firearms, protective body armor, furniture, software, uniforms, and maintenance equipment;

(2) supplies, including office supplies, mobile phone and data account fees for employees, and Internet services;

(3) investigative and training-related travel expenses, including payment for hotel rooms, airfare, meals, rental of and fuel for a motor vehicle, and parking;

(4) conferences and training expenses, including fees and materials;

(5) investigative costs, including payments to informants and lab expenses;

(6) crime prevention and treatment programs;

(7) facility costs, including building purchase, lease payments, remodeling and renovating, maintenance, and utilities;

(8) witness-related costs, including travel and security; and

(9) audit costs and fees, including audit preparation and professional fees.

(d-4) Except as otherwise provided by this article, an expenditure of proceeds or property received under this chapter is considered to be for an official purpose of an attorney's office if the expenditure is made for an activity of an attorney or office of an attorney representing the state that relates to the preservation, enforcement, or administration of the laws of this state, including an expenditure made for:

(1) equipment, including vehicles, computers, visual aid equipment for litigation, firearms, body armor, furniture, software, and uniforms;

(2) supplies, including office supplies, legal library supplies and access fees, mobile phone and data account fees for employees, and Internet services;

(3) prosecution and training-related travel expenses, including payment for hotel rooms, airfare, meals, rental of and fuel for a motor vehicle, and parking;

(4) conferences and training expenses, including fees and materials;

(5) investigative costs, including payments to informants and lab expenses;

(6) crime prevention and treatment programs;

(7) facility costs, including building purchase, lease payments, remodeling and renovating, maintenance, and utilities;

(8) legal fees, including court costs, witness fees, and related costs, including travel and security, audit costs, and professional fees; and

(9) state bar and legal association dues.

(e) On the sale of contraband under this article, the appropriate state agency shall issue a certificate of title to the recipient if a certificate of title is required for the property by other law.

(f) A final judgment of forfeiture under this chapter perfects the title of the state to the property as of the date that the contraband was seized or the date the forfeiture action was filed, whichever occurred first, except that if the property forfeited is real property, the title is perfected as of the date a notice of lis pendens is filed on the property.

(g) (1) All law enforcement agencies and attorneys representing the state who receive proceeds or property under this chapter shall account for the seizure, forfeiture, receipt, and specific expenditure of all the proceeds and property in an audit, which is to be performed annually by the commissioners court or governing body of a municipality, as appropriate. The annual period of the audit for a law enforcement agency is the fiscal year of the appropriate county or municipality and the annual period for an attorney representing the state is the

state fiscal year. The audit must be completed on a form provided by the attorney general and must include a detailed report and explanation of all expenditures, including salaries and overtime pay, officer training, investigative equipment and supplies, and other items. Certified copies of the audit shall be delivered by the law enforcement agency or attorney representing the state to the attorney general not later than the 60th day after the date on which the annual period that is the subject of the audit ends.

(2) If a copy of the audit is not delivered to the attorney general within the period required by Subdivision (1), within five days after the end of the period the attorney general shall notify the law enforcement agency or the attorney representing the state of that fact. On a showing of good cause, the attorney general may grant an extension permitting the agency or attorney to deliver a copy of the audit after the period required by Subdivision (1) and before the 76th day after the date on which the annual period that is the subject of the audit ends. If the law enforcement agency or the attorney representing the state fails to establish good cause for not delivering the copy of the audit within the period required by Subdivision (1) or fails to deliver a copy of an audit within the extension period, the attorney general shall notify the comptroller of that fact.

(3) On notice under Subdivision (2), the comptroller shall perform the audit otherwise required by Subdivision (1). At the conclusion of the audit, the comptroller shall forward a copy of the audit to the attorney general. The law enforcement agency or attorney representing the state is liable to the comptroller for the costs of the comptroller in performing the audit.

(h) As a specific exception to the requirement of Subdivisions (1)—(3) of Subsection (c) of this article that the funds described by those subdivisions be used only for the official purposes of the attorney representing the state or for law enforcement purposes, on agreement between the attorney representing the state or the head of a law enforcement agency and the governing body of a political subdivision, the attorney representing the state or the head of the law enforcement agency shall comply with the request of the governing body to deposit not more than a total of 10 percent of the gross amount credited to the attorney's or agency's fund into the treasury of the political subdivision. The governing body of the political subdivision shall, by ordinance, order, or resolution, use funds received under this subsection for:

(1) nonprofit programs for the prevention of drug abuse;

(2) nonprofit chemical dependency treatment facilities licensed under Chapter 464, Health and Safety Code;

(3) nonprofit drug and alcohol rehabilitation or prevention programs administered or staffed by professionals designated as qualified and credentialed by the Texas Commission on Alcohol and Drug Abuse; or

(4) financial assistance as described by Subsection (o).

(i) The governing body of a political subdivision may not use funds received under this subchapter for programs

or facilities listed under Subsections (h)(1)—(3) if an officer of or member of the Board of Directors of the entity providing the program or facility is related to a member of the governing body, the attorney representing the state, or the head of the law enforcement agency within the third degree by consanguinity or the second degree by affinity.

(j) As a specific exception to Subdivision (4) of Subsection (c) of this article, the director of a state law enforcement agency may use not more than 10 percent of the amount credited to the special fund of the agency under that subdivision for the prevention of drug abuse and the treatment of persons with drug-related problems.

(k) (1) The attorney for the state shall transfer all forfeited property that is income from, or acquired with the income from, a movie, book, magazine article, tape recording, phonographic record, radio or television presentation, telephone service, electronic media format, including an Internet website, or live entertainment in which a crime is reenacted to the attorney general.

(2) The attorney for the state shall transfer to the attorney general all income from the sale of tangible property the value of which is increased by the notoriety gained from the conviction of an offense by the person accused or convicted of the crime, minus the deduction authorized by this subdivision. The attorney for the state shall determine the fair market value of property that is substantially similar to the property that was sold but that has not been increased in value by notoriety and deduct that amount from the proceeds of the sale. After transferring income to the attorney general, the attorney for the state shall transfer the remainder of the proceeds of the sale to the owner of the property. The attorney for the state, the attorney general, or a person who may be entitled to claim money from the escrow account described by Subdivision (3) in satisfaction of a claim may at any time bring an action to enjoin the waste of income described by this subdivision.

(3) The attorney general shall deposit the money or proceeds from the sale of the property into an escrow account. The money in the account is available to satisfy a judgment against the person who committed the crime in favor of a victim of the crime if the judgment is for damages incurred by the victim caused by the commission of the crime. The attorney general shall transfer the money in the account that has not been ordered paid to a victim in satisfaction of a judgment to the compensation to victims of crime fund on the fifth anniversary of the date the account was established. In this subsection, "victim" has the meaning assigned by Article 56B.003.

(l) A law enforcement agency that, or an attorney representing the state who, does not receive proceeds or property under this chapter during an annual period as described by Subsection (g) shall, not later than the 30th day after the date on which the annual period ends, report to the attorney general that the agency or attorney, as appropriate, did not receive proceeds or property under this chapter during the annual period.

(m) As a specific exception to Subdivisions (1)—(3) of Subsection (c), a law enforcement agency or attorney representing the state may use proceeds received under this chapter to contract with a person or entity to prepare an audit as required by Subsection (g).

(n) As a specific exception to Subsection (c)(2) or (3), a local law enforcement agency may transfer not more than a total of 10 percent of the gross amount credited to the agency's fund to a separate special fund in the treasury of the political subdivision. The agency shall administer the separate special fund, and expenditures from the fund are at the sole discretion of the agency and may be used only for financial assistance as described by Subsection (o).

(o) The governing body of a political subdivision or a local law enforcement agency may provide financial assistance under Subsection (h)(4) or (n) only to a person who is a Texas resident, who plans to enroll or is enrolled at an institution of higher education in an undergraduate degree or certificate program in a field related to law enforcement, and who plans to return to that locality to work for the political subdivision or the agency in a field related to law enforcement. To ensure the promotion of a law enforcement purpose of the political subdivision or the agency, the governing body of the political subdivision or the agency shall impose other reasonable criteria related to the provision of this financial assistance, including a requirement that a recipient of the financial assistance work for a certain period of time for the political subdivision or the agency in a field related to law enforcement and including a requirement that the recipient sign an agreement to perform that work for that period of time. In this subsection, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(p) Notwithstanding Subsection (a), and to the extent necessary to protect the state's ability to recover amounts wrongfully obtained by the owner of the property and associated damages and penalties to which the affected health care program may otherwise be entitled by law, the attorney representing the state shall transfer to the governmental entity administering the affected health care program all forfeited property defined as contraband under Article 59.01(2)(B)(vi). If the forfeited property consists of property other than money or negotiable instruments, the attorney representing the state may, with the consent of the governmental entity administering the affected health care program, sell the property and deliver to the governmental entity administering the affected health care program the proceeds from the sale, minus costs attributable to the sale. The sale must be conducted in a manner that is reasonably expected to result in receiving the fair market value for the property.

(q) (1) Notwithstanding any other provision of this article, a multicounty drug task force, or a county or municipality participating in the task force, that is not established in accordance with Section 362.004, Local Government Code, or that fails to comply with the policies and procedures established by the Department of Public Safety under that section, and that participates in the seizure of contraband shall forward to the comptroller all proceeds received by the task force from the forfeiture of the contraband. The comptroller shall deposit the proceeds in the state treasury to the credit of the general revenue fund.

(2) The attorney general shall ensure the enforcement of Subdivision (1) by filing any necessary legal proceedings in the county in which the contraband is forfeited or in Travis County.

(r) As a specific exception to Subsection (c)(2), (3), or (4), a law enforcement agency may transfer not more than 10 percent of the gross amount credited to the agency's fund to a separate special fund established in the treasury of the political subdivision or maintained by the state law enforcement agency, as applicable. The law enforcement agency shall administer the separate special fund. Interest received from the investment of money in the fund shall be credited to the fund. The agency may use money in the fund only to provide scholarships to children of peace officers who were employed by the agency or by another law enforcement agency with which the agency has overlapping geographic jurisdiction and who were killed in the line of duty. Scholarships under this subsection may be used only to pay the costs of attendance at an institution of higher education or private or independent institution of higher education, including tuition and fees and costs for housing, books, supplies, transportation, and other related personal expenses. In this subsection, "institution of higher education" and "private or independent institution of higher education" have the meanings assigned by Section 61.003, Education Code.

(s) Not later than April 30 of each year, the attorney general shall develop a report based on information submitted by law enforcement agencies and attorneys representing the state under Subsection (g) detailing the total amount of funds forfeited, or credited after the sale of forfeited property, in this state in the preceding calendar year. The attorney general shall maintain in a prominent location on the attorney general's publicly accessible Internet website a link to the most recent annual report developed under this subsection.

(t) (1) This subsection applies only to contraband for which forfeiture is authorized with respect to an offense under Section 20.05, 20.06, 20.07, 43.04, or 43.05 or Chapter 20A, Penal Code.

(2) Notwithstanding any other provision of this article, the gross amount credited to the special fund of the office of the attorney representing the state or of a law enforcement agency under Subsection (c) from the forfeiture of contraband described by Subdivision (1) shall be:

(A) used to provide direct victim services by the victim services division or other similar division of the office of the attorney representing the state or of a law enforcement agency, as applicable; or

(B) used by the office of the attorney representing the state or of the law enforcement agency to cover the costs of a contract with a local nonprofit organization to provide direct services to crime victims.

(3) An expenditure of money in the manner required by this subsection is considered to be for an official purpose of the office of the attorney representing the state or for a law enforcement purpose, as applicable.

HISTORY: Enacted by Acts 1989, 71st Leg., 1st C.S., ch. 12 (H.B. 65), § 1, effective October 18, 1989; am. Acts 1991, 72nd Leg., ch. 312 (H.B. 1185), §§ 1, 2, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 780 (H.B. 605), §§ 3, 4, effective September 1, 1993; am. Acts 1993, 73rd Leg., ch. 814 (H.B. 2766), § 1, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(112), effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 975 (H.B. 2257), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 481 (S.B. 1486), §§ 1, 2, effective

September 1, 1999; am. Acts 1999, 76th Leg., ch. 582 (S.B. 579), § 2, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 707 (H.B. 855), § 1, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 124 (S.B. 795), § 2, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 929 (S.B. 563), § 3, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.142, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 257 (H.B. 1743), § 18, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 428 (H.B. 406), § 2, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 556 (H.B. 1239), § 4, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 120 (S.B. 1106), § 2, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 446 (H.B. 195), § 1, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 187 (H.B. 2062), § 1, effective May 27, 2009; am. Acts 2009, 81st Leg., ch. 941 (H.B. 3140), § 1, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 508 (H.B. 1674), § 23, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 1321 (S.B. 316), § 2, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 157 (S.B. 878), § 1, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1357 (S.B. 1451), § 4, effective September 1, 2013; am. Acts 2019, 86th Leg., ch. 381 (H.B. 2894), § 4, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 412 (H.B. 2613), § 3, effective September 1, 2019.

Art. 59.06. Disposition of Forfeited Property. [Effective January 1, 2021]

(a) Except as provided by Subsection (k), all forfeited property shall be administered by the attorney representing the state, acting as the agent of the state, in accordance with accepted accounting practices and with the provisions of any local agreement entered into between the attorney representing the state and law enforcement agencies. If a local agreement has not been executed, the property shall be sold on the 75th day after the date of the final judgment of forfeiture at public auction under the direction of the county sheriff, after notice of public auction as provided by law for other sheriff's sales. The proceeds of the sale shall be distributed as follows:

- (1) to any interest holder to the extent of the interest holder's nonforfeitable interest;
- (2) after any distributions under Subdivision (1), if the Title IV-D agency has filed a child support lien in the forfeiture proceeding, to the Title IV-D agency in an amount not to exceed the amount of child support arrearages identified in the lien; and
- (3) the balance, if any, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f) and, after that deduction, the deduction of storage and disposal costs, to be deposited not later than the 30th day after the date of the sale in the state treasury to the credit of the general revenue fund.

(b) If a local agreement exists between the attorney representing the state and law enforcement agencies, the attorney representing the state may transfer the property to law enforcement agencies to maintain, repair, use, and operate the property for official purposes if the property is free of any interest of an interest holder. The agency receiving the forfeited property may purchase the interest of an interest holder so that the property can be released for use by the agency. The agency receiving the forfeited property may maintain, repair, use, and operate the property with money appropriated for current operations. If the property is a motor vehicle subject to registration under the motor vehicle registration laws of this state, the agency receiving the forfeited vehicle is considered to be the purchaser and the certificate of title shall issue to the

agency. A law enforcement agency to which property is transferred under this subsection at any time may transfer or loan the property to any other municipal or county agency, a groundwater conservation district governed by Chapter 36, Water Code, or a school district for the use of that agency or district. A municipal or county agency, a groundwater conservation district, or a school district to which a law enforcement agency loans a motor vehicle under this subsection shall maintain any automobile insurance coverage for the vehicle that is required by law.

(b-1) If a loan is made by a sheriff's office or by a municipal police department, the commissioners court of the county in which the sheriff has jurisdiction or the governing body of the municipality in which the department has jurisdiction, as applicable, may revoke the loan at any time by notifying the receiving agency or district, by mail, that the receiving agency or district must return the loaned vehicle to the loaning agency before the seventh day after the date the receiving agency or district receives the notice.

(b-2) An agency that loans property under this article shall:

- (1) keep a record of the loan, including the name of the agency or district to which the vehicle was loaned, the fair market value of the vehicle, and where the receiving agency or district will use the vehicle; and
- (2) update the record when the information relating to the vehicle changes.

(c) If a local agreement exists between the attorney representing the state and law enforcement agencies, all money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, shall be deposited, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f), according to the terms of the agreement into one or more of the following funds:

- (1) a special fund in the county treasury for the benefit of the office of the attorney representing the state, to be used by the attorney solely for the official purposes of his office;
- (2) a special fund in the municipal treasury if distributed to a municipal law enforcement agency, to be used solely for law enforcement purposes;
- (3) a special fund in the county treasury if distributed to a county law enforcement agency, to be used solely for law enforcement purposes; or
- (4) a special fund in the state law enforcement agency if distributed to a state law enforcement agency, to be used solely for law enforcement purposes.

(c-1) Notwithstanding Subsection (a), the attorney representing the state and special rangers of the Texas and Southwestern Cattle Raisers Association who meet the requirements of Article 2.125 may enter into a local agreement that allows the attorney representing the state to transfer proceeds from the sale of forfeited property described by Subsection (c), after the deduction of court costs as described by that subsection, to a special fund established for the special rangers. Proceeds transferred under this subsection must be used by the special rangers solely for law enforcement purposes. Any expenditures of the proceeds are subject to the audit provisions established under this article.

(c-2) Any postjudgment interest from money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, that are deposited in an interest-bearing bank account under Subsection (c) shall be used for the same purpose as the principal.

(c-3) Notwithstanding Subsection (a), with respect to forfeited property seized in connection with a violation of Chapter 481, Health and Safety Code (Texas Controlled Substances Act), by a peace officer employed by the Department of Public Safety, in a proceeding under Article 59.05 in which a default judgment is rendered in favor of the state, the attorney representing the state shall enter into a local agreement with the department that allows the attorney representing the state either to:

(1) transfer forfeited property to the department to maintain, repair, use, and operate for official purposes in the manner provided by Subsection (b); or

(2) allocate proceeds from the sale of forfeited property described by Subsection (c), after the deduction of court costs as described by that subsection, in the following proportions:

(A) 40 percent to a special fund in the department to be used solely for law enforcement purposes;

(B) 30 percent to a special fund in the county treasury for the benefit of the office of the attorney representing the state, to be used by the attorney solely for the official purposes of the attorney's office; and

(C) 30 percent to the general revenue fund.

(c-4) Notwithstanding Subsections (a) and (c-3), with respect to forfeited property seized in connection with a violation of Chapter 481, Health and Safety Code (Texas Controlled Substances Act), by the Department of Public Safety concurrently with any other law enforcement agency, in a proceeding under Article 59.05 in which a default judgment is rendered in favor of the state, the attorney representing the state may allocate property or proceeds in accordance with a memorandum of understanding between the law enforcement agencies and the attorney representing the state.

(d) Proceeds awarded under this chapter to a law enforcement agency or to the attorney representing the state may be spent by the agency or the attorney after a budget for the expenditure of the proceeds has been submitted to the commissioners court or governing body of the municipality. The budget must be detailed and clearly list and define the categories of expenditures, but may not list details that would endanger the security of an investigation or prosecution. Expenditures are subject to the audit and enforcement provisions established under this chapter. A commissioners court or governing body of a municipality may not use the existence of an award to offset or decrease total salaries, expenses, and allowances that the agency or the attorney receives from the commissioners court or governing body at or after the time the proceeds are awarded.

(d-1) The head of a law enforcement agency or an attorney representing the state may not use proceeds or property received under this chapter to:

(1) contribute to a political campaign;

(2) make a donation to any entity, except as provided by Subsection (d-2);

(3) pay expenses related to the training or education of any member of the judiciary;

(4) pay any travel expenses related to attendance at training or education seminars if the expenses violate generally applicable restrictions established by the commissioners court or governing body of the municipality, as applicable;

(5) purchase alcoholic beverages;

(6) make any expenditure not approved by the commissioners court or governing body of the municipality, as applicable, if the head of a law enforcement agency or attorney representing the state holds an elective office and:

(A) the deadline for filing an application for a place on the ballot as a candidate for reelection to that office in the general primary election has passed and the person did not file an application for a place on that ballot; or

(B) during the person's current term of office, the person was a candidate in a primary, general, or runoff election for reelection to that office and was not the prevailing candidate in that election; or

(7) increase a salary, expense, or allowance for an employee of the law enforcement agency or attorney representing the state who is budgeted by the commissioners court or governing body of the municipality unless the commissioners court or governing body first approves the increase.

(d-2) The head of a law enforcement agency or an attorney representing the state may use as an official purpose of the agency or attorney proceeds or property received under this chapter to make a donation to an entity that assists in:

(1) the detection, investigation, or prosecution of:

(A) criminal offenses; or

(B) instances of abuse, as defined by Section 261.001, Family Code;

(2) the provision of:

(A) mental health, drug, or rehabilitation services; or

(B) services for victims or witnesses of criminal offenses or instances of abuse described by Subdivision (1); or

(3) the provision of training or education related to duties or services described by Subdivision (1) or (2).

(d-3) Except as otherwise provided by this article, an expenditure of proceeds or property received under this chapter is considered to be for a law enforcement purpose if the expenditure is made for an activity of a law enforcement agency that relates to the criminal and civil enforcement of the laws of this state, including an expenditure made for:

(1) equipment, including vehicles, computers, firearms, protective body armor, furniture, software, uniforms, and maintenance equipment;

(2) supplies, including office supplies, mobile phone and data account fees for employees, and Internet services;

(3) investigative and training-related travel expenses, including payment for hotel rooms, airfare, meals, rental of and fuel for a motor vehicle, and parking;

(4) conferences and training expenses, including fees and materials;

(5) investigative costs, including payments to informants and lab expenses;

(6) crime prevention and treatment programs;

(7) facility costs, including building purchase, lease payments, remodeling and renovating, maintenance, and utilities;

(8) witness-related costs, including travel and security; and

(9) audit costs and fees, including audit preparation and professional fees.

(d-4) Except as otherwise provided by this article, an expenditure of proceeds or property received under this chapter is considered to be for an official purpose of an attorney's office if the expenditure is made for an activity of an attorney or office of an attorney representing the state that relates to the preservation, enforcement, or administration of the laws of this state, including an expenditure made for:

(1) equipment, including vehicles, computers, visual aid equipment for litigation, firearms, body armor, furniture, software, and uniforms;

(2) supplies, including office supplies, legal library supplies and access fees, mobile phone and data account fees for employees, and Internet services;

(3) prosecution and training-related travel expenses, including payment for hotel rooms, airfare, meals, rental of and fuel for a motor vehicle, and parking;

(4) conferences and training expenses, including fees and materials;

(5) investigative costs, including payments to informants and lab expenses;

(6) crime prevention and treatment programs;

(7) facility costs, including building purchase, lease payments, remodeling and renovating, maintenance, and utilities;

(8) legal fees, including court costs, witness fees, and related costs, including travel and security, audit costs, and professional fees; and

(9) state bar and legal association dues.

(e) On the sale of contraband under this article, the appropriate state agency shall issue a certificate of title to the recipient if a certificate of title is required for the property by other law.

(f) A final judgment of forfeiture under this chapter perfects the title of the state to the property as of the date that the contraband was seized or the date the forfeiture action was filed, whichever occurred first, except that if the property forfeited is real property, the title is perfected as of the date a notice of lis pendens is filed on the property.

(g) (1) All law enforcement agencies and attorneys representing the state who receive proceeds or property under this chapter shall account for the seizure, forfeiture, receipt, and specific expenditure of all the proceeds and property in an audit, which is to be performed annually by the commissioners court or governing body of a municipality, as appropriate. The annual period of the audit for a law enforcement agency is the fiscal year of the appropriate county or municipality and the annual period for an attorney representing the state is the

state fiscal year. The audit must be completed on a form provided by the attorney general and must include a detailed report and explanation of all expenditures, including salaries and overtime pay, officer training, investigative equipment and supplies, and other items. Certified copies of the audit shall be delivered by the law enforcement agency or attorney representing the state to the attorney general not later than the 60th day after the date on which the annual period that is the subject of the audit ends.

(2) If a copy of the audit is not delivered to the attorney general within the period required by Subdivision (1), within five days after the end of the period the attorney general shall notify the law enforcement agency or the attorney representing the state of that fact. On a showing of good cause, the attorney general may grant an extension permitting the agency or attorney to deliver a copy of the audit after the period required by Subdivision (1) and before the 76th day after the date on which the annual period that is the subject of the audit ends. If the law enforcement agency or the attorney representing the state fails to establish good cause for not delivering the copy of the audit within the period required by Subdivision (1) or fails to deliver a copy of an audit within the extension period, the attorney general shall notify the comptroller of that fact.

(3) On notice under Subdivision (2), the comptroller shall perform the audit otherwise required by Subdivision (1). At the conclusion of the audit, the comptroller shall forward a copy of the audit to the attorney general. The law enforcement agency or attorney representing the state is liable to the comptroller for the costs of the comptroller in performing the audit.

(h) As a specific exception to the requirement of Subdivisions (1)–(3) of Subsection (c) of this article that the funds described by those subdivisions be used only for the official purposes of the attorney representing the state or for law enforcement purposes, on agreement between the attorney representing the state or the head of a law enforcement agency and the governing body of a political subdivision, the attorney representing the state or the head of the law enforcement agency shall comply with the request of the governing body to deposit not more than a total of 10 percent of the gross amount credited to the attorney's or agency's fund into the treasury of the political subdivision. The governing body of the political subdivision shall, by ordinance, order, or resolution, use funds received under this subsection for:

(1) nonprofit programs for the prevention of drug abuse;

(2) nonprofit chemical dependency treatment facilities licensed under Chapter 464, Health and Safety Code;

(3) nonprofit drug and alcohol rehabilitation or prevention programs administered or staffed by professionals designated as qualified and credentialed by the Texas Commission on Alcohol and Drug Abuse; or

(4) financial assistance as described by Subsection (o).

(i) The governing body of a political subdivision may not use funds received under this subchapter for programs

or facilities listed under Subsections (h)(1)—(3) if an officer of or member of the Board of Directors of the entity providing the program or facility is related to a member of the governing body, the attorney representing the state, or the head of the law enforcement agency within the third degree by consanguinity or the second degree by affinity.

(j) As a specific exception to Subdivision (4) of Subsection (c) of this article, the director of a state law enforcement agency may use not more than 10 percent of the amount credited to the special fund of the agency under that subdivision for the prevention of drug abuse and the treatment of persons with drug-related problems.

(k) (1) The attorney for the state shall transfer all forfeited property that is income from, or acquired with the income from, a movie, book, magazine article, tape recording, phonographic record, radio or television presentation, telephone service, electronic media format, including an Internet website, or live entertainment in which a crime is reenacted to the attorney general.

(2) The attorney for the state shall transfer to the attorney general all income from the sale of tangible property the value of which is increased by the notoriety gained from the conviction of an offense by the person accused or convicted of the crime, minus the deduction authorized by this subdivision. The attorney for the state shall determine the fair market value of property that is substantially similar to the property that was sold but that has not been increased in value by notoriety and deduct that amount from the proceeds of the sale. After transferring income to the attorney general, the attorney for the state shall transfer the remainder of the proceeds of the sale to the owner of the property. The attorney for the state, the attorney general, or a person who may be entitled to claim money from the escrow account described by Subdivision (3) in satisfaction of a claim may at any time bring an action to enjoin the waste of income described by this subdivision.

(3) The attorney general shall deposit the money or proceeds from the sale of the property into an escrow account. The money in the account is available to satisfy a judgment against the person who committed the crime in favor of a victim of the crime if the judgment is for damages incurred by the victim caused by the commission of the crime. The attorney general shall transfer the money in the account that has not been ordered paid to a victim in satisfaction of a judgment to the compensation to victims of crime fund on the fifth anniversary of the date the account was established. In this subsection, “victim” has the meaning assigned by Article 56B.003.

(l) A law enforcement agency that, or an attorney representing the state who, does not receive proceeds or property under this chapter during an annual period as described by Subsection (g) shall, not later than the 30th day after the date on which the annual period ends, report to the attorney general that the agency or attorney, as appropriate, did not receive proceeds or property under this chapter during the annual period.

(m) As a specific exception to Subdivisions (1)—(3) of Subsection (c), a law enforcement agency or attorney representing the state may use proceeds received under this chapter to contract with a person or entity to prepare an audit as required by Subsection (g).

(n) As a specific exception to Subsection (c)(2) or (3), a local law enforcement agency may transfer not more than a total of 10 percent of the gross amount credited to the agency’s fund to a separate special fund in the treasury of the political subdivision. The agency shall administer the separate special fund, and expenditures from the fund are at the sole discretion of the agency and may be used only for financial assistance as described by Subsection (o).

(o) The governing body of a political subdivision or a local law enforcement agency may provide financial assistance under Subsection (h)(4) or (n) only to a person who is a Texas resident, who plans to enroll or is enrolled at an institution of higher education in an undergraduate degree or certificate program in a field related to law enforcement, and who plans to return to that locality to work for the political subdivision or the agency in a field related to law enforcement. To ensure the promotion of a law enforcement purpose of the political subdivision or the agency, the governing body of the political subdivision or the agency shall impose other reasonable criteria related to the provision of this financial assistance, including a requirement that a recipient of the financial assistance work for a certain period of time for the political subdivision or the agency in a field related to law enforcement and including a requirement that the recipient sign an agreement to perform that work for that period of time. In this subsection, “institution of higher education” has the meaning assigned by Section 61.003, Education Code.

(p) Notwithstanding Subsection (a), and to the extent necessary to protect the state’s ability to recover amounts wrongfully obtained by the owner of the property and associated damages and penalties to which the affected health care program may otherwise be entitled by law, the attorney representing the state shall transfer to the governmental entity administering the affected health care program all forfeited property defined as contraband under Article 59.01(2)(B)(vi). If the forfeited property consists of property other than money or negotiable instruments, the attorney representing the state may, with the consent of the governmental entity administering the affected health care program, sell the property and deliver to the governmental entity administering the affected health care program the proceeds from the sale, minus costs attributable to the sale. The sale must be conducted in a manner that is reasonably expected to result in receiving the fair market value for the property.

(q) (1) Notwithstanding any other provision of this article, a multicounty drug task force, or a county or municipality participating in the task force, that is not established in accordance with Section 362.004, Local Government Code, or that fails to comply with the policies and procedures established by the Department of Public Safety under that section, and that participates in the seizure of contraband shall forward to the comptroller all proceeds received by the task force from the forfeiture of the contraband. The comptroller shall deposit the proceeds in the state treasury to the credit of the general revenue fund.

(2) The attorney general shall ensure the enforcement of Subdivision (1) by filing any necessary legal proceedings in the county in which the contraband is forfeited or in Travis County.

(r) As a specific exception to Subsection (c)(2), (3), or (4), a law enforcement agency may transfer not more than 10 percent of the gross amount credited to the agency's fund to a separate special fund established in the treasury of the political subdivision or maintained by the state law enforcement agency, as applicable. The law enforcement agency shall administer the separate special fund. Interest received from the investment of money in the fund shall be credited to the fund. The agency may use money in the fund only to provide scholarships to children of peace officers who were employed by the agency or by another law enforcement agency with which the agency has overlapping geographic jurisdiction and who were killed in the line of duty. Scholarships under this subsection may be used only to pay the costs of attendance at an institution of higher education or private or independent institution of higher education, including tuition and fees and costs for housing, books, supplies, transportation, and other related personal expenses. In this subsection, "institution of higher education" and "private or independent institution of higher education" have the meanings assigned by Section 61.003, Education Code.

(s) Not later than April 30 of each year, the attorney general shall develop a report based on information submitted by law enforcement agencies and attorneys representing the state under Subsection (g) detailing the total amount of funds forfeited, or credited after the sale of forfeited property, in this state in the preceding calendar year. The attorney general shall maintain in a prominent location on the attorney general's publicly accessible Internet website a link to the most recent annual report developed under this subsection.

(t) (1) This subsection applies only to contraband for which forfeiture is authorized with respect to an offense under Section 20.05, 20.06, 20.07, 43.04, or 43.05 or Chapter 20A, Penal Code.

(2) Notwithstanding any other provision of this article, the gross amount credited to the special fund of the office of the attorney representing the state or of a law enforcement agency under Subsection (c) from the forfeiture of contraband described by Subdivision (1) shall be:

(A) used to provide direct victim services by the victim services division or other similar division of the office of the attorney representing the state or of a law enforcement agency, as applicable; or

(B) used by the office of the attorney representing the state or of the law enforcement agency to cover the costs of a contract with a local nonprofit organization to provide direct services to crime victims.

(3) An expenditure of money in the manner required by this subsection is considered to be for an official purpose of the office of the attorney representing the state or for a law enforcement purpose, as applicable.

HISTORY: Enacted by Acts 1989, 71st Leg., 1st C.S., ch. 12 (H.B. 65), § 1, effective October 18, 1989; am. Acts 1991, 72nd Leg., ch. 312 (H.B. 1185), §§ 1, 2, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 780 (H.B. 605), §§ 3, 4, effective September 1, 1993; am. Acts 1993, 73rd Leg., ch. 814 (H.B. 2766), § 1, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(112), effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 975 (H.B. 2257), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 481 (S.B. 1486), §§ 1, 2, effective

September 1, 1999; am. Acts 1999, 76th Leg., ch. 582 (S.B. 579), § 2, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 707 (H.B. 855), § 1, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 124 (S.B. 795), § 2, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 929 (S.B. 563), § 3, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.142, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 257 (H.B. 1743), § 18, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 428 (H.B. 406), § 2, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 556 (H.B. 1239), § 4, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 120 (S.B. 1106), § 2, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 446 (H.B. 195), § 1, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 187 (H.B. 2062), § 1, effective May 27, 2009; am. Acts 2009, 81st Leg., ch. 941 (H.B. 3140), § 1, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 508 (H.B. 1674), § 23, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 1321 (S.B. 316), § 2, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 157 (S.B. 878), § 1, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1357 (S.B. 1451), § 4, effective September 1, 2013; am. Acts 2019, 86th Leg., ch. 381 (H.B. 2894), § 4, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 412 (H.B. 2613), § 3, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 469 (H.B. 4173), § 2.19, effective January 1, 2021.

TITLE 2

CODE OF CRIMINAL PROCEDURE

CHAPTER 102

Costs Paid by Defendants [Effective until January 1, 2020]

Subchapter A

General Costs [Effective until January 1, 2020]

Article
102.006.

Fees in Expunction Proceedings.

Art. 102.006. Fees in Expunction Proceedings.

(a) In addition to any other fees required by other law and except as provided by Subsections (b) and (b-1), a petitioner seeking expunction of a criminal record in a district court shall pay the following fees:

- (1) the fee charged for filing an ex parte petition in a civil action in district court;
- (2) \$1 plus postage for each certified mailing of notice of the hearing date; and
- (3) \$2 plus postage for each certified mailing of certified copies of an order of expunction.

(a-1) In addition to any other fees required by other law and except as provided by Subsection (b), a petitioner seeking expunction of a criminal record in a justice court or a municipal court of record under Chapter 55 shall pay a fee of \$100 for filing an ex parte petition for expunction to defray the cost of notifying state agencies of orders of expunction under that chapter.

(b) The fees under Subsection (a) or the fee under Subsection (a-1), as applicable, shall be waived if the petitioner seeks expunction of a criminal record that relates to an arrest for an offense of which the person was acquitted, other than an acquittal for an offense described by Article 55.01(c), and the petition for expunction is filed not later than the 30th day after the date of the acquittal.

(b-1) The fees under Subsection (a) shall be waived if the petitioner is entitled to expunction:

(1) under Article 55.01(a)(2)(A)(ii)(a) after successful completion of a veterans treatment court program created under Chapter 124, Government Code, or former law; or

(2) under Article 55.01(a)(2)(A)(ii)(b) after successful completion of a mental health court program created under Chapter 125, Government Code, or former law.

(c) A court that grants a petition for expunction of a

criminal record may order that any fee, or portion of a fee, required to be paid under Subsection (a) be returned to the petitioner.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 269 (S.B. 854), § 1, effective September 1, 1985; am. Acts 2005, 79th Leg., ch. 886 (S.B. 1426), § 4, effective September 1, 2005; am. Acts 2009, 81st Leg., ch. 140 (S.B. 1224), § 1, effective September 1, 2009; am. Acts 2017, 85th Leg., ch. 693 (H.B. 322), § 3, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 1149 (H.B. 557), § 5, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 1212 (S.B. 562), §§ 21, 22, 23, effective June 14, 2019.

CIVIL PRACTICE AND REMEDIES CODE

TITLE 2

TRIAL, JUDGMENT, AND APPEAL

Subtitle

- A. General Provisions
- C. Judgments

SUBTITLE A

GENERAL PROVISIONS

CHAPTER 14

Inmate Litigation

Section

- 14.003. Dismissal of Claim.

Sec. 14.003. Dismissal of Claim.

(a) A court may dismiss a claim, either before or after service of process, if the court finds that:

- (1) the allegation of poverty in the affidavit or unsworn declaration is false;
- (2) the claim is frivolous or malicious; or
- (3) the inmate filed an affidavit or unsworn declaration required by this chapter that the inmate knew was false.

(b) In determining whether a claim is frivolous or malicious, the court may consider whether:

- (1) the claim's realistic chance of ultimate success is slight;
- (2) the claim has no arguable basis in law or in fact;
- (3) it is clear that the party cannot prove facts in support of the claim; or
- (4) the claim is substantially similar to a previous claim filed by the inmate because the claim arises from the same operative facts.

(c) In determining whether Subsection (a) applies, the court may hold a hearing. The hearing may be held before or after service of process, and it may be held on motion of the court, a party, or the clerk of the court.

(d) On the filing of a motion under Subsection (c), the court shall suspend discovery relating to the claim pending the hearing.

(e) A court that dismisses a claim brought by a person housed in a facility operated by or under contract with the department may notify the department of the dismissal and, on the court's own motion or the motion of any party or the clerk of the court, may advise the department that a mental health evaluation of the inmate may be appropriate.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 378 (H.B. 1343), § 2, effective June 8, 1995.

SUBTITLE C

JUDGMENTS

CHAPTER 31

Judgments

Section

- 31.004. Effect of Adjudication in Lower Trial Court.

Sec. 31.004. Effect of Adjudication in Lower Trial Court.

(a) A judgment or a determination of fact or law in a proceeding in a lower trial court is not res judicata and is not a basis for estoppel by judgment in a proceeding in a district court, except that a judgment rendered in a lower trial court is binding on the parties thereto as to recovery or denial of recovery.

(b) This section does not apply to a judgment in probate, guardianship, mental health, or other matter in which a lower trial court has exclusive subject matter jurisdiction on a basis other than the amount in controversy.

(c) For the purposes of this section, a "lower trial court" is a small claims court, a justice of the peace court, a county court, or a statutory county court.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 959 (S.B. 797), § 1, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 167 (S.B. 892), § 3.07(a), effective September 1, 1987.

TITLE 6

MISCELLANEOUS PROVISIONS

Chapter

- 137. Declaration for Mental Health Treatment
- 144. Destruction of Certain Records

CHAPTER 137

Declaration for Mental Health Treatment

Section

- 137.001. Definitions.
- 137.002. Persons Who May Execute Declaration for Mental Health Treatment; Period of Validity.
- 137.003. Execution and Witnesses; Execution and Acknowledgment Before Notary Public.
- 137.004. Health Care Provider to Act in Accordance with Declaration for Mental Health Treatment.
- 137.005. Limitation on Liability.
- 137.006. Discrimination Relating to Execution of Declaration for Mental Health Treatment.
- 137.007. Use and Effect of Declaration for Mental Health Treatment.
- 137.008. Disregard of Declaration for Mental Health Treatment.
- 137.009. Conflicting or Contrary Provisions.
- 137.010. Revocation.

Section
137.011. Form of Declaration for Mental Health Treatment.

Sec. 137.001. Definitions.

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, selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient.

(3) "Declaration for mental health treatment" means a document making a declaration of preferences or instructions regarding mental health treatment.

(4) "Emergency" means a situation in which it is immediately necessary to treat a patient to prevent:

(A) probable imminent death or serious bodily injury to the patient because the patient:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily injury to the patient; or

(ii) is behaving in a manner that indicates that the patient is unable to satisfy the patient's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts of the patient.

(5) "Health care provider" means an individual or facility licensed, certified, or otherwise authorized to administer health care or treatment, for profit or otherwise, in the ordinary course of business or professional practice and includes a physician or other health care provider, a residential care provider, or an inpatient mental health facility as defined by Section 571.003, Health and Safety Code.

(6) "Incapacitated" means that, in the opinion of the court in a guardianship proceeding under Title 3, Estates Code, or in a medication hearing under Section 574.106, Health and Safety Code, a person lacks the ability to understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment, and lacks the ability to make mental health treatment decisions because of impairment.

(7) "Mental health treatment" means electroconvulsive or other convulsive treatment, treatment of mental illness with psychoactive medication as defined by Section 574.101, Health and Safety Code, or emergency mental health treatment.

(8) "Principal" means a person who has executed a declaration for mental health treatment.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1318 (S.B. 972), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 464 (S.B. 1361), § 1, effective June 18, 1999; am. Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 22.009, effective September 1, 2017.

Sec. 137.002. Persons Who May Execute Declaration for Mental Health Treatment; Period of Validity.

(a) An adult who is not incapacitated may execute a declaration for mental health treatment. The preferences

or instructions may include consent to or refusal of mental health treatment.

(b) A declaration for mental health treatment is effective on execution as provided by this chapter. Except as provided by Subsection (c), a declaration for mental health treatment expires on the third anniversary of the date of its execution or when revoked by the principal, whichever is earlier.

(c) If the declaration for mental health treatment is in effect and the principal is incapacitated on the third anniversary of the date of its execution, the declaration remains in effect until the principal is no longer incapacitated.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1318 (S.B. 972), § 1, effective September 1, 1997.

Sec. 137.003. Execution and Witnesses; Execution and Acknowledgment Before Notary Public.

(a) A declaration for mental health treatment must be:

(1) signed by the principal in the presence of two or more subscribing witnesses; or

(2) signed by the principal and acknowledged before a notary public.

(b) A witness may not, at the time of execution, be:

(1) the principal's health or residential care provider or an employee of that provider;

(2) the operator of a community health care facility providing care to the principal or an employee of an operator of the facility;

(3) a person related to the principal by blood, marriage, or adoption;

(4) a person entitled to any part of the estate of the principal on the death of the principal under a will, trust, or deed in existence or who would be entitled to any part of the estate by operation of law if the principal died intestate; or

(5) a person who has a claim against the estate of the principal.

(c) For a witness's signature to be effective, the witness must sign a statement affirming that, at the time the declaration for mental health treatment was signed, the principal:

(1) appeared to be of sound mind to make a mental health treatment decision;

(2) has stated in the witness's presence that the principal was aware of the nature of the declaration for mental health treatment and that the principal was signing the document voluntarily and free from any duress; and

(3) requested that the witness serve as a witness to the principal's execution of the document.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1318 (S.B. 972), § 1, effective September 1, 1997; am. Acts 2017, 85th Leg., ch. 349 (H.B. 1787), §§ 1, 2, effective September 1, 2017.

Sec. 137.004. Health Care Provider to Act in Accordance with Declaration for Mental Health Treatment.

A physician or other health care provider shall act in accordance with the declaration for mental health treatment when the principal has been found to be incapacitated. A physician or other provider shall continue to seek

and act in accordance with the principal's informed consent to all mental health treatment decisions if the principal is capable of providing informed consent.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1318 (S.B. 972), § 1, effective September 1, 1997.

Sec. 137.005. Limitation on Liability.

(a) An attending physician, health or residential care provider, or person acting for or under an attending physician's or health or residential care provider's control is not subject to criminal or civil liability and has not engaged in professional misconduct for an act or omission if the act or omission is done in good faith under the terms of a declaration for mental health treatment.

(b) An attending physician, health or residential care provider, or person acting for or under an attending physician's or health or residential care provider's control does not engage in professional misconduct for:

(1) failure to act in accordance with a declaration for mental health treatment if the physician, provider, or other person:

(A) was not provided with a copy of the declaration; and

(B) had no knowledge of the declaration after a good faith attempt to learn of the existence of a declaration; or

(2) acting in accordance with a directive for mental health treatment after the directive has expired or has been revoked if the physician, provider, or other person does not have knowledge of the expiration or revocation.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1318 (S.B. 972), § 1, effective September 1, 1997.

Sec. 137.006. Discrimination Relating to Execution of Declaration for Mental Health Treatment.

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 declaration for mental health treatment;

(2) require a person to execute a declaration for mental health treatment 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;

(3) refuse health or residential care to a person solely because the person has executed a declaration for mental health treatment; or

(4) discharge the person solely because the person has or has not executed a declaration for mental health treatment.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1318 (S.B. 972), § 1, effective September 1, 1997.

Sec. 137.007. Use and Effect of Declaration for Mental Health Treatment.

(a) On being presented with a declaration for mental health treatment, a physician or other health care pro-

vider shall make the declaration a part of the principal's medical record. When acting in accordance with a declaration for mental health treatment, a physician or other health care provider shall comply with the declaration to the fullest extent possible.

(b) If a physician or other provider is unwilling at any time to comply with a declaration for mental health treatment, the physician or provider may withdraw from providing treatment consistent with the exercise of independent medical judgment and must promptly:

(1) make a reasonable effort to transfer care for the principal to a physician or provider who is willing to comply with the declaration;

(2) notify the principal, or principal's guardian, if appropriate, of the decision to withdraw; and

(3) record in the principal's medical record the notification and, if applicable, the name of the physician or provider to whom the principal is transferred.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1318 (S.B. 972), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 464 (S.B. 1361), § 2, effective June 18, 1999.

Sec. 137.008. Disregard of Declaration for Mental Health Treatment.

(a) A physician or other health care provider may subject the principal to mental health treatment in a manner contrary to the principal's wishes as expressed in a declaration for mental health treatment only:

(1) if the principal is under an order for temporary or extended mental health services under Section 574.034, 574.0345, 574.035, or 574.0355, Health and Safety Code, and treatment is authorized in compliance with Section 574.106, Health and Safety Code; or

(2) in case of an emergency when the principal's instructions have not been effective in reducing the severity of the behavior that has caused the emergency.

(b) A declaration for mental health treatment does not limit any authority provided by Chapter 573 or 574, Health and Safety Code:

(1) to take a person into custody; or

(2) to admit or retain a person in a mental health treatment facility.

(c) This section does not apply to the use of electroconvulsive treatment or other convulsive treatment.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1318 (S.B. 972), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 464 (S.B. 1361), § 3, effective June 18, 1999; am. Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 1, effective September 1, 2019.

Sec. 137.009. Conflicting or Contrary Provisions.

(a) Mental health treatment instructions contained in a declaration executed in accordance with this chapter supersede any contrary or conflicting instructions given by:

(1) a medical power of attorney under Subchapter D, Chapter 166, Health and Safety Code; or

(2) a guardian appointed under Title 3, Estates Code, after the execution of the declaration.

(b) Mental health treatment instructions contained in a declaration executed in accordance with this chapter shall be conclusive evidence of a declarant's preference in a medication hearing under Section 574.106, Health and Safety Code.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1318 (S.B. 972), § 1, effective September 1, 1997; am. Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 22.010, effective September 1, 2017.

Sec. 137.010. Revocation.

(a) A declaration for mental health treatment is revoked when a principal who is not incapacitated:

- (1) notifies a licensed or certified health or residential care provider of the revocation;
- (2) acts in a manner that demonstrates a specific intent to revoke the declaration; or
- (3) executes a later declaration for mental health treatment.

(b) A principal’s health or residential care provider who is informed of or provided with a revocation of a declaration for mental health treatment immediately shall:

- (1) record the revocation in the principal’s medical record; and
- (2) give notice of the revocation to any other health or residential care provider the provider knows to be responsible for the principal’s care.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1318 (S.B. 972), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 464 (S.B. 1361), § 4, effective June 18, 1999.

Sec. 137.011. Form of Declaration for Mental Health Treatment.

The declaration for mental health treatment must be in substantially the following form:

DECLARATION FOR MENTAL HEALTH TREATMENT

I, _____, being an adult of sound mind, wilfully and voluntarily make this declaration for mental health treatment to be followed if it is determined by a court that my ability to understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment, is impaired to such an extent that I lack the capacity to make mental health treatment decisions. “Mental health treatment” means electroconvulsive or other convulsive treatment, treatment of mental illness with psychoactive medication, and preferences regarding emergency mental health treatment.

(OPTIONAL PARAGRAPH) I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include:

PSYCHOACTIVE MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding psychoactive medications are as follows:

_____ I consent to the administration of the following medications:

_____ I do not consent to the administration of the following medications:

_____ I consent to the administration of a federal Food and Drug Administration approved medication that

was only approved and in existence after my declaration and that is considered in the same class of psychoactive medications as stated below:

Conditions or limitations: _____

CONVULSIVE TREATMENT

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding convulsive treatment are as follows:

_____ I consent to the administration of convulsive treatment.

_____ I do not consent to the administration of convulsive treatment.

Conditions or limitations: _____

PREFERENCES FOR EMERGENCY TREATMENT

In an emergency, I prefer the following treatment FIRST (circle one) Restraint/Seclusion/Medication.

In an emergency, I prefer the following treatment SECOND (circle one) Restraint/Seclusion/Medication.

In an emergency, I prefer the following treatment THIRD (circle one) Restraint/Seclusion/Medication.

_____ I prefer a male/female to administer restraint, seclusion, and/or medications.

Options for treatment prior to use of restraint, seclusion, and/or medications:

Conditions or limitations: _____

ADDITIONAL PREFERENCES OR INSTRUCTIONS

Conditions or limitations: _____

Signature of Principal/Date: _____

SIGNATURE ACKNOWLEDGED BEFORE NOTARY PUBLIC

State of Texas

County of _____

This instrument was acknowledged before me on _____ (date) by _____ (name of notary public).

NOTARY PUBLIC, State of Texas
Printed name of Notary Public:

My commission expires: _____

SIGNATURE IN PRESENCE OF TWO WITNESSES

STATEMENT OF WITNESSES

I declare under penalty of perjury that the principal’s name has been represented to me by the principal, that the principal signed or acknowledged this declaration in my presence, that I believe the principal to be of sound mind, that the principal has affirmed that the principal is aware of the nature of the document and is signing it voluntarily and free from duress, that the principal requested that I serve as witness to the principal’s execution of this document, and that I am not a provider of health or residential care to the principal, an employee of a provider

of health or residential care to the principal, an operator of a community health care facility providing care to the principal, or an employee of an operator of a community health care facility providing care to the principal.

I declare that I am not related to the principal by blood, marriage, or adoption and that to the best of my knowledge I am not entitled to and do not have a claim against any part of the estate of the principal on the death of the principal under a will or by operation of law.

Witness
Signature: _____
Print
Name: _____
Date: _____
Address: _____
Witness
Signature: _____
Print
Name: _____
Date: _____
Address: _____

NOTICE TO PERSON MAKING A DECLARATION FOR MENTAL HEALTH TREATMENT

This is an important legal document. It creates a declaration for mental health treatment. Before signing this document, you should know these important facts:

This document allows you to make decisions in advance about mental health treatment and specifically three types of mental health treatment: psychoactive medication, convulsive therapy, and emergency mental health treatment. The instructions that you include in this declaration will be followed only if a court believes that you are incapacitated to make treatment decisions. Otherwise, you will be considered able to give or withhold consent for the treatments.

This document will continue in effect for a period of three years unless you become incapacitated to participate in mental health treatment decisions. If this occurs, the directive will continue in effect until you are no longer incapacitated.

You have the right to revoke this document in whole or in part at any time you have not been determined to be incapacitated. **YOU MAY NOT REVOKE THIS DECLARATION WHEN YOU ARE CONSIDERED BY A COURT TO BE INCAPACITATED.** A revocation is effective when it is communicated to your attending physician or other health care provider.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you. This declaration is not valid unless it is either acknowledged before a notary public or signed by two qualified witnesses who are personally known to you and who are present when you sign or acknowledge your signature.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1318 (S.B. 972), § 1, effective September 1, 1997; am. Acts 2017, 85th Leg., ch. 349 (H.B. 1787), § 3, effective September 1, 2017.

CHAPTER 144

Destruction of Certain Records

Section
144.001.

Definitions.

Section 144.002.	Suit and Order for Destruction of Admission Records [Expired].
144.003.	Procedure for Petition, Notice, Hearing, and Order [Expired].
144.004.	Actions Following Court Order [Expired].
144.005.	Court Records Concerning Order.
144.006.	Collateral Effects of Order.
144.007.	Limitation on Certain Lawsuits.
144.008.	Disclosure of Information Subject to Order; Penalty.
144.009.	Applicability of Other Law.
144.010.	Expiration of Certain Provisions.

Sec. 144.001. Definitions.

In this chapter:

(1) "Former mental health patient" means an individual who:

(A) between January 1, 1986, and December 31, 1993, was admitted to a mental health facility that has pled guilty, or whose parent or affiliate corporation has so pled, to unlawfully conspiring to offer and pay remuneration to any person to induce that person to refer individuals for services to a mental health facility; and

(B) has been released from that mental health facility; but

(C) was not admitted to the facility on the basis of a court proceeding that included a commitment hearing that was on the record.

(2) "Record" means a medical record:

(A) that a federal statute or regulation does not require to be retained, maintained, or preserved; or

(B) for which the requirement under a federal statute or regulation to retain, maintain, or preserve the record has expired.

(3) "Court" means a district or statutory probate court.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective September 1, 1997.

Sec. 144.002. Suit and Order for Destruction of Admission Records [Expired].

Expired pursuant to Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective January 1, 1999.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective September 1, 1997.

Sec. 144.003. Procedure for Petition, Notice, Hearing, and Order [Expired].

Expired pursuant to Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective January 1, 1999.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective September 1, 1997.

Sec. 144.004. Actions Following Court Order [Expired].

Expired pursuant to Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective January 1, 1999.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective September 1, 1997.

Sec. 144.005. Court Records Concerning Order.

The court shall seal records concerning an order issued under this chapter and ensure that the court's records are

not open for inspection by any person except the former mental patient or on further order of the court after notice to the former mental patient and a finding of good cause. The institution of a suit or bringing of a claim by or on behalf of the former mental patient or the former patient's assignee or insurer constitutes good cause.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective September 1, 1997.

Sec. 144.006. Collateral Effects of Order.

(a) A former mental health patient who successfully petitions for an order under this chapter and a facility or health care provider, or the owner, operator, parent, or affiliate of a facility or health care provider, that is subject to an order under this chapter may deny:

- (1) the existence of any record subject to the order;
- (2) the existence of the order itself;
- (3) the occurrence of the former mental patient's admission to a mental health facility if the records of the admission are subject to the order; and
- (4) the occurrence of any treatment related to the admission if the records of the admission are subject to the order.

(b) A former mental health patient who makes a denial under Subsection (a) or a facility or health care provider, or the owner, operator, parent, or affiliate of a facility or health care provider, that is subject to an order under this chapter and that makes a denial under Subsection (a) is not liable for a civil or criminal penalty for perjury.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective September 1, 1997.

Sec. 144.007. Limitation on Certain Lawsuits.

(a) Except as provided by Subsection (b), a former mental patient who successfully petitions a court for an order under this chapter or a person acting on the former mental patient's behalf may not file an action against a facility or health care provider, or the owner, operator, parent, or affiliate of a facility or health care provider, related to an event or activity that formed the basis of a record subject to the court's order.

(b) A juvenile former mental health patient whose records have been sealed under this chapter may file an action or complaint at any time before the records have been destroyed under Section 144.002(c).

(c) A finding made under this chapter is not admissible against any party in litigation to establish liability for damages, expenses, or other relief as an alleged result of any treatment or admission.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective September 1, 1997.

Sec. 144.008. Disclosure of Information Subject to Order; Penalty.

(a) A person commits an offense if the person:

- (1) knows of a former mental patient's admission to a mental health facility;
- (2) knows of a court order issued under this chapter that relates to that admission; and
- (3) intentionally releases, disseminates, or publishes a record or index reference subject to that order.

(b) A person commits an offense if the person:

- (1) knowingly fails to delete, seal, destroy, or present to the court a record or index reference subject to an order issued under this chapter; and
- (2) knows or should know that the record or index reference is subject to that order.

(c) An offense under this chapter is a Class B misdemeanor.

(d) This chapter does not prohibit an attorney or insurer of a provider or patient from retaining or communicating confidentially about a privileged document as necessary to provide legal advice regarding an actual or potential claim or issue. The document or communication remains privileged and not subject to a subpoena.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective September 1, 1997.

Sec. 144.009. Applicability of Other Law.

This chapter supersedes other state law regarding the retention or destruction of patient records.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective September 1, 1997.

Sec. 144.010. Expiration of Certain Provisions.

Sections 144.002, 144.003, and 144.004 expire January 1, 1999.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective September 1, 1997.

EDUCATION CODE

TITLE 2

PUBLIC EDUCATION

Subtitle	
A.	General Provisions
B.	State and Regional Organization and Governance
C.	Local Organization and Governance
D.	Educators and School District Employees and Volunteers
E.	Students and Parents
F.	Curriculum, Programs, and Services
G.	Safe Schools
I.	School Finance and Fiscal Management

SUBTITLE A

GENERAL PROVISIONS

CHAPTER 5

Definitions

Section	
5.001.	Definitions.

Sec. 5.001. Definitions.

In this title:

(1) "Agency" means the Texas Education Agency.

(1-a) "Child who is homeless," "person who is homeless," and "student who is homeless" have the meaning assigned to the term "homeless children and youths" under 42 U.S.C. Section 11434a.

(2) "Classroom teacher" means an educator who is employed by a school district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technology instructional setting. The term does not include a teacher's aide or a full-time administrator.

(3) "Commissioner" means the commissioner of education.

(4) "Educationally disadvantaged" means eligible to participate in the national free or reduced-price lunch program established under 42 U.S.C. Section 1751 et seq.

(5) "Educator" means a person who is required to hold a certificate issued under Subchapter B, Chapter 21.

(5-a) "Mental health condition" means a persistent or recurrent pattern of thoughts, feelings, or behaviors that:

(A) constitutes a mental illness, disease, or disorder, other than or in addition to epilepsy, substance abuse, or an intellectual disability; or

(B) impairs a person's social, emotional, or educational functioning and increases the risk of developing a condition described by Paragraph (A)

(6) "Open-enrollment charter school" means a school that has been granted a charter under Subchapter D, Chapter 12.

(6-a) "Private school" means a school that:

(A) offers a course of instruction for students in one or more grades from prekindergarten through grade 12; and

(B) is not operated by a governmental entity.

(7) "Regional education service centers" means a system of regional and educational services established in Chapter 8.

(8) "Residential facility" means:

(A) a facility operated by a state agency or political subdivision, including a child placement agency, that provides 24-hour custody or care of a person 22 years of age or younger, if the person resides in the facility for detention, treatment, foster care, or any noneducational purpose; and

(B) any person or entity that contracts with or is funded, licensed, certified, or regulated by a state agency or political subdivision to provide custody or care for a person under Paragraph (A).

(9) "Substance abuse" means a patterned use of a substance, including a controlled substance, as defined by Chapter 481, Health and Safety Code, and alcohol, in which the person consumes the substance in amounts or with methods that are harmful to the person's self or to others.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 1999, 76th Leg., ch. 396 (S.B. 4), art. 2, § 2.03, effective September 1, 1999; am. Acts 2007, 80th Leg., ch. 1371 (S.B. 7), § 1, effective June 15, 2007; am. Acts 2017, 85th Leg., ch. 522 (S.B. 179), § 6, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 597 (S.B. 668), § 1.01, effective June 10, 2019; am. Acts 2019, 86th Leg., ch. 352 (H.B. 18), § 1.01, effective December 1, 2019.

SUBTITLE B

STATE AND REGIONAL ORGANIZATION AND GOVERNANCE

CHAPTER 8

Regional Education Service Centers

Subchapter E

Mental Health and Substance Use Resources for School District Personnel

Section	
8.151.	Definitions.
8.152.	Employment of Non-Physician Mental Health Professional As Mental Health and Substance Use Resource.
8.153.	Interagency Collaboration; Memorandum of Understanding.
8.154.	Supervision of Non-Physician Mental Health Professional.
8.155.	Duties of Non-Physician Mental Health Professional.
8.156.	Participation by School District Not Required.

Section 8.157.	Distribution of Funding.
8.158.	Report.

Sec. 8.151. Definitions.

In this subchapter, “local mental health authority” and “non-physician mental health professional” have the meanings assigned by Section 571.003, Health and Safety Code.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1019 (H.B. 19), § 1, effective September 1, 2019.

Sec. 8.152. Employment of Non-Physician Mental Health Professional As Mental Health and Substance Use Resource.

(a) A local mental health authority shall employ a non-physician mental health professional to serve as a mental health and substance use resource for school districts located in the region served by a regional education service center and in which the local mental health authority provides services.

(b) If two or more local mental health authorities provide services in a region served by a regional education service center, the local mental health authority that primarily operates in the county in which the center is located shall:

- (1) employ the non-physician mental health professional;
- (2) in making a hiring decision, consult with other local mental health authorities providing services in that region; and
- (3) before making the final hiring decision, consult with the center.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1019 (H.B. 19), § 1, effective September 1, 2019.

Sec. 8.153. Interagency Collaboration; Memorandum of Understanding.

(a) A local mental health authority that employs a non-physician mental health professional under Section 8.152 and the regional education service center shall collaborate in carrying out this subchapter.

(b) Each regional education service center shall provide for a non-physician mental health professional employed for the region served by the center with a space for the professional to carry out the professional’s duties under Section 8.155. The local mental health authority that employs the professional shall pay the center a reasonable, negotiated cost-recovery fee for providing the space and administrative support as outlined in the memorandum of understanding entered into under Subsection (c). The cost-recovery fee may not exceed \$15,000 per year unless the local mental health authority and center agree to a higher amount.

(c) A local mental health authority and a regional education service center shall enter into a memorandum of understanding for the administration of this section.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1019 (H.B. 19), § 1, effective September 1, 2019.

Sec. 8.154. Supervision of Non-Physician Mental Health Professional.

A local mental health authority that employs a non-

physician mental health professional under Section 8.152 shall:

- (1) supervise the professional in carrying out the professional’s duties under Section 8.155; and
- (2) consult with any other local mental health authorities in the region and the regional education service center for input on supervising the professional.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1019 (H.B. 19), § 1, effective September 1, 2019.

Sec. 8.155. Duties of Non-Physician Mental Health Professional.

(a) A non-physician mental health professional employed under Section 8.152 shall, to the greatest extent possible, work collaboratively with the regional education service center and shall act as a resource for the center and school district personnel by:

- (1) helping personnel gain awareness and a better understanding of mental health and co-occurring mental health and substance use disorders;
- (2) assisting personnel to implement initiatives related to mental health or substance use under state law or agency rules, interagency memorandums of understanding, and related programs;
- (3) ensuring personnel are aware of:

(A) the list of recommended best practice-based programs and research-based practices developed under Section 161.325, Health and Safety Code;

(B) other public and private mental health and substance use prevention, treatment, and recovery programs available in the school district, including evidence-based programs provided by a local mental health authority and other public or private mental health providers; and

(C) other available public and private mental health and substance use prevention, treatment, and recovery program resources administered by the local mental health authority or the Health and Human Services Commission to support school districts, students, and families;

(4) on a monthly basis, facilitating mental health first aid training;

(5) on a monthly basis, facilitating training regarding the effects of grief and trauma and providing support to children with intellectual or developmental disabilities who suffer from grief or trauma; and

(6) on a monthly basis, facilitating training on prevention and intervention programs that have been shown to be effective in helping students cope with pressures to:

- (A) use alcohol, cigarettes, or illegal drugs; or
- (B) misuse prescription drugs.

(b) A non-physician mental health professional employed under Section 8.152 may not treat or provide counseling to a student or provide specific advice to school district personnel regarding a student.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1019 (H.B. 19), § 1, effective September 1, 2019.

Sec. 8.156. Participation by School District Not Required.

This subchapter does not require a school district to participate in training provided by a non-physician men-

tal health professional or otherwise use the professional as a resource.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1019 (H.B. 19), § 1, effective September 1, 2019.

Sec. 8.157. Distribution of Funding.

A state agency to which money is appropriated to carry out this subchapter shall ensure that the money is distributed equally among the local mental health authorities that employ and supervise non-physician mental health professionals under this subchapter.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1019 (H.B. 19), § 1, effective September 1, 2019.

Sec. 8.158. Report.

(a) Before the last business day of each calendar year, each local mental health authority that employs and supervises a non-physician mental health professional under this subchapter shall prepare and submit a report to the Health and Human Services Commission regarding the outcomes for school districts and students resulting from services provided by the non-physician mental health professional.

(b) Not later than January 31 of the following calendar year, the Health and Human Services Commission shall compile the information submitted under this section and prepare and submit a report to the lieutenant governor, the speaker of the house of representatives, each standing committee of the legislature having primary jurisdiction over mental health, each standing committee of the legislature having primary jurisdiction over public education, and the agency. Before submitting the report under this subsection, the commission shall provide the agency a reasonable opportunity to review and provide input on the contents of the report.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1019 (H.B. 19), § 1, effective September 1, 2019.

SUBTITLE C

LOCAL ORGANIZATION AND GOVERNANCE

CHAPTER 11

School Districts

Subchapter F

District-Level and Site-Based Decision-Making

Section
11.252.

District-Level Planning and Decision-Making.

Sec. 11.252. District-Level Planning and Decision-Making.

(a) Each school district shall have a district improvement plan that is developed, evaluated, and revised annually, in accordance with district policy, by the superintendent with the assistance of the district-level committee established under Section 11.251. The purpose of the district improvement plan is to guide district and campus

staff in the improvement of student performance for all student groups in order to attain state standards in respect to the achievement indicators adopted under Section 39.053(c). The district improvement plan must include provisions for:

(1) a comprehensive needs assessment addressing district student performance on the achievement indicators, and other appropriate measures of performance, that are disaggregated by all student groups served by the district, including categories of ethnicity, socioeconomic status, sex, and populations served by special programs, including students in special education programs under Subchapter A, Chapter 29;

(2) measurable district performance objectives for all appropriate achievement indicators for all student populations, including students in special education programs under Subchapter A, Chapter 29, and other measures of student performance that may be identified through the comprehensive needs assessment;

(3) strategies for improvement of student performance that include:

(A) instructional methods for addressing the needs of student groups not achieving their full potential;

(B) evidence-based practices that address the needs of students for special programs, including:

(i) suicide prevention programs, in accordance with Subchapter G, Chapter 38, which include a parental or guardian notification procedure;

(ii) conflict resolution programs;

(iii) violence prevention programs; and

(iv) dyslexia treatment programs;

(C) dropout reduction;

(D) integration of technology in instructional and administrative programs;

(E) positive behavior interventions and support, including interventions and support that integrate best practices on grief-informed and trauma-informed care;

(F) staff development for professional staff of the district;

(G) career education to assist students in developing the knowledge, skills, and competencies necessary for a broad range of career opportunities;

(H) accelerated education; and

(I) implementation of a comprehensive school counseling program under Section 33.005;

(4) strategies for providing to elementary school, middle school, junior high school, and high school students, those students' teachers and school counselors, and those students' parents information about:

(A) higher education admissions and financial aid opportunities, including state financial aid opportunities such as the TEXAS grant program and the Teach for Texas grant program established under Chapter 56;

(B) the need for students to make informed curriculum choices to be prepared for success beyond high school; and

(C) sources of information on higher education admissions and financial aid;

(5) resources needed to implement identified strategies;

- (6) staff responsible for ensuring the accomplishment of each strategy;
- (7) timelines for ongoing monitoring of the implementation of each improvement strategy;
- (8) formative evaluation criteria for determining periodically whether strategies are resulting in intended improvement of student performance;
- (9) the policy under Section 38.0041 addressing sexual abuse and other maltreatment of children; and
- (10) the trauma-informed care policy required under Section 38.036.

(b) A district’s plan for the improvement of student performance is not filed with the agency, but the district must make the plan available to the agency on request.

(c) In a district that has only one campus, the district- and campus-level committees may be one committee and the district and campus plans may be one plan.

(d) At least every two years, each district shall evaluate the effectiveness of the district’s decision-making and planning policies, procedures, and staff development activities related to district- and campus-level decision-making and planning to ensure that they are effectively structured to positively impact student performance.

(d-1) [Expired pursuant to Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective January 1, 1996.]

(e) The district-level committee established under Section 11.251 shall hold at least one public meeting per year. The required meeting shall be held after receipt of the annual district performance report from the agency for the purpose of discussing the performance of the district and the district performance objectives. District policy and procedures must be established to ensure that systematic communications measures are in place to periodically obtain broad-based community, parent, and staff input and to provide information to those persons regarding the recommendations of the district-level committee. This section does not create a new cause of action or require collective bargaining.

(f) A superintendent shall regularly consult the district-level committee in the planning, operation, supervision, and evaluation of the district educational program.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 1999, 76th Leg., ch. 1202 (S.B. 476), § 2, effective June 18, 1999; am. Acts 1999, 76th Leg., ch. 1590 (H.B. 713), § 6, effective June 19, 1999; am. Acts 2001, 77th Leg., ch. 1261 (S.B. 1057), § 7, effective June 15, 2001; am. Acts 2009, 81st Leg., ch. 895 (H.B. 3), § 10, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 1134 (H.B. 1386), § 4, effective June 17, 2011; am. Acts 2011, 82nd Leg., ch. 1323 (S.B. 471), § 1, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 443 (S.B. 715), § 2, effective June 14, 2013; am. Acts 2015, 84th Leg., ch. 1094 (H.B. 2804), § 9, effective June 19, 2015; am. Acts 2017, 85th Leg., ch. 807 (H.B. 22), § 1, effective June 15, 2017; am. Acts 2019, 86th Leg., ch. 352 (H.B. 18), § 1.02, effective December 1, 2019; am. Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 2, effective June 6, 2019.

SUBTITLE D
EDUCATORS AND SCHOOL DISTRICT
EMPLOYEES AND VOLUNTEERS

CHAPTER 21

Educators

Subchapter B. Certification of Educators

Section 21.044. 21.054.	Educator Preparation. Continuing Education.
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Subchapter J. Staff Development

21.451. 21.462.	Staff Development Requirements. Resources Regarding Students with Mental Health or Substance Abuse Conditions.
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Subchapter B

Certification of Educators

Sec. 21.044. Educator Preparation.

(a) The board shall propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program. The board shall specify the minimum academic qualifications required for a certificate.

(b) Any minimum academic qualifications for a certificate specified under Subsection (a) that require a person to possess a bachelor’s degree must also require that the person receive, as part of the training required to obtain that certificate, instruction in detection and education of students with dyslexia.

(c) The instruction under Subsection (b) must:

(1) be developed by a panel of experts in the diagnosis and treatment of dyslexia who are:

(A) employed by institutions of higher education; and

(B) approved by the board; and

(2) include information on:

(A) characteristics of dyslexia;

(B) identification of dyslexia; and

(C) effective, multisensory strategies for teaching students with dyslexia.

(c-1) Any minimum academic qualifications for a certificate specified under Subsection (a) that require a person to possess a bachelor’s degree must also require that the person receive, as part of the training required to obtain that certificate, instruction regarding mental health, substance abuse, and youth suicide. The instruction required must:

(1) be provided through:

(A) a program selected from the list of recommended best practice-based programs and research-based practices established under Section 38.351; or

(B) a course offered by any accredited public or private postsecondary educational institution as part of a degree program; and

(2) include effective strategies including de-escalation techniques and positive behavioral interventions and supports, for teaching and intervening with students with mental health conditions or who engage in substance abuse.

(c-2) Any minimum academic qualifications for a certificate specified under Subsection (a) that require a person to possess a bachelor's degree must also require that the person receive, as part of the training required to obtain that certificate, instruction in digital learning, including a digital literacy evaluation followed by a prescribed digital learning curriculum. The instruction required must:

(1) be aligned with the International Society for Technology in Education's standards for teachers;

(2) provide effective, evidence-based strategies to determine a person's degree of digital literacy; and

(3) include resources to address any deficiencies identified by the digital literacy evaluation.

(d) In proposing rules under this section, the board shall specify that to obtain a certificate to teach an "applied STEM course," as that term is defined by Section 28.027, at a secondary school, a person must:

(1) pass the certification test administered by the recognized national or international business and industry group that created the curriculum the applied STEM course is based on; and

(2) have at a minimum:

(A) an associate degree from an accredited institution of higher education; and

(B) three years of work experience in an occupation for which the applied STEM course is intended to prepare the student.

(e) In proposing rules under this section for a person to obtain a certificate to teach a health science technology education course, the board shall specify that a person must have:

(1) an associate degree or more advanced degree from an accredited institution of higher education;

(2) current licensure, certification, or registration as a health professions practitioner issued by a nationally recognized accrediting agency for health professionals; and

(3) at least two years of wage earning experience utilizing the licensure requirement.

(f) The board may not propose rules for a certificate to teach a health science technology education course that specify that a person must have a bachelor's degree or that establish any other credential or teaching experience requirements that exceed the requirements under Subsection (e).

(f-1) Board rules addressing ongoing educator preparation program support for a candidate seeking certification in a certification class other than classroom teacher may not require that an educator preparation program conduct one or more formal observations of the candidate on the

candidate's site in a face-to-face setting. The rules must permit each required formal observation to occur on the candidate's site or through use of electronic transmission or other video-based or technology-based method.

(g) Each educator preparation program must provide information regarding:

(1) the skills that educators are required to possess, the responsibilities that educators are required to accept, and the high expectations for students in this state;

(2) the effect of supply and demand forces on the educator workforce in this state;

(3) the performance over time of the educator preparation program;

(4) the importance of building strong classroom management skills;

(5) the framework in this state for teacher and principal evaluation, including the procedures followed in accordance with Subchapter H; and

(6) appropriate relationships, boundaries, and communications between educators and students.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 2011, 82nd Leg., ch. 635 (S.B. 866), § 1, effective June 17, 2011; am. Acts 2011, 82nd Leg., ch. 926 (S.B. 1620), § 1, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 4.001, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1091 (H.B. 3573), § 1, effective June 14, 2013; am. Acts 2013, 83rd Leg., ch. 1282 (H.B. 2012), § 3, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1321 (S.B. 460), § 2, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 931 (H.B. 2205), § 3, effective September 1, 2015; am. Acts 2015, 84th Leg., ch. 1157 (S.B. 674), §§ 1, 2, effective September 1, 2015; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 21.001(8), effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 178 (S.B. 7), § 8, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 714 (H.B. 4056), § 2, effective June 12, 2017; am. Acts 2017, 85th Leg., ch. 757 (S.B. 1839), § 3, effective June 12, 2017; am. Acts 2017, 85th Leg., ch. 960 (S.B. 1963), § 1, effective June 15, 2017; am. Acts 2019, 86th Leg., ch. 352 (H.B. 18), § 1.03, effective December 1, 2019.

Sec. 21.054. Continuing Education.

(a) The board shall propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements, including opportunities for educators to receive micro-credentials in fields of study related to the educator's certification class as provided by Subsection (i).

(b) Continuing education requirements for an educator who teaches students with dyslexia must include training regarding new research and practices in educating students with dyslexia.

(c) The training required under Subsection (b) may be offered in an online course.

(d) **[As amended by Acts 2019, 86th Leg., ch. 464 (S.B. 11)]** Continuing education requirements for a classroom teacher must provide that not more than 25 percent of the training required every five years include instruction regarding:

(1) collecting and analyzing information that will improve effectiveness in the classroom;

(2) recognizing early warning indicators that a student may be at risk of dropping out of school;

(3) digital learning, digital teaching, and integrating technology into classroom instruction;

- (4) educating diverse student populations, including:
- (A) students with disabilities, including mental health disorders;
 - (B) students who are educationally disadvantaged;
 - (C) students of limited English proficiency; and
 - (D) students at risk of dropping out of school;
- (5) understanding appropriate relationships, boundaries, and communications between educators and students; and
- (6) how grief and trauma affect student learning and behavior and how evidence-based, grief-informed, and trauma-informed strategies support the academic success of students affected by grief and trauma.
- (d) **[As amended by Acts 2019, 86th Leg., ch. 352 (H.B. 18)]** Continuing education requirements for a classroom teacher must provide that at least 25 percent of the training required every five years include instruction regarding:
- (1) collecting and analyzing information that will improve effectiveness in the classroom;
 - (2) recognizing early warning indicators that a student may be at risk of dropping out of school;
 - (3) digital learning, digital teaching, and integrating technology into classroom instruction;
 - (4) educating diverse student populations, including:
 - (A) students who are eligible to participate in special education programs under Subchapter A, Chapter 29;
 - (B) students who are eligible to receive educational services required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794);
 - (C) students with mental health conditions or who engage in substance abuse;
 - (D) students with intellectual or developmental disabilities;
 - (E) students who are educationally disadvantaged;
 - (F) students of limited English proficiency; and
 - (G) students at risk of dropping out of school;
 - (5) understanding appropriate relationships, boundaries, and communications between educators and students; and
 - (6) how mental health conditions, including grief and trauma, affect student learning and behavior and how evidence-based, grief-informed, and trauma-informed strategies support the academic success of students affected by grief and trauma.
- (d-1) The instruction required under Subsection (d) may include two or more listed topics together.
- (d-2) **[As amended by Acts 2019, 86th Leg., ch. 464 (S.B. 11)]** The instruction required under Subsection (d)(6) must:
- (1) comply with the training required by Section 38.036(c)(1); and
 - (2) be approved by the commissioner.
- (d-2) **[As amended by Acts 2019, 86th Leg., ch. 352 (H.B. 18)]** The instruction required under Subsection (d)(6) must be:
- (1) based on relevant best practice-based programs and research-based practices; and
 - (2) approved by the commissioner, in consultation with the Health and Human Services Commission.
- (e) Continuing education requirements for a principal must provide that at least 25 percent of the training required every five years include instruction regarding:
- (1) effective and efficient management, including:
 - (A) collecting and analyzing information;
 - (B) making decisions and managing time; and
 - (C) supervising student discipline and managing behavior;
 - (2) recognizing early warning indicators that a student may be at risk of dropping out of school;
 - (3) digital learning, digital teaching, and integrating technology into campus curriculum and instruction;
 - (4) effective implementation of a comprehensive school counseling program under Section 33.005;
 - (5) mental health programs addressing a mental health condition;
 - (6) educating diverse student populations, including:
 - (A) students who are eligible to participate in special education programs under Subchapter A, Chapter 29;
 - (B) students with intellectual or developmental disabilities;
 - (C) students who are eligible to receive educational services required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794);
 - (D) students with mental health conditions or who engage in substance abuse;
 - (E) students who are educationally disadvantaged;
 - (F) students of limited English proficiency; and
 - (G) students at risk of dropping out of school;
 - (7) preventing, recognizing, and reporting any sexual conduct between an educator and student that is prohibited under Section 21.12, Penal Code, or for which reporting is required under Section 21.006 of this code; and
 - (8) how mental health conditions, including grief and trauma, affect student learning and behavior and how evidence-based, grief-informed, and trauma-informed strategies support the academic success of students affected by grief and trauma.
- (e-2) The instruction required under Subsection (e)(8) must be:
- (1) based on relevant best practice-based programs and research-based practices; and
 - (2) approved by the commissioner, in consultation with the Health and Human Services Commission.
- (f) Continuing education requirements for a counselor must provide that at least 25 percent of training required every five years include instruction regarding:
- (1) assisting students in developing high school graduation plans;
 - (2) implementing dropout prevention strategies;
 - (3) informing students concerning:
 - (A) college admissions, including college financial aid resources and application procedures; and
 - (B) career opportunities;
 - (4) counseling students concerning mental health conditions and substance abuse, including through the use of grief-informed and trauma-informed interventions and crisis management and suicide prevention strategies; and
 - (5) effective implementation of a comprehensive school counseling program under Section 33.005.
 - (g) The board shall adopt rules that allow an educator to fulfill continuing education requirements by participat-

ing in an evidence-based mental health first aid training program or an evidence-based grief-informed and trauma-informed care program. The rules adopted under this subsection must allow an educator to complete a program described by this subsection and receive credit toward continuing education requirements for twice the number of hours of instruction provided under that program, not to exceed 16 hours. The program must be offered through a classroom instruction format that requires in-person attendance.

(h) Continuing education requirements for a superintendent must include at least 2-1/2 hours of training every five years on identifying and reporting potential victims of sexual abuse, human trafficking, and other maltreatment of children. For purposes of this subsection, “other maltreatment” has the meaning assigned by Section 42.002, Human Resources Code.

(i) The board shall propose rules establishing a program to issue micro-credentials in fields of study related to an educator’s certification class. The agency shall approve continuing education providers to offer micro-credential courses. A micro-credential received by an educator shall be recorded on the agency’s Educator Certification Online System (ECOS) and included as part of the educator’s public certification records.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 2005, 79th Leg., ch. 675 (S.B. 143), § 2, effective June 17, 2005; am. Acts 2009, 81st Leg., ch. 596 (H.B. 200), § 1, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 895 (H.B. 3), § 67 (a), effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 635 (S.B. 866), § 2, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 638 (H.B. 642), § 1, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1306 (H.B. 3793), § 1, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 21.001(9), effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 178 (S.B. 7), § 9, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 522 (S.B. 179), § 8, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 757 (S.B. 1839), § 8, effective June 12, 2017; am. Acts 2019, 86th Leg., ch. 1123 (H.B. 2424), § 1, effective June 14, 2019; am. Acts 2019, 86th Leg., ch. 214 (H.B. 403), § 2, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 352 (H.B. 18), § 1.04, effective December 1, 2019; am. Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 4, effective June 6, 2019.

Subchapter J

Staff Development

Sec. 21.451. Staff Development Requirements.

(a) The staff development provided by a school district to an educator other than a principal must be:

- (1) conducted in accordance with standards developed by the district; and
- (2) designed to improve education in the district.

(a-1) Section 21.3541 and rules adopted under that section govern the professional development provided to a principal.

(b) The staff development described by Subsection (a) must be predominantly campus-based, related to achieving campus performance objectives established under Section 11.253, and developed and approved by the campus-level committee established under Section 11.251.

(c) For staff development under Subsection (a), a school district may use district-wide staff development developed

and approved through the district-level decision process under Section 11.251.

(d) The staff development:

(1) may include training in:

(A) technology;

(B) positive behavior intervention and support strategies, including classroom management, district discipline policies, and the student code of conduct adopted under Chapter 37; and

(C) digital learning;

(2) subject to Subsection (e) and to Section 21.3541 and rules adopted under that section, must include training that is evidence-based, as defined by Section 8101, Every Student Succeeds Act (20 U.S.C. Section 7801), and that:

(A) relates to instruction of students with disabilities, including students with disabilities who also have other intellectual or mental health conditions; and

(B) is designed for educators who work primarily outside the area of special education; and

(3) must include training on:

(A) suicide prevention;

(B) recognizing signs of mental health conditions and substance abuse;

(C) strategies for establishing and maintaining positive relationships among students, including conflict resolution;

(D) how grief and trauma affect student learning and behavior and how evidence-based, grief-informed, and trauma-informed strategies support the academic success of students affected by grief and trauma; and

(E) preventing, identifying, responding to, and reporting incidents of bullying.

(d-1) The training required by Subsection (d)(3):

(1) must:

(A) be provided:

(i) on an annual basis, as part of a new employee orientation, to all new school district and open-enrollment charter school educators; and

(ii) to existing school district and open-enrollment charter school educators on a schedule adopted by the agency by rule; and

(B) use a best practice-based program recommended by the Health and Human Services Commission in coordination with the agency under Section 38.351; and

(2) may include two or more listed topics together.

(d-2) The suicide prevention training required by Subsection (d)(3) may be satisfied through independent review of suicide prevention training material that:

(1) complies with the guidelines developed by the agency; and

(2) is offered online.

(d-3) The digital learning training provided by Subsection (d)(1)(E) must:

(1) discuss basic technology proficiency expectations and methods to increase an educator’s digital literacy; and

(2) assist an educator in the use of digital technology in learning activities that improve teaching, assessment, and instructional practices.

(e) A school district is required to provide the training described by Subsection (d)(2) to an educator who works primarily outside the area of special education only if the educator does not possess the knowledge and skills necessary to implement the individualized education program developed for a student receiving instruction from the educator. A district may determine the time and place at which the training is delivered.

(f) In developing or maintaining the training required by Subsection (d)(2), a school district must consult with persons with expertise in research-based practices for students with disabilities. Persons who may be consulted under this subsection include colleges, universities, private and nonprofit organizations, regional education service centers, qualified district personnel, and any other persons identified as qualified by the district. This subsection applies to all training required by Subsection (d)(2), regardless of whether the training is provided at the campus or district level.

(g) The staff development may include instruction as to what is permissible under law, including opinions of the United States Supreme Court, regarding prayer in public school.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 1999, 76th Leg., ch. 396 (S.B. 4), art. 2, § 2.06, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 766 (S.B. 1727), § 1, effective June 13, 2001; am. Acts 2003, 78th Leg., ch. 495 (H.B. 1024), § 1, effective September 1, 2003; am. Acts 2009, 81st Leg., ch. 740 (S.B. 451), § 1, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 776 (H.B. 1942), § 1, effective June 17, 2011; am. Acts 2011, 82nd Leg., ch. 1093 (S.B. 1383), § 4, effective June 17, 2011; am. Acts 2015, 84th Leg., ch. 1064 (H.B. 2186), § 2, effective June 19, 2015; am. Acts 2017, 85th Leg., ch. 757 (S.B. 1839), § 10, effective June 12, 2017; am. Acts 2019, 86th Leg., ch. 352 (H.B. 18), § 1.05, effective December 1, 2019.

§ 21.462. Resources Regarding Students with Mental Health or Substance Abuse Conditions.

The agency, in coordination with the Health and Human Services Commission, shall establish and maintain an Internet website to provide resources for school district or open-enrollment charter school employees regarding working with students with mental health conditions or who engage in substance abuse. The agency must include on the Internet website information about:

- (1) grief-informed and trauma-informed practices;
- (2) building skills related to managing emotions, establishing and maintaining positive relationships, and responsible decision-making;
- (3) positive behavior interventions and supports; and
- (4) a safe and supportive school climate.

HISTORY: am. Acts 2019, 86th Leg., ch. 352 (H.B. 18), § 1.06, effective December 1, 2019.

**SUBTITLE E
STUDENTS AND PARENTS**

CHAPTER 25

Admission, Transfer, and Attendance

Subchapter B. Assignments and Transfers

Section 25.041. Transfer of Children or Wards of Employees of State Supported Living Centers.

Subchapter C. Operation of Schools and School Attendance

Section 25.086. Exemptions.

Subchapter B

Assignments and Transfers

Sec. 25.041. Transfer of Children or Wards of Employees of State Supported Living Centers.

A school-age child or ward of an employee of a state supported living center for persons with intellectual disabilities constituted as a school district who resides in the boundaries of center property but who is not a student at the center is entitled to attend school in a district adjacent to the center free of any charge to the child's or ward's parent or guardian provided the parent or guardian is required by the superintendent of the center to live on the grounds of the center for the convenience of this state. A tuition charge required by the admitting district shall be paid by the district constituting the state supported living center out of funds allotted to it by the agency.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 2019, 86th Leg., ch. 1279 (H.B. 965), § 1, effective September 1, 2019.

Subchapter C

Operation of Schools and School Attendance

Sec. 25.086. Exemptions.

(a) A child is exempt from the requirements of compulsory school attendance if the child:

- (1) attends a private or parochial school that includes in its course a study of good citizenship;
- (2) is eligible to participate in a school district's special education program under Section 29.003 and cannot be appropriately served by the resident district;
- (3) has a physical or mental condition of a temporary and remediable nature that makes the child's attendance infeasible and holds a certificate from a qualified physician specifying the temporary condition, indicating the treatment prescribed to remedy the temporary condition, and covering the anticipated period of the child's absence from school for the purpose of receiving and recuperating from that remedial treatment;
- (4) is expelled in accordance with the requirements of law in a school district that does not participate in a mandatory juvenile justice alternative education program under Section 37.011;
- (5) is at least 17 years of age and:
 - (A) is attending a course of instruction to prepare for the high school equivalency examination, and:
 - (i) has the permission of the child's parent or guardian to attend the course;
 - (ii) is required by court order to attend the course;
 - (iii) has established a residence separate and apart from the child's parent, guardian, or other person having lawful control of the child; or
 - (iv) is homeless; or

- (B) has received a high school diploma or high school equivalency certificate;
- (6) is at least 16 years of age and is attending a course of instruction to prepare for the high school equivalency examination, if:
 - (A) the child is recommended to take the course of instruction by a public agency that has supervision or custody of the child under a court order; or
 - (B) the child is enrolled in a Job Corps training program under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.);
 - (7) is at least 16 years of age and is enrolled in a high school diploma program under Chapter 18;
 - (8) is enrolled in the Texas Academy of Mathematics and Science under Subchapter G, Chapter 105;
 - (9) is enrolled in the Texas Academy of Leadership in the Humanities;
 - (10) is enrolled in the Texas Academy of Mathematics and Science at The University of Texas at Brownsville;
 - (11) is enrolled in the Texas Academy of International Studies; or
 - (12) is specifically exempted under another law.
- (b) This section does not relieve a school district in which a child eligible to participate in the district's special education program resides of its fiscal and administrative responsibilities under Subchapter A, Chapter 29, or of its responsibility to provide a free appropriate public education to a child with a disability.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 1997, 75th Leg., ch. 1015 (S.B. 133), § 1, effective June 19, 1997; am. Acts 1997, 75th Leg., ch. 1019 (S.B. 247), § 3, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1282 (S.B. 1472), § 2, effective June 18, 1999; am. Acts 2005, 79th Leg., ch. 377 (S.B. 1395), § 3, effective June 17, 2005; am. Acts 2005, 79th Leg., ch. 887 (S.B. 1452), § 2, effective June 17, 2005; am. Acts 2005, 79th Leg., ch. 1339 (S.B. 151), § 6, effective June 18, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), art. 4, § 4.003, effective September 1, 2007; am. Acts 2019, 86th Leg., ch. 597 (S.B. 668), § 1.04, effective June 10, 2019.

SUBTITLE F

CURRICULUM, PROGRAMS, AND SERVICES

Chapter	
28.	Courses of Study; Advancement
29.	Educational Programs
30.	State and Regional Programs and Services
33.	Service Programs and Extracurricular Activities

CHAPTER 28

Courses of Study; Advancement

Subchapter A. Essential Knowledge and Skills; Curriculum

Section	
28.002.	Required Curriculum.
28.004.	Local School Health Advisory Council and Health Education Instruction.

Subchapter B. Advancement, Placement, Credit, and Academic Achievement Record

28.02122.	Inclusion of Mental Health Professions in Health Science Career Information.
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Section	
28.025.	High School Diploma and Certificate; Academic Achievement Record.
28.0259.	School District Reporting Requirements for Students Graduating Based on Individual Graduation Committee Review Process. [Expires September 1, 2023]

Subchapter A

Essential Knowledge and Skills; Curriculum

Sec. 28.002. Required Curriculum.

- (a) Each school district that offers kindergarten through grade 12 shall offer, as a required curriculum:
 - (1) a foundation curriculum that includes:
 - (A) English language arts;
 - (B) mathematics;
 - (C) science; and
 - (D) social studies, consisting of Texas, United States, and world history, government, economics, with emphasis on the free enterprise system and its benefits, and geography; and
 - (2) an enrichment curriculum that includes:
 - (A) to the extent possible, languages other than English;
 - (B) health, with emphasis on:
 - (i) physical health, including the importance of proper nutrition and exercise; and
 - (ii) mental health, including instruction about mental health conditions, substance abuse, skills to manage emotions, establishing and maintaining positive relationships, and responsible decision-making; and
 - (iii) suicide prevention, including recognizing suicide-related risk factors and warning signs;
 - (C) physical education;
 - (D) fine arts;
 - (E) career and technology education;
 - (F) technology applications;
 - (G) religious literature, including the Hebrew Scriptures (Old Testament) and New Testament, and its impact on history and literature; and
 - (H) personal financial literacy.
- (b) The State Board of Education by rule shall designate subjects constituting a well-balanced curriculum to be offered by a school district that does not offer kindergarten through grade 12.
 - (b-1) In this section, "common core state standards" means the national curriculum standards developed by the Common Core State Standards Initiative.
 - (b-2) The State Board of Education may not adopt common core state standards to comply with a duty imposed under this chapter.
 - (b-3) A school district may not use common core state standards to comply with the requirement to provide instruction in the essential knowledge and skills at appropriate grade levels under Subsection (c).
 - (b-4) Notwithstanding any other provision of this code, a school district or open-enrollment charter school may not be required to offer any aspect of a common core state standards curriculum.
- (c) The State Board of Education, with the direct participation of educators, parents, business and industry

representatives, and employers shall by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials under Chapter 31 and addressed on the assessment instruments required under Subchapter B, Chapter 39. As a condition of accreditation, the board shall require each district to provide instruction in the essential knowledge and skills at appropriate grade levels and to make available to each high school student in the district an Algebra II course.

(c-1) The State Board of Education shall adopt rules requiring students enrolled in grade levels six, seven, and eight to complete at least one fine arts course during those grade levels as part of a district's fine arts curriculum.

(c-2) Each time the Texas Higher Education Coordinating Board revises the Internet database of the coordinating board's official statewide inventory of workforce education courses, the State Board of Education shall by rule revise the essential knowledge and skills of any corresponding career and technology education curriculum as provided by Subsection (c).

(c-3) In adopting the essential knowledge and skills for the technology applications curriculum for kindergarten through grade eight, the State Board of Education shall adopt essential knowledge and skills that include coding, computer programming, computational thinking, and cybersecurity. The State Board of Education shall review and revise, as needed, the essential knowledge and skills of the technology applications curriculum every five years to ensure the curriculum:

- (1) is relevant to student education; and
- (2) aligns with current or emerging professions.

(d) The physical education curriculum required under Subsection (a)(2)(C) must be sequential, developmentally appropriate, and designed, implemented, and evaluated to enable students to develop the motor, self-management, and other skills, knowledge, attitudes, and confidence necessary to participate in physical activity throughout life. Each school district shall establish specific objectives and goals the district intends to accomplish through the physical education curriculum. In identifying the essential knowledge and skills of physical education, the State Board of Education shall ensure that the curriculum:

- (1) emphasizes the knowledge and skills capable of being used during a lifetime of regular physical activity;
- (2) is consistent with national physical education standards for:

(A) the information that students should learn about physical activity; and

(B) the physical activities that students should be able to perform;

(3) requires that, on a weekly basis, at least 50 percent of the physical education class be used for actual student physical activity and that the activity be, to the extent practicable, at a moderate or vigorous level;

(4) offers students an opportunity to choose among many types of physical activity in which to participate;

(5) offers students both cooperative and competitive games;

(6) meets the needs of students of all physical ability levels, including students who have a chronic health

problem, disability, including a student who is a person with a disability described under Section 29.003(b) or criteria developed by the agency in accordance with that section, or other special need that precludes the student from participating in regular physical education instruction but who might be able to participate in physical education that is suitably adapted and, if applicable, included in the student's individualized education program;

(7) takes into account the effect that gender and cultural differences might have on the degree of student interest in physical activity or on the types of physical activity in which a student is interested;

(8) teaches self-management and movement skills;

(9) teaches cooperation, fair play, and responsible participation in physical activity;

(10) promotes student participation in physical activity outside of school; and

(11) allows physical education classes to be an enjoyable experience for students.

(e) American Sign Language is a language for purposes of Subsection (a)(2)(A). A public school may offer an elective course in the language.

(f) A school district may offer courses for local credit in addition to those in the required curriculum. The State Board of Education shall:

(1) be flexible in approving a course for credit for high school graduation under this subsection; and

(2) approve courses in cybersecurity for credit for high school graduation under this subsection.

(g) A local instructional plan may draw on state curriculum frameworks and program standards as appropriate. Each district is encouraged to exceed minimum requirements of law and State Board of Education rule. Each district shall ensure that all children in the district participate actively in a balanced curriculum designed to meet individual needs. Before the adoption of a major curriculum initiative, including the use of a curriculum management system, a district must use a process that:

(1) includes teacher input;

(2) provides district employees with the opportunity to express opinions regarding the initiative; and

(3) includes a meeting of the board of trustees of the district at which:

(A) information regarding the initiative is presented, including the cost of the initiative and any alternatives that were considered; and

(B) members of the public and district employees are given the opportunity to comment regarding the initiative.

(g-1) A district may also offer a course or other activity, including an apprenticeship or training hours needed to obtain an industry-recognized credential or certificate, that is approved by the board of trustees for credit without obtaining State Board of Education approval if:

(1) the district develops a program under which the district partners with a public or private institution of higher education and local business, labor, and community leaders to develop and provide the courses; and

(2) the course or other activity allows students to enter:

(A) a career or technology training program in the district's region of the state;

(B) an institution of higher education without remediation;

(C) an apprenticeship training program; or

(D) an internship required as part of accreditation toward an industry-recognized credential or certificate for course credit.

(g-2) Each school district shall annually report to the agency the names of the courses, programs, institutions of higher education, and internships in which the district's students have enrolled under Subsection (g-1) and the names of the courses and institutions of higher education in which the district's students have enrolled under Subsection (g-3). The agency shall make available information provided under this subsection to other districts.

(g-3) A district may also offer a course in cybersecurity that is approved by the board of trustees for credit without obtaining State Board of Education approval if the district partners with a public or private institution of higher education that offers an undergraduate degree program in cybersecurity to develop and provide the course.

(h) The State Board of Education and each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of instructional materials. A primary purpose of the public school curriculum is to prepare thoughtful, active citizens who understand the importance of patriotism and can function productively in a free enterprise society with appreciation for the basic democratic values of our state and national heritage.

(i) The State Board of Education shall adopt rules for the implementation of this subchapter. Except as provided by Subsection (j), the board may not adopt rules that designate the methodology used by a teacher or the time spent by a teacher or a student on a particular task or subject.

(j) The State Board of Education by rule may require laboratory instruction in secondary science courses and may require a specific amount or percentage of time in a secondary science course that must be laboratory instruction.

(k) The State Board of Education, in consultation with the Department of State Health Services and the Texas Diabetes Council, shall develop a diabetes education program that a school district may use in the health curriculum under Subsection (a)(2)(B).

(l) A school district shall require a student enrolled in full-day prekindergarten, in kindergarten, or in a grade level below grade six to participate in moderate or vigorous daily physical activity for at least 30 minutes throughout the school year as part of the district's physical education curriculum or through structured activity during a school campus's daily recess. To the extent practicable, a school district shall require a student enrolled in prekindergarten on less than a full-day basis to participate in the same type and amount of physical activity as a student enrolled in full-day prekindergarten. A school district shall require students enrolled in grade levels six, seven, and eight to participate in moderate or vigorous daily physical activity for at least 30 minutes for at least four semesters during those grade levels as part of the district's physical education curriculum. If a school dis-

trict determines, for any particular grade level below grade six, that requiring moderate or vigorous daily physical activity is impractical due to scheduling concerns or other factors, the district may as an alternative require a student in that grade level to participate in moderate or vigorous physical activity for at least 135 minutes during each school week. Additionally, a school district may as an alternative require a student enrolled in a grade level for which the district uses block scheduling to participate in moderate or vigorous physical activity for at least 225 minutes during each period of two school weeks. A school district must provide for an exemption for:

(1) any student who is unable to participate in the required physical activity because of illness or disability; and

(2) a middle school or junior high school student who participates in an extracurricular activity with a moderate or vigorous physical activity component that is considered a structured activity under rules adopted by the commissioner.

(l-1) In adopting rules relating to an activity described by Subsection (l)(2), the commissioner may permit an exemption for a student who participates in a school-related activity or an activity sponsored by a private league or club only if the student provides proof of participation in the activity.

(l-2) To encourage school districts to promote physical activity for children through classroom curricula for health and physical education, the agency, in consultation with the Department of State Health Services, shall designate nationally recognized health and physical education program guidelines that a school district may use in the health curriculum under Subsection (a)(2)(B) or the physical education curriculum under Subsection (a)(2)(C).

(l-3) (1) This subsection may be cited as "Lauren's Law."

(2) The State Board of Education, the Department of State Health Services, or a school district may not adopt any rule, policy, or program under Subsections (a), (k), (l), (l-1), or (l-2) that would prohibit a parent or grandparent of a student from providing any food product of the parent's or grandparent's choice to:

(A) children in the classroom of the child of the parent or grandparent on the occasion of the child's birthday; or

(B) children at a school-designated function.

(m) Section 2001.039, Government Code, as added by Chapter 1499, Acts of the 76th Legislature, Regular Session, 1999, does not apply to a rule adopted by the State Board of Education under Subsection (c) or (d).

(n) The State Board of Education may by rule develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technology education curriculum under Subsection (a)(2)(E).

(o) In approving career and technology courses, the State Board of Education must determine that at least 50 percent of the approved courses are cost-effective for a school district to implement.

(p) The State Board of Education, in conjunction with the office of the attorney general, shall develop a parenting and paternity awareness program that a school district shall use in the district's high school health curricu-

lum. A school district may use the program developed under this subsection in the district's middle or junior high school curriculum. At the discretion of the district, a teacher may modify the suggested sequence and pace of the program at any grade level. The program must:

(1) address parenting skills and responsibilities, including child support and other legal rights and responsibilities that come with parenthood;

(2) address relationship skills, including money management, communication skills, and marriage preparation; and

(3) in district middle, junior high, or high schools that do not have a family violence prevention program, address skills relating to the prevention of family violence.

(p-1) [Blank.]

(p-2) A school district may develop or adopt research-based programs and curriculum materials for use in conjunction with the program developed under Subsection (p). The programs and curriculum materials may provide instruction in:

(1) child development;

(2) parenting skills, including child abuse and neglect prevention; and

(3) assertiveness skills to prevent teenage pregnancy, abusive relationships, and family violence.

(p-3) The agency shall evaluate programs and curriculum materials developed under Subsection (p-2) and distribute to other school districts information regarding those programs and materials.

(p-4) A student under 14 years of age may not participate in a program developed under Subsection (p) without the permission of the student's parent or person standing in parental relation to the student.

(q) [Repealed by Acts 2013, 83rd Leg., ch. 211 (H.B. 5), § 78(b)(1), effective September 1, 2014.]

(r) In adopting the essential knowledge and skills for the health curriculum under Subsection (a)(2)(B), the State Board of Education shall adopt essential knowledge and skills that address the science, risk factors, causes, dangers, consequences, signs, symptoms, and treatment of substance abuse, including the use of illegal drugs, abuse of prescription drugs, abuse of alcohol such as by binge drinking or other excessive drinking resulting in alcohol poisoning, inhaling solvents, and other forms of substance abuse. The agency shall compile a list of evidence-based substance abuse awareness programs from which a school district shall choose a program to use in the district's middle school, junior high school, and high school health curriculum. In this subsection, "evidence-based substance abuse awareness program" means a program, practice, or strategy that has been proven to effectively prevent substance abuse among students, as determined by evaluations that are evidence-based.

(s) In this subsection, "bullying" has the meaning assigned by Section 37.0832 and "harassment" has the meaning assigned by Section 37.001. In addition to any other essential knowledge and skills the State Board of Education adopts for the health curriculum under Subsection (a)(2)(B), the board shall adopt for the health curriculum, in consultation with the Texas School Safety Center, essential knowledge and skills that include evidence-

based practices that will effectively address awareness, prevention, identification, self-defense in response to, and resolution of and intervention in bullying and harassment.

(t) The State Board of Education, in consultation with the commissioner of higher education and business and industry leaders, shall develop an advanced language course that a school district may use in the curriculum under Subsection (a)(2)(A) to provide students with instruction in industry-related terminology that prepares students to communicate in a language other than English in a specific professional, business, or industry environment.

(w) [Repealed.]

(z) The State Board of Education by rule shall require each school district to incorporate instruction in digital citizenship into the district's curriculum, including information regarding the potential criminal consequences of cyberbullying. In this subsection:

(1) "Cyberbullying" has the meaning assigned by Section 37.0832.

(2) "Digital citizenship" means the standards of appropriate, responsible, and healthy online behavior, including the ability to access, analyze, evaluate, create, and act on all forms of digital communication.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 1997, 75th Leg., ch. 1285 (S.B. 162), art. 4, § 4.02, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 907 (S.B. 19), § 1, effective June 14, 2001; am. Acts 2001, 77th Leg., ch. 925 (S.B. 467), § 3, effective June 14, 2001; am. Acts 2003, 78th Leg., ch. 61 (H.B. 242), § 2, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1264 (S.B. 815), §§ 1, 2, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(14), effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 784 (S.B. 42), § 1, effective June 17, 2005; am. Acts 2007, 80th Leg., ch. 254 (H.B. 2176), § 1, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 856 (H.B. 1287), § 3, effective June 15, 2007; am. Acts 2007, 80th Leg., ch. 1377 (S.B. 530), § 1, effective June 15, 2007; am. Acts 2009, 81st Leg., ch. 529 (S.B. 1344), § 2, effective June 19, 2009; am. Acts 2009, 81st Leg., ch. 773 (S.B. 891), § 1, effective June 19, 2009; am. Acts 2009, 81st Leg., ch. 895 (H.B. 3), § 25, effective June 19, 2009; am. Acts 2009, 81st Leg., ch. 1419 (H.B. 3076), § 1, effective June 19, 2009; am. Acts 2009, 81st Leg., ch. 1421 (S.B. 1219), § 1, effective June 19, 2009; am. Acts 2011, 82nd Leg., 1st C.S., ch. 6 (S.B. 6), § 13, effective July 19, 2011; am. Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 27.001(5), effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 776 (H.B. 1942), § 4, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 211 (H.B. 5), § 8(a), effective June 10, 2013; am. Acts 2013, 83rd Leg., ch. 211 (H.B. 5), § 78(b)(1), effective September 1, 2014; am. Acts 2013, 83rd Leg., ch. 796 (S.B. 1474), § 1, effective June 14, 2013; am. Acts 2013, 83rd Leg., ch. 861 (H.B. 462), § 1, effective June 14, 2013; am. Acts 2013, 83rd Leg., ch. 1026 (H.B. 2662), § 1, effective June 14, 2013; am. Acts 2015, 84th Leg., ch. 89 (H.B. 440), § 1, effective May 23, 2015; am. Acts 2015, 84th Leg., ch. 729 (H.B. 1431), § 1, effective June 17, 2015; am. Acts 2015, 84th Leg., ch. 1175 (S.B. 968), § 1, effective June 19, 2015; am. Acts 2017, 85th Leg., ch. 1088 (H.B. 3593), § 1, effective June 15, 2017; am. Acts 2019, 86th Leg., ch. 352 (H.B. 18), §§ 1.07, 4.01(2), effective December 1, 2019; am. Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 7, effective June 6, 2019; am. Acts 2019, 86th Leg., ch. 1149 (H.B. 2984), § 1, effective June 14, 2019.

Sec. 28.004. Local School Health Advisory Council and Health Education Instruction.

(a) The board of trustees of each school district shall establish a local school health advisory council to assist

the district in ensuring that local community values are reflected in the district's health education instruction.

(b) A school district must consider the recommendations of the local school health advisory council before changing the district's health education curriculum or instruction.

(c) The local school health advisory council's duties include recommending:

(1) the number of hours of instruction to be provided in:

(A) health education in kindergarten through grade eight; and

(B) if the school district requires health education for high school graduation, health education, including physical health education and mental health education, in grades 9 through 12;

(2) policies, procedures, strategies, and curriculum appropriate for specific grade levels designed to prevent physical health concerns, including obesity, cardiovascular disease, Type 2 diabetes, and mental health concerns, including suicide, through coordination of:

(A) health education, which must address physical health concerns and mental health concerns to ensure the integration of physical health education and mental health education;

(B) physical education and physical activity;

(C) nutrition services;

(D) parental involvement;

(E) instruction on substance abuse prevention;

(F) school health services, including mental health services;

(G) a comprehensive school counseling program under Section 33.005;

(H) a safe and healthy school environment; and

(I) school employee wellness;

(3) appropriate grade levels and methods of instruction for human sexuality instruction;

(4) strategies for integrating the curriculum components specified by Subdivision (2) with the following elements in a coordinated school health program for the district:

(A) school health services, including physical health services and mental health services, if provided at a campus by the district or by a third party under a contract with the district;

(B) a comprehensive school counseling program under Section 33.005;

(C) a safe and healthy school environment; and

(D) school employee wellness;

(5) if feasible, joint use agreements or strategies for collaboration between the school district and community organizations or agencies; and

(6) **[As added by Acts 2019, 86th Leg., ch. 331 (S.B. 435)]** appropriate grade levels and curriculum for instruction regarding opioid addiction and abuse and methods of administering an opioid antagonist, as defined by Section 483.101, Health and Safety Code.

(6) **[As added by Acts 2019, 86th Leg., ch. 464 (S.B. 11)]** strategies to increase parental awareness regarding:

(A) risky behaviors and early warning signs of suicide risks and behavioral health concerns, includ-

ing mental health disorders and substance use disorders; and

(B) available community programs and services that address risky behaviors, suicide risks, and behavioral health concerns.

(d) The board of trustees shall appoint at least five members to the local school health advisory council. A majority of the members must be persons who are parents of students enrolled in the district and who are not employed by the district. One of those members shall serve as chair or co-chair of the council. The board of trustees also may appoint one or more persons from each of the following groups or a representative from a group other than a group specified under this subsection:

(1) classroom teachers employed by the district;

(2) school counselors certified under Subchapter B, Chapter 21, employed by the district;

(3) school administrators employed by the district;

(4) district students;

(5) health care professionals licensed or certified to practice in this state, including medical or mental health professionals;

(6) the business community;

(7) law enforcement;

(8) senior citizens;

(9) the clergy;

(10) nonprofit health organizations; and

(11) local domestic violence programs.

(d-1) The local school health advisory council shall meet at least four times each year.

(e) Any course materials and instruction relating to human sexuality, sexually transmitted diseases, or human immunodeficiency virus or acquired immune deficiency syndrome shall be selected by the board of trustees with the advice of the local school health advisory council and must:

(1) present abstinence from sexual activity as the preferred choice of behavior in relationship to all sexual activity for unmarried persons of school age;

(2) devote more attention to abstinence from sexual activity than to any other behavior;

(3) emphasize that abstinence from sexual activity, if used consistently and correctly, is the only method that is 100 percent effective in preventing pregnancy, sexually transmitted diseases, infection with human immunodeficiency virus or acquired immune deficiency syndrome, and the emotional trauma associated with adolescent sexual activity;

(4) direct adolescents to a standard of behavior in which abstinence from sexual activity before marriage is the most effective way to prevent pregnancy, sexually transmitted diseases, and infection with human immunodeficiency virus or acquired immune deficiency syndrome; and

(5) teach contraception and condom use in terms of human use reality rates instead of theoretical laboratory rates, if instruction on contraception and condoms is included in curriculum content.

(f) A school district may not distribute condoms in connection with instruction relating to human sexuality.

(g) A school district that provides human sexuality instruction may separate students according to sex for instructional purposes.

(h) The board of trustees shall determine the specific content of the district's instruction in human sexuality, in accordance with Subsections (e), (f), and (g).

(i) Before each school year, a school district shall provide written notice to a parent of each student enrolled in the district of the board of trustees' decision regarding whether the district will provide human sexuality instruction to district students. If instruction will be provided, the notice must include:

(1) a summary of the basic content of the district's human sexuality instruction to be provided to the student, including a statement informing the parent of the instructional requirements under state law;

(2) a statement of the parent's right to:

(A) review curriculum materials as provided by Subsection (j); and

(B) remove the student from any part of the district's human sexuality instruction without subjecting the student to any disciplinary action, academic penalty, or other sanction imposed by the district or the student's school; and

(3) information describing the opportunities for parental involvement in the development of the curriculum to be used in human sexuality instruction, including information regarding the local school health advisory council established under Subsection (a).

(i-1) A parent may use the grievance procedure adopted under Section 26.011 concerning a complaint of a violation of Subsection (i).

(j) A school district shall make all curriculum materials used in the district's human sexuality instruction available for reasonable public inspection.

(k) A school district shall publish in the student handbook and post on the district's Internet website, if the district has an Internet website:

(1) a statement of the policies and procedures adopted to promote the physical health and mental health of students, the physical health and mental health resources available at each campus, contact information for the nearest providers of essential public health services under Chapter 121, Health and Safety Code, and the contact information for the nearest local mental health authority;

(2) a statement of the policies adopted to ensure that elementary school, middle school, and junior high school students engage in at least the amount and level of physical activity required by Section 28.002(1);

(3) a statement of:

(A) the number of times during the preceding year the district's school health advisory council has met;

(B) whether the district has adopted and enforces policies to ensure that district campuses comply with agency vending machine and food service guidelines for restricting student access to vending machines; and

(C) whether the district has adopted and enforces policies and procedures that prescribe penalties for the use of e-cigarettes, as defined by Section 38.006, and tobacco products by students and others on school campuses or at school-sponsored or school-related activities;

(4) a statement providing notice to parents that they can request in writing their child's physical fitness assessment results at the end of the school year; and

(5) for each campus in the district, a statement of whether the campus has a full-time nurse or full-time school counselor.

(l) The local school health advisory council shall consider and make policy recommendations to the district concerning the importance of daily recess for elementary school students. The council must consider research regarding unstructured and undirected play, academic and social development, and the health benefits of daily recess in making the recommendations. The council shall ensure that local community values are reflected in any policy recommendation made to the district under this subsection.

(l-1) The local school health advisory council shall establish a physical activity and fitness planning subcommittee to consider issues relating to student physical activity and fitness and make policy recommendations to increase physical activity and improve fitness among students.

(m) In addition to performing other duties, the local school health advisory council shall submit to the board of trustees, at least annually, a written report that includes:

(1) any council recommendation concerning the school district's health education curriculum and instruction or related matters that the council has not previously submitted to the board;

(2) any suggested modification to a council recommendation previously submitted to the board;

(3) a detailed explanation of the council's activities during the period between the date of the current report and the date of the last prior written report; and

(4) any recommendations made by the physical activity and fitness planning subcommittee.

(m-1), (m-2) [Expired pursuant to Acts 2009, 81st Leg., ch. 729 (S.B. 283), § 1, effective April 30, 2010.]

(n) Any joint use agreement that a school district and community organization or agency enter into based on a recommendation of the local school health advisory council under Subsection (c)(5) must address liability for the school district and community organization or agency in the agreement.

(o) The local school health advisory council shall make policy recommendations to the district to increase parental awareness of suicide-related risk factors and warning signs and available community suicide prevention services.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 2001, 77th Leg., ch. 907 (S.B. 19), § 2, effective June 14, 2001; am. Acts 2003, 78th Leg., ch. 944 (S.B. 1357), §§ 1, 2, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 784 (S.B. 42), § 2, effective June 17, 2005; am. Acts 2007, 80th Leg., ch. 1377 (S.B. 530), § 2, effective June 15, 2007; am. Acts 2009, 81st Leg., ch. 729 (S.B. 283), § 1, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 1235 (S.B. 736), § 1, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 892 (H.B. 1018), § 1, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1321 (S.B. 460), § 3, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 181 (S.B. 97), § 37, effective October 1, 2015; am. Acts 2017, 85th Leg., ch. 211 (S.B. 489), § 1, effective May 28, 2017; am. Acts 2019, 86th Leg., ch. 331 (S.B. 435), § 1,

effective May 31, 2019; am. Acts 2019, 86th Leg., ch. 352 (H.B. 18), § 1.08, effective December 1, 2019; am. Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 8, effective June 6, 2019.

Subchapter B

Advancement, Placement, Credit, and Academic Achievement Record

Sec. 28.02122. Inclusion of Mental Health Professions in Health Science Career Information.

The agency shall ensure that any information provided to students relating to health science careers includes information regarding mental health professions. To the extent that the public services endorsement includes information on health science career pathways, the information must include mental health careers as a possible pathway.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 96 (H.B. 1430), § 1, effective May 23, 2015.

Sec. 28.025. High School Diploma and Certificate; Academic Achievement Record.

(a) The State Board of Education by rule shall determine curriculum requirements for the foundation high school program that are consistent with the required curriculum under Section 28.002. The State Board of Education shall designate the specific courses in the foundation curriculum under Section 28.002(a)(1) required under the foundation high school program. Except as provided by this section, the State Board of Education may not designate a specific course or a specific number of credits in the enrichment curriculum as requirements for the program.

(b) A school district shall ensure that each student, on entering ninth grade, indicates in writing an endorsement under Subsection (c-1) that the student intends to earn. A district shall permit a student to choose, at any time, to earn an endorsement other than the endorsement the student previously indicated. A student may graduate under the foundation high school program without earning an endorsement if, after the student's sophomore year:

(1) the student and the student's parent or person standing in parental relation to the student are advised by a school counselor of the specific benefits of graduating from high school with one or more endorsements; and

(2) the student's parent or person standing in parental relation to the student files with a school counselor written permission, on a form adopted by the agency, allowing the student to graduate under the foundation high school program without earning an endorsement.

(b-1) The State Board of Education by rule shall require that the curriculum requirements for the foundation high school program under Subsection (a) include a requirement that students successfully complete:

(1) four credits in English language arts under Section 28.002(a)(1)(A), including one credit in English I, one credit in English II, one credit in English III, and one credit in an advanced English course authorized under Subsection (b-2);

(2) three credits in mathematics under Section 28.002(a)(1)(B), including one credit in Algebra I, one credit in geometry, and one credit in any advanced mathematics course authorized under Subsection (b-2);

(3) three credits in science under Section 28.002(a)(1)(C), including one credit in biology, one credit in any advanced science course authorized under Subsection (b-2), and one credit in integrated physics and chemistry or in an additional advanced science course authorized under Subsection (b-2);

(4) three credits in social studies under Section 28.002(a)(1)(D), including one credit in United States history, at least one-half credit in government and at least one-half credit in economics, and one credit in world geography or world history;

(5) except as provided under Subsections (b-12), (b-13), and (b-14), two credits in the same language in a language other than English under Section 28.002(a)(2)(A);

(6) five elective credits;

(7) one credit in fine arts under Section 28.002(a)(2)(D); and

(8) except as provided by Subsection (b-11), one credit in physical education under Section 28.002(a)(2)(C).

(b-2) In adopting rules under Subsection (b-1), the State Board of Education shall:

(1) provide for a student to comply with the curriculum requirements for an advanced English course under Subsection (b-1)(1), for an advanced mathematics course under Subsection (b-1)(2), and for any advanced science course under Subsection (b-1)(3) by successfully completing a course in the appropriate content area that has been approved as an advanced course by board rule or that is offered as an advanced course for credit without board approval as provided by Section 28.002(g-1); and

(2) allow a student to comply with the curriculum requirements for the third and fourth mathematics credits under Subsection (b-1)(2) or the third and fourth science credits under Subsection (b-1)(3) by successfully completing an advanced career and technical course designated by the State Board of Education as containing substantively similar and rigorous academic content.

(b-3) In adopting rules for purposes of Subsection (b-2), the State Board of Education must approve a variety of advanced English, mathematics, and science courses that may be taken to comply with the foundation high school program requirements, provided that each approved course prepares students to enter the workforce successfully or postsecondary education without remediation.

(b-4) A school district may offer the curriculum described in Subsections (b-1)(1) through (4) in an applied manner. Courses delivered in an applied manner must cover the essential knowledge and skills, and the student shall be administered the applicable end-of-course assessment instrument as provided by Sections 39.023(c) and 39.025.

(b-5) A school district may offer a mathematics or science course to be taken by a student after completion of Algebra II and physics. A course approved under this subsection must be endorsed by an institution of higher

education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit.

(b-6) A school district may allow a student to enroll concurrently in Algebra I and geometry.

(b-7) The State Board of Education, in coordination with the Texas Higher Education Coordinating Board, shall adopt rules to ensure that a student may comply with the curriculum requirements under the foundation high school program or for an endorsement under Subsection (c-1) by successfully completing appropriate courses in the core curriculum of an institution of higher education under Section 61.822. Notwithstanding Subsection (b-15) or (c) of this section, Section 39.025, or any other provision of this code and notwithstanding any school district policy, a student who has completed the core curriculum of an institution of higher education under Section 61.822, as certified by the institution in accordance with commissioner rule, is considered to have earned a distinguished level of achievement under the foundation high school program and is entitled to receive a high school diploma from the appropriate high school as that high school is determined in accordance with commissioner rule. A student who is considered to have earned a distinguished level of achievement under the foundation high school program under this subsection may apply for admission to an institution of higher education for the first semester or other academic term after the semester or other academic term in which the student completes the core curriculum.

(b-8) [Repealed by Acts 2013, 83rd Leg., ch. 211 (H.B. 5), § 78(b)(3), effective September 1, 2014.]

(b-9) A school district, with the approval of the commissioner, may allow a student to satisfy the fine arts credit required under Subsection (b-1)(7) by participating in a community-based fine arts program not provided by the school district in which the student is enrolled. The fine arts program must provide instruction in the essential knowledge and skills identified for fine arts by the State Board of Education under Section 28.002(c). The fine arts program may be provided on or off a school campus and outside the regular school day.

(b-10) A school district, with the approval of the commissioner, may allow a student to comply with the curriculum requirements for the physical education credit required under Subsection (b-1)(8) by participating in a private or commercially sponsored physical activity program provided on or off a school campus and outside the regular school day.

(b-11) In adopting rules under Subsection (b-1), the State Board of Education shall allow a student who is unable to participate in physical activity due to disability or illness to substitute one credit in English language arts, mathematics, science, or social studies, one credit in a course that is offered for credit as provided by Section 28.002(g-1), or one academic elective credit for the physical education credit required under Subsection (b-1)(8). A credit allowed to be substituted under this subsection may not also be used by the student to satisfy a graduation requirement other than completion of the physical education credit. The rules must provide that the determination regarding a student's ability to participate in physical activity will be made by:

(1) if the student receives special education services under Subchapter A, Chapter 29, the student's admission, review, and dismissal committee;

(2) if the student does not receive special education services under Subchapter A, Chapter 29, but is covered by Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), the committee established for the student under that Act; or

(3) if each of the committees described by Subdivisions (1) and (2) is inapplicable, a committee established by the school district of persons with appropriate knowledge regarding the student.

(b-12) In adopting rules under Subsection (b-1), the State Board of Education shall adopt criteria to allow a student to comply with the curriculum requirements for the two credits in a language other than English required under Subsection (b-1)(5) by substituting two credits in computer programming languages, including computer coding.

(b-13) In adopting rules under Subsection (b-1), the State Board of Education shall allow a student to substitute credit in another appropriate course for the second credit in the same language in a language other than English otherwise required by Subsection (b-1)(5) if the student, in completing the first credit required under Subsection (b-1)(5), demonstrates that the student is unlikely to be able to complete the second credit. The board rules must establish:

(1) the standards and, as applicable, the appropriate school personnel for making a determination under this subsection; and

(2) appropriate substitute courses for purposes of this subsection.

(b-14) In adopting rules under Subsection (b-1), the State Board of Education shall allow a student who, due to disability, is unable to complete two courses in the same language in a language other than English, as provided under Subsection (b-1)(5), to substitute for those credits two credits in English language arts, mathematics, science, or social studies or two credits in career and technology education, technology applications, or other academic electives. A credit allowed to be substituted under this subsection may not also be used by the student to satisfy a graduation credit requirement other than credit for completion of a language other than English. The rules must provide that the determination regarding a student's ability to participate in language-other-than-English courses will be made by:

(1) if the student receives special education services under Subchapter A, Chapter 29, the student's admission, review, and dismissal committee; or

(2) if the student does not receive special education services under Subchapter A, Chapter 29, but is covered by Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), the committee established for the student under that Act.

(b-15) A student may earn a distinguished level of achievement under the foundation high school program by successfully completing:

(1) four credits in mathematics, which must include Algebra II and the courses described by Subsection (b-1)(2);

(2) four credits in science, which must include the courses described by Subsection (b-1)(3);

(3) the remaining curriculum requirements under Subsection (b-1); and

(4) the curriculum requirements for at least one endorsement under Subsection (c-1).

(b-16) A student may satisfy an elective credit required under Subsection (b-1)(6) with a credit earned to satisfy the additional curriculum requirements for the distinguished level of achievement under the foundation high school program or an endorsement under Subsection (c-1). This subsection may apply to more than one elective credit.

(b-17) The State Board of Education shall adopt rules to ensure that a student may comply with the curriculum requirements under Subsection (b-1)(6) by successfully completing an advanced career and technical course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

(b-18) In adopting rules under Subsection (b-1), the State Board of Education shall allow a student to comply with the curriculum requirements under Subsection (b-1) by successfully completing a dual credit course.

(b-19) In adopting rules under Subsection (b-1), the State Board of Education shall adopt criteria to allow a student to comply with curriculum requirements for the world geography or world history credit under Subsection (b-1)(4) by successfully completing a combined world history and world geography course developed by the State Board of Education.

(b-20) The State Board of Education shall adopt rules to include the instruction developed under Section 28.012 in one or more courses in the required curriculum for students in grade levels 9 through 12.

(b-21) In adopting rules under Subsection (b-1), the State Board of Education shall adopt criteria to allow a student to comply with the curriculum requirement for one credit under Subsection (b-1)(5) by successfully completing at an elementary school either a dual language immersion program under Section 28.0051 or a course in American Sign Language.

(c) A person may receive a diploma if the person is eligible for a diploma under Section 28.0251. In other cases, a student may graduate and receive a diploma only if:

(1) the student successfully completes the curriculum requirements identified by the State Board of Education under Subsection (a) and complies with Sections 28.0256 and 39.025; or

(2) the student successfully completes an individualized education program developed under Section 29.005.

(c-1) A student may earn an endorsement on the student's transcript by successfully completing curriculum requirements for that endorsement adopted by the State Board of Education by rule. The State Board of Education by rule shall provide students with multiple options for earning each endorsement, including, to the greatest extent possible, coherent sequences of courses. The State Board of Education by rule must permit a student to enroll in courses under more than one endorsement curriculum before the student's junior year. An endorsement under this subsection may be earned in any of the following categories:

(1) science, technology, engineering, and mathematics (STEM), which includes courses directly related to science, including environmental science, technology, including computer science, cybersecurity, and computer coding, engineering, and advanced mathematics;

(2) business and industry, which includes courses directly related to database management, information technology, communications, accounting, finance, marketing, graphic design, architecture, construction, welding, logistics, automotive technology, agricultural science, and heating, ventilation, and air conditioning;

(3) public services, which includes courses directly related to health sciences and occupations, mental health, education and training, law enforcement, and culinary arts and hospitality;

(4) arts and humanities, which includes courses directly related to political science, world languages, cultural studies, English literature, history, and fine arts; and

(5) multidisciplinary studies, which allows a student to:

(A) select courses from the curriculum of each endorsement area described by Subdivisions (1) through (4); and

(B) earn credits in a variety of advanced courses from multiple content areas sufficient to complete the distinguished level of achievement under the foundation high school program.

(c-2) In adopting rules under Subsection (c-1), the State Board of Education shall:

(1) require a student in order to earn any endorsement to successfully complete:

(A) four credits in mathematics, which must include:

(i) the courses described by Subsection (b-1)(2); and

(ii) an additional advanced mathematics course authorized under Subsection (b-2) or an advanced career and technology course designated by the State Board of Education;

(B) four credits in science, which must include:

(i) the courses described by Subsection (b-1)(3); and

(ii) an additional advanced science course authorized under Subsection (b-2) or an advanced career and technology course designated by the State Board of Education; and

(C) two elective credits in addition to the elective credits required under Subsection (b-1)(6); and

(2) develop additional curriculum requirements for each endorsement with the direct participation of educators and business, labor, and industry representatives, and shall require each school district to report to the agency the categories of endorsements under Subsection (c-1) for which the district offers all courses for curriculum requirements, as determined by board rule.

(c-3) In adopting rules under Subsection (c-1), the State Board of Education shall adopt criteria to allow a student participating in the arts and humanities endorsement under Subsection (c-1)(4), with the written permission of the student's parent or a person standing in parental relation to the student, to comply with the curriculum

requirements for science required under Subsection (c-2)(1)(B)(ii) by substituting for an advanced course requirement a course related to that endorsement.

(c-4) Each school district must make available to high school students courses that allow a student to complete the curriculum requirements for at least one endorsement under Subsection (c-1). A school district that offers only one endorsement curriculum must offer the multidisciplinary studies endorsement curriculum.

(c-5) A student may earn a performance acknowledgment on the student's transcript by satisfying the requirements for that acknowledgment adopted by the State Board of Education by rule. An acknowledgment under this subsection may be earned:

- (1) for outstanding performance:
 - (A) in a dual credit course;
 - (B) in bilingualism and biliteracy;
 - (C) on a college advanced placement test or international baccalaureate examination;
 - (D) on an established, valid, reliable, and nationally norm-referenced preliminary college preparation assessment instrument used to measure a student's progress toward readiness for college and the workplace; or
 - (E) on an established, valid, reliable, and nationally norm-referenced assessment instrument used by colleges and universities as part of their undergraduate admissions process; or
- (2) for earning a state recognized or nationally or internationally recognized business or industry certification or license.

(c-6) **[Expires September 1, 2023]** Notwithstanding Subsection (c), a person may receive a diploma if the person is eligible for a diploma under Section 28.0258. This subsection expires September 1, 2023.

(c-7) Subject to Subsection (c-8), a student who is enrolled in a special education program under Subchapter A, Chapter 29, may earn an endorsement on the student's transcript by:

- (1) successfully completing, with or without modification of the curriculum:
 - (A) the curriculum requirements identified by the State Board of Education under Subsection (a); and
 - (B) the additional endorsement curriculum requirements prescribed by the State Board of Education under Subsection (c-2); and
- (2) successfully completing all curriculum requirements for that endorsement adopted by the State Board of Education:
 - (A) without modification of the curriculum; or
 - (B) with modification of the curriculum, provided that the curriculum, as modified, is sufficiently rigorous as determined by the student's admission, review, and dismissal committee.

(c-8) For purposes of Subsection (c-7), the admission, review, and dismissal committee of a student in a special education program under Subchapter A, Chapter 29, shall determine whether the student is required to achieve satisfactory performance on an end-of-course assessment instrument to earn an endorsement on the student's transcript.

(c-10) In adopting rules under Subsection (c-1), the State Board of Education shall adopt or select five tech-

nology applications courses on cybersecurity to be included in a cybersecurity pathway for the science, technology, engineering, and mathematics endorsement.

(d) A school district may issue a certificate of coursework completion to a student who successfully completes the curriculum requirements identified by the State Board of Education under Subsection (a) but who fails to comply with Section 39.025. A school district may allow a student who receives a certificate to participate in a graduation ceremony with students receiving high school diplomas.

(e) Each school district shall report the academic achievement record of students who have completed the foundation high school program on transcript forms adopted by the State Board of Education. The transcript forms adopted by the board must be designed to clearly identify whether a student received a diploma or a certificate of coursework completion.

(e-1) A school district shall clearly indicate a distinguished level of achievement under the foundation high school program as described by Subsection (b-15), an endorsement described by Subsection (c-1), and a performance acknowledgment described by Subsection (c-5) on the transcript of a student who satisfies the applicable requirements. The State Board of Education shall adopt rules as necessary to administer this subsection.

(e-2) At the end of each school year, each school district shall report through the Public Education Information Management System (PEIMS) the number of district students who, during that school year, were:

- (1) enrolled in the foundation high school program;
- (2) pursuing the distinguished level of achievement under the foundation high school program as provided by Subsection (b-15); and
- (3) enrolled in a program to earn an endorsement described by Subsection (c-1).

(e-3) Information reported under Subsection (e-2) must be disaggregated by all student groups served by the district, including categories of race, ethnicity, socioeconomic status, sex, and populations served by special programs, including students in special education programs under Subchapter A, Chapter 29.

(f) A school district shall issue a certificate of attendance to a student who receives special education services under Subchapter A, Chapter 29, and who has completed four years of high school but has not completed the student's individualized education program. A school district shall allow a student who receives a certificate to participate in a graduation ceremony with students receiving high school diplomas. A student may participate in only one graduation ceremony under this subsection. This subsection does not preclude a student from receiving a diploma under Subsection (c)(2).

(g) [Repealed by Acts 2013, 83rd Leg., ch. 211 (H.B. 5), § 78(b)(3), effective September 1, 2014.]

(h) **[Expired September 1, 2018]**

(h-1) **[Expired September 1, 2018]**

(h-2) **[Expired September 1, 2015]**

(i) If an 11th or 12th grade student who is homeless or in the conservatorship of the Department of Family and Protective Services transfers to a different school district and the student is ineligible to graduate from the district to which the student transfers, the district from which the

student transferred shall award a diploma at the student's request, if the student meets the graduation requirements of the district from which the student transferred.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 1997, 75th Leg., ch. 767 (H.B. 1800), § 8, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 397 (S.B. 103), § 1, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 187 (S.B. 387), § 2, effective May 19, 2001; am. Acts 2001, 77th Leg., ch. 834 (H.B. 1144), § 2, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 365 (S.B. 1366), § 2, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), art. 6, § 6.003, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1317 (H.B. 1882), § 10, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 164 (H.B. 25), § 4, effective May 27, 2005; am. Acts 2006, 79th Leg., 3rd C.S., ch. 5 (H.B. 1), art. 5, § 5.02, effective May 31, 2006; am. Acts 2007, 80th Leg., ch. 46 (S.B. 673), § 1, effective May 28, 2007; am. Acts 2007, 80th Leg., ch. 763 (H.B. 3485), § 4, effective June 15, 2007; am. Acts 2009, 81st Leg., ch. 895 (H.B. 3), § 30, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 714 (H.B. 692), § 1, effective June 17, 2011; am. Acts 2011, 82nd Leg., ch. 926 (S.B. 1620), § 3, effective June 17, 2011; am. Acts 2011, 82nd Leg., ch. 1163 (H.B. 2702), § 9, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 211 (H.B. 5), § 16(a), effective June 10, 2013; am. Acts 2013, 83rd Leg., ch. 211 (H.B. 5), § 78(b)(3), effective September 1, 2014; am. Acts 2013, 83rd Leg., ch. 214 (H.B. 2201), § 2, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1354 (S.B. 1404), § 4, effective June 14, 2013; am. Acts 2015, 84th Leg., ch. 5 (S.B. 149), § 2, effective May 11, 2015; am. Acts 2015, 84th Leg., ch. 7 (H.B. 181), § 1, effective May 13, 2015; am. Acts 2015, 84th Leg., ch. 96 (H.B. 1430), § 2; am. Acts 2015, 84th Leg., ch. 934 (H.B. 2349), § 1, effective June 18, 2015; am. Acts 2015, 84th Leg., ch. 1206 (S.B. 1494), § 4, effective June 19, 2015; am. Acts 2017, 85th Leg., ch. 63 (S.B. 671), § 1, effective May 22, 2017; am. Acts 2017, 85th Leg., ch. 307 (S.B. 826), § 1, effective May 29, 2017; am. Acts 2017, 85th Leg., ch. 513 (S.B. 30), § 3, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 549 (S.B. 463), § 2, effective June 9, 2017; am. Acts 2017, 85th Leg., ch. 1088 (H.B. 3593), § 2, effective June 15, 2017; am. Acts 2019, 86th Leg., ch. 739 (H.B. 678), § 1, effective June 10, 2019; am. Acts 2019, 86th Leg., ch. 1074 (H.B. 165), § 1, effective June 10, 2019; am. Acts 2019, 86th Leg., ch. 597 (S.B. 668), § 1.05, effective June 10, 2019; am. Acts 2019, 86th Leg., ch. 14 (S.B. 213), § 2, effective May 7, 2019; am. Acts 2019, 86th Leg., ch. 625 (S.B. 1374), § 1, effective June 10, 2019; am. Acts 2019, 86th Leg., ch. 943 (H.B. 3), § 2.014, effective June 12, 2019.

Sec. 28.0259. School District Reporting Requirements for Students Graduating Based on Individual Graduation Committee Review Process. [Expires September 1, 2023]

(a) Each school district shall report through the Public Education Information Management System (PEIMS) the number of district students each school year for which an individual graduation committee is established under Section 28.0258 and the number of district students each school year who are awarded a diploma based on the decision of an individual graduation committee as provided by Section 28.0258.

(b) A school district shall report the information required by Subsection (a) not later than December 1 of the school year following the school year the student is awarded a diploma.

(c) The agency shall make the information reported under this section available on the agency's Internet website.

(d) The commissioner shall adopt rules as necessary to implement this section not later than the 2015-2016 school year.

(e) This section expires September 1, 2023.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 5 (S.B. 149), § 3, effective May 11, 2015; am. Acts 2017, 85th Leg., ch. 549 (S.B. 463), §§ 6, 7, effective June 9, 2017; am. Acts 2019, 86th Leg., ch. 14 (S.B. 213), § 6, effective May 7, 2019.

CHAPTER 29

Educational Programs

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Subchapter A

Special Education Program

Sec. 29.001. Statewide Plan.

The agency shall develop, and modify as necessary, a statewide design, consistent with federal law, for the delivery of services to children with disabilities in this state that includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all of those children between the ages of three and 21. The statewide design shall include the provision of services primarily through school districts and shared services arrangements, supplemented by regional education service centers. The agency shall also develop and implement a statewide plan with programmatic content that includes procedures designed to:

- (1) ensure state compliance with requirements for supplemental federal funding for all state-administered programs involving the delivery of instructional or related services to students with disabilities;
- (2) facilitate interagency coordination when other state agencies are involved in the delivery of instructional or related services to students with disabilities;
- (3) periodically assess statewide personnel needs in all areas of specialization related to special education and pursue strategies to meet those needs through a consortium of representatives from regional education service centers, local education agencies, and institutions of higher education and through other available alternatives;
- (4) ensure that regional education service centers throughout the state maintain a regional support function, which may include direct service delivery and a component designed to facilitate the placement of students with disabilities who cannot be appropriately served in their resident districts;
- (5) allow the agency to effectively monitor and periodically conduct site visits of all school districts to ensure that rules adopted under this section are applied in a consistent and uniform manner, to ensure that districts are complying with those rules, and to ensure that annual statistical reports filed by the districts and not otherwise available through the Public Education Information Management System under Sections 48.008 and 48.009 are accurate and complete;
- (6) ensure that appropriately trained personnel are involved in the diagnostic and evaluative procedures operating in all districts and that those personnel routinely serve on district admissions, review, and dismissal committees;

(7) ensure that an individualized education program for each student with a disability is properly developed, implemented, and maintained in the least restrictive environment that is appropriate to meet the student's educational needs;

(8) ensure that, when appropriate, each student with a disability is provided an opportunity to participate in career and technology and physical education classes, in addition to participating in regular or special classes;

(9) ensure that each student with a disability is provided necessary related services;

(10) ensure that an individual assigned to act as a surrogate parent for a child with a disability, as provided by 20 U.S.C. Section 1415(b), is required to:

- (A) complete a training program that complies with minimum standards established by agency rule;
- (B) visit the child and the child's school;
- (C) consult with persons involved in the child's education, including teachers, caseworkers, court-appointed volunteers, guardians ad litem, attorneys ad litem, foster parents, and caretakers;
- (D) review the child's educational records;
- (E) attend meetings of the child's admission, review, and dismissal committee;
- (F) exercise independent judgment in pursuing the child's interests; and
- (G) exercise the child's due process rights under applicable state and federal law; and

(11) ensure that each district develops a process to be used by a teacher who instructs a student with a disability in a regular classroom setting:

- (A) to request a review of the student's individualized education program;
- (B) to provide input in the development of the student's individualized education program;
- (C) that provides for a timely district response to the teacher's request; and
- (D) that provides for notification to the student's parent or legal guardian of that response.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 1999, 76th Leg., ch. 430 (S.B. 1141), § 1, effective September 1, 1999; am. Acts 2011, 82nd Leg., ch. 1283 (H.B. 1335), § 1, effective June 17, 2011; am. Acts 2015, 84th Leg., ch. 1192 (S.B. 1259), § 1, effective June 19, 2015; am. Acts 2019, 86th Leg., ch. 943 (H.B. 3), § 3.023, effective September 1, 2019.

Sec. 29.0011. Prohibited Performance Indicator.

(a) Notwithstanding Section 29.001(5), Section 29.010, or any other provision of this code, the commissioner or agency may not adopt or implement a performance indicator in any agency monitoring system, including the performance-based monitoring analysis system, that solely measures a school district's or open-enrollment charter school's aggregated number or percentage of enrolled students who receive special education services.

(b) Subsection (a) does not prohibit or limit the commissioner or agency from meeting requirements under:

- (1) 20 U.S.C. Section 1418(d) and its implementing regulations to collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the state and in the school

districts and open-enrollment charter schools in the state with respect to the:

(A) identification of children as children with disabilities, including the identification of children as children with particular impairments;

(B) placement of children with disabilities in particular educational settings; and

(C) incidence, duration, and type of disciplinary actions taken against children with disabilities, including suspensions and expulsions; or

(2) 20 U.S.C. Section 1416(a)(3)(C) and its implementing regulations to address in the statewide plan the percentage of school districts and open-enrollment charter schools with disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories that results from inappropriate identification.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 59 (S.B. 160), § 1, effective May 22, 2017.

Sec. 29.002. Definition.

In this subchapter, “special services” means:

(1) special education instruction, which may be provided by professional and supported by paraprofessional personnel in the regular classroom or in an instructional arrangement described by Section 48.102; and

(2) related services, which are developmental, corrective, supportive, or evaluative services, not instructional in nature, that may be required for the student to benefit from special education instruction and for implementation of a student’s individualized education program.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 2001, 77th Leg., ch. 767 (S.B. 1735), § 1, effective June 13, 2001; am. Acts 2019, 86th Leg., ch. 943 (H.B. 3), § 3.024, effective September 1, 2019.

Sec. 29.003. Eligibility Criteria.

(a) The agency shall develop specific eligibility criteria based on the general classifications established by this section with reference to contemporary diagnostic or evaluative terminologies and techniques. Eligible students with disabilities shall enjoy the right to a free appropriate public education, which may include instruction in the regular classroom, instruction through special teaching, or instruction through contracts approved under this subchapter. Instruction shall be supplemented by the provision of related services when appropriate.

(b) A student is eligible to participate in a school district’s special education program if the student:

(1) is not more than 21 years of age and has a visual or auditory impairment that prevents the student from being adequately or safely educated in public school without the provision of special services; or

(2) is at least three but not more than 21 years of age and has one or more of the following disabilities that prevents the student from being adequately or safely educated in public school without the provision of special services:

(A) physical disability;

(B) intellectual or developmental disability;

(C) emotional disturbance;

(D) learning disability;

(E) autism;

(F) speech disability; or

(G) traumatic brain injury.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 2019, 86th Leg., ch. 1279 (H.B. 965), § 2, effective September 1, 2019.

Sec. 29.004. Full Individual and Initial Evaluation.

(a) A written report of a full individual and initial evaluation of a student for purposes of special education services shall be completed as follows, except as otherwise provided by this section:

(1) not later than the 45th school day following the date on which the school district, in accordance with 20 U.S.C. Section 1414(a), as amended, receives written consent for the evaluation, signed by the student’s parent or legal guardian, except that if a student has been absent from school during that period on three or more days, that period must be extended by a number of school days equal to the number of school days during that period on which the student has been absent; or

(2) for students under five years of age by September 1 of the school year and not enrolled in public school and for students enrolled in a private or home school setting, not later than the 45th school day following the date on which the school district receives written consent for the evaluation, signed by a student’s parent or legal guardian.

(a-1) If a school district receives written consent signed by a student’s parent or legal guardian for a full individual and initial evaluation of a student at least 35 but less than 45 school days before the last instructional day of the school year, the evaluation must be completed and the written report of the evaluation must be provided to the parent or legal guardian not later than June 30 of that year. The student’s admission, review, and dismissal committee shall meet not later than the 15th school day of the following school year to consider the evaluation. If a district receives written consent signed by a student’s parent or legal guardian less than 35 school days before the last instructional day of the school year or if the district receives the written consent at least 35 but less than 45 school days before the last instructional day of the school year but the student is absent from school during that period on three or more days, Subsection (a)(1) applies to the date the written report of the full individual and initial evaluation is required.

(a-2) For purposes of this section, “school day” does not include a day that falls after the last instructional day of the spring school term and before the first instructional day of the subsequent fall school term. The commissioner by rule may determine days during which year-round schools are recessed that, consistent with this subsection, are not considered to be school days for purposes of this section.

(a-3) Subsection (a) does not impair any rights of an infant or toddler with a disability who is receiving early intervention services in accordance with 20 U.S.C. Section 1431.

(b) The evaluation shall be conducted using procedures that are appropriate for the student’s most proficient method of communication.

(c) If a parent or legal guardian makes a written request to a school district's director of special education services or to a district administrative employee for a full individual and initial evaluation of a student, the district shall, not later than the 15th school day after the date the district receives the request:

- (1) provide an opportunity for the parent or legal guardian to give written consent for the evaluation; or
- (2) refuse to provide the evaluation and provide the parent or legal guardian with notice of procedural safeguards under 20 U.S.C. Section 1415(b).

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 2001, 77th Leg., ch. 767 (S.B. 1735), § 2, effective June 13, 2001; am. Acts 2003, 78th Leg., ch. 539 (H.B. 1339), § 3, effective September 1, 2003; am. Acts 2013, 83rd Leg., ch. 757 (S.B. 816), § 1, effective September 1, 2013.

Sec. 29.0041. Information and Consent for Certain Psychological Examinations or Tests.

(a) On request of a child's parent, before obtaining the parent's consent under 20 U.S.C. Section 1414 for the administration of any psychological examination or test to the child that is included as part of the evaluation of the child's need for special education, a school district shall provide to the child's parent:

- (1) the name and type of the examination or test; and
- (2) an explanation of how the examination or test will be used to develop an appropriate individualized education program for the child.

(b) If the district determines that an additional examination or test is required for the evaluation of a child's need for special education after obtaining consent from the child's parent under Subsection (a), the district shall provide the information described by Subsections (a)(1) and (2) to the child's parent regarding the additional examination or test and shall obtain additional consent for the examination or test.

(c) The time required for the district to provide information and seek consent under Subsection (b) may not be counted toward the 60 calendar days for completion of an evaluation under Section 29.004. If a parent does not give consent under Subsection (b) within 20 calendar days after the date the district provided to the parent the information required by that subsection, the parent's consent is considered denied.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1008 (H.B. 320), § 2, effective June 20, 2003.

Sec. 29.005. Individualized Education Program.

(a) Before a child is enrolled in a special education program of a school district, the district shall establish a committee composed of the persons required under 20 U.S.C. Section 1414(d) to develop the child's individualized education program. If a committee is required to include a regular education teacher, the regular education teacher included must, to the extent practicable, be a teacher who is responsible for implementing a portion of the child's individualized education program.

(b) The committee shall develop the individualized education program by agreement of the committee members or, if those persons cannot agree, by an alternate method

provided by the agency. Majority vote may not be used to determine the individualized education program.

(b-1) The written statement of the individualized education program must document the decisions of the committee with respect to issues discussed at each committee meeting. The written statement must include:

- (1) the date of the meeting;
- (2) the name, position, and signature of each member participating in the meeting; and
- (3) an indication of whether the child's parents, the adult student, if applicable, and the administrator agreed or disagreed with the decisions of the committee.

(c) If the individualized education program is not developed by agreement, the written statement of the program required under 20 U.S.C. Section 1414(d) must include the basis of the disagreement. Each member of the committee who disagrees with the individualized education program developed by the committee is entitled to include a statement of disagreement in the written statement of the program.

(d) If the child's parent is unable to speak English, the district shall:

- (1) provide the parent with a written or audiotaped copy of the child's individualized education program translated into Spanish if Spanish is the parent's native language; or
- (2) if the parent's native language is a language other than Spanish, make a good faith effort to provide the parent with a written or audiotaped copy of the child's individualized education program translated into the parent's native language.

(e) The commissioner by rule may require a school district to include in the individualized education program of a student with autism or another pervasive developmental disorder any information or requirement determined necessary to ensure the student receives a free appropriate public education as required under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

(f) The written statement of a student's individualized education program may be required to include only information included in the model form developed under Section 29.0051(a).

(g) The committee may determine that a behavior improvement plan or a behavioral intervention plan is appropriate for a student for whom the committee has developed an individualized education program. If the committee makes that determination, the behavior improvement plan or the behavioral intervention plan shall be included as part of the student's individualized education program and provided to each teacher with responsibility for educating the student.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 1999, 76th Leg., ch. 1372 (H.B. 1275), § 1, effective June 19, 1999; am. Acts 2001, 77th Leg., ch. 767 (S.B. 1735), § 3, effective June 13, 2001; am. Acts 2005, 79th Leg., ch. 838 (S.B. 882), § 12, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 1250 (S.B. 1788), § 1, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 458 (S.B. 914), § 1, effective June 14, 2013; am. Acts 2015, 84th Leg., ch. 1192 (S.B. 1259), § 2, effective June 19, 2015.

Sec. 29.0051. Model Form.

(a) The agency shall develop a model form for use in developing an individualized education program under

Section 29.005(b). The form must be clear, concise, well organized, and understandable to parents and educators and may include only:

- (1) the information included in the model form developed under 20 U.S.C. Section 1417(e)(1);
 - (2) a state-imposed requirement relevant to an individualized education program not required under federal law; and
 - (3) the requirements identified under 20 U.S.C. Section 1407(a)(2).
- (b) The agency shall post on the agency's Internet website the form developed under Subsection (a).
- (c) A school district may use the form developed under Subsection (a) to comply with the requirements for an individualized education program under 20 U.S.C. Section 1414(d).

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1250 (S.B. 1788), § 2, effective June 17, 2011.

Sec. 29.006. Continuing Advisory Committee.

(a) The governor shall appoint a continuing advisory committee, composed of 17 members, under 20 U.S.C. Section 1412(a)(21). At least one member appointed under this subsection must be a director of special education programs for a school district.

(b) The appointments are not subject to confirmation by the senate.

(c) Members of the committee are appointed for staggered terms of four years with the terms of eight or nine members expiring on February 1 of each odd-numbered year.

(d) Committee meetings must be conducted in compliance with Chapter 551, Government Code.

(e) The committee shall provide a procedure for members of the public to speak at committee meetings. The procedure may not require a member of the public to register to speak earlier than the day of the meeting.

(f) The agency must post on the agency's Internet website:

- (1) contact information for the committee, including an e-mail address;
- (2) notice of each open meeting of the committee;
- (3) minutes of each open meeting of the committee; and
- (4) guidance concerning how to submit public comments to the committee.

(g) The committee shall develop a policy to encourage public participation with the committee.

(h) Not later than January 1 of each odd-numbered year, the committee shall submit a report to the legislature with recommended changes to state law and agency rules relating to special education. The committee shall include the committee's current policy on encouraging public participation, as required by Subsection (g), in the report.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 2001, 77th Leg., ch. 767 (S.B. 1735), § 4, effective June 13, 2001; am. Acts 2011, 82nd Leg., ch. 44 (H.B. 861), § 1, effective May 12, 2011; am. Acts 2017, 85th Leg., ch. 547 (S.B. 436), § 1, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 439 (S.B. 1376), § 1.02, effective June 4, 2019.

Sec. 29.007. Shared Services Arrangements. [Repealed]

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; Repealed by Acts 2019, 86th Leg., ch. 439 (S.B. 1376), § 4.01(a)(3), effective June 4, 2019.

Sec. 29.008. Contracts for Services; Residential Placement.

(a) A school district, shared services arrangement unit, or regional education service center may contract with a public or private facility, institution, or agency inside or outside of this state for the provision of services to students with disabilities. Each contract for residential placement must be approved by the commissioner. The commissioner may approve a residential placement contract only after at least a programmatic evaluation of personnel qualifications, adequacy of physical plant and equipment, and curriculum content. The commissioner may approve either the whole or a part of a facility or program.

(b) Except as provided by Subsection (c), costs of an approved contract for residential placement may be paid from a combination of federal, state, and local funds. The local share of the total contract cost for each student is that portion of the local tax effort that exceeds the district's local fund assignment under Section 48.256, divided by the average daily attendance in the district. If the contract involves a private facility, the state share of the total contract cost is that amount remaining after subtracting the local share. If the contract involves a public facility, the state share is that amount remaining after subtracting the local share from the portion of the contract that involves the costs of instructional and related services. For purposes of this subsection, "local tax effort" means the total amount of money generated by taxes imposed for debt service and maintenance and operation less any amounts paid into a tax increment fund under Chapter 311, Tax Code.

(c) When a student, including one for whom the state is managing conservator, is placed primarily for care or treatment reasons in a private residential facility that operates its own private education program, none of the costs may be paid from public education funds. If a residential placement primarily for care or treatment reasons involves a private residential facility in which the education program is provided by the school district, the portion of the costs that includes appropriate education services, as determined by the school district's admission, review, and dismissal committee, shall be paid from state and federal education funds.

(d) A district that contracts for the provision of education services rather than providing the services itself shall oversee the implementation of the student's individualized education program and shall annually reevaluate the appropriateness of the arrangement. An approved facility, institution, or agency with whom the district contracts shall periodically report to the district on the services the student has received or will receive in accordance with the contract as well as diagnostic or other evaluative information that the district requires in order to fulfill its obligations under this subchapter.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 1997, 75th Leg., ch. 1071 (S.B.

1873), § 3, effective September 1, 1997; am. Acts 2019, 86th Leg., ch. 943 (H.B. 3), § 3.025, effective September 1, 2019.

Sec. 29.009. Public Notice Concerning Preschool Programs for Students with Disabilities.

Each school district shall develop a system to notify the population in the district with children who are at least three years of age but younger than six years of age and who are eligible for enrollment in a special education program of the availability of the program.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995.

Sec. 29.010. Compliance.

(a) The agency shall adopt and implement a comprehensive system for monitoring school district compliance with federal and state laws relating to special education. The monitoring system must provide for ongoing analysis of district special education data and of complaints filed with the agency concerning special education services and for inspections of school districts at district facilities. The agency shall use the information obtained through analysis of district data and from the complaints management system to determine the appropriate schedule for and extent of the inspection.

(b) To complete the inspection, the agency must obtain information from parents and teachers of students in special education programs in the district.

(c) The agency shall develop and implement a system of sanctions for school districts whose most recent monitoring visit shows a failure to comply with major requirements of the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.), federal regulations, state statutes, or agency requirements necessary to carry out federal law or regulations or state law relating to special education.

(d) For districts that remain in noncompliance for more than one year, the first stage of sanctions shall begin with annual or more frequent monitoring visits. Subsequent sanctions may range in severity up to the withholding of funds. If funds are withheld, the agency may use the funds to provide, through alternative arrangements, services to students and staff members in the district from which the funds are withheld.

(e) The agency's complaint management division shall develop a system for expedited investigation and resolution of complaints concerning a district's failure to provide special education or related services to a student eligible to participate in the district's special education program.

(f) This section does not create an obligation for or impose a requirement on a school district or open-enrollment charter school that is not also created or imposed under another state law or a federal law.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 1999, 76th Leg., ch. 1417 (H.B. 2172), § 1, effective June 19, 1999.

Sec. 29.011. Transition Planning.

(a) The commissioner shall by rule adopt procedures for compliance with federal requirements relating to transition services for students who are enrolled in special education programs under this subchapter. The proce-

dures must specify the manner in which a student's admission, review, and dismissal committee must consider, and if appropriate, address the following issues in the student's individualized education program:

(1) appropriate student involvement in the student's transition to life outside the public school system;

(2) if the student is younger than 18 years of age, appropriate involvement in the student's transition by the student's parents and other persons invited to participate by:

(A) the student's parents; or

(B) the school district in which the student is enrolled;

(3) if the student is at least 18 years of age, involvement in the student's transition and future by the student's parents and other persons, if the parent or other person:

(A) is invited to participate by the student or the school district in which the student is enrolled; or

(B) has the student's consent to participate pursuant to a supported decision-making agreement under Chapter 1357, Estates Code;

(4) appropriate postsecondary education options, including preparation for postsecondary-level coursework;

(5) an appropriate functional vocational evaluation;

(6) appropriate employment goals and objectives;

(7) if the student is at least 18 years of age, the availability of age-appropriate instructional environments, including community settings or environments that prepare the student for postsecondary education or training, competitive integrated employment, or independent living, in coordination with the student's transition goals and objectives;

(8) appropriate independent living goals and objectives;

(9) appropriate circumstances for facilitating a referral of a student or the student's parents to a governmental agency for services or public benefits, including a referral to a governmental agency to place the student on a waiting list for public benefits available to the student, such as a waiver program established under Section 1915(c), Social Security Act (42 U.S.C. Section 1396n(c)); and

(10) the use and availability of appropriate:

(A) supplementary aids, services, curricula, and other opportunities to assist the student in developing decision-making skills; and

(B) supports and services to foster the student's independence and self-determination, including a supported decision-making agreement under Chapter 1357, Estates Code.

(a-1) A student's admission, review, and dismissal committee shall annually review the issues described by Subsection (a) and, if necessary, update the portions of the student's individualized education program that address those issues.

(a-2) The commissioner shall develop and post on the agency's Internet website a list of services and public benefits for which referral may be appropriate under Subsection (a)(9).

(b) The commissioner shall require each school district or shared services arrangement to designate at least one

employee to serve as the district's or shared services arrangement's designee on transition and employment services for students enrolled in special education programs under this subchapter. The commissioner shall develop minimum training guidelines for a district's or shared services arrangement's designee. An individual designated under this subsection must provide information and resources about effective transition planning and services, including each issue described by Subsection (a), and interagency coordination to ensure that local school staff communicate and collaborate with:

- (1) students enrolled in special education programs under this subchapter and the parents of those students; and
- (2) as appropriate, local and regional staff of the:
 - (A) Health and Human Services Commission;
 - (B) Texas Workforce Commission;
 - (C) Department of State Health Services; and
 - (D) Department of Family and Protective Services.

(c) The commissioner shall review and, if necessary, update the minimum training guidelines developed under Subsection (b) at least once every four years. In reviewing and updating the guidelines, the commissioner shall solicit input from stakeholders.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 2003, 78th Leg., ch. 704 (H.B. 2823), §§ 1, 2, effective June 20, 2003; am. Acts 2013, 83rd Leg., ch. 257 (H.B. 617), § 2, effective September 1, 2013; am. Acts 2017, 85th Leg., ch. 574 (S.B. 748), § 1, effective June 9, 2017; am. Acts 2017, 85th Leg., ch. 1044 (H.B. 1886), § 2, effective June 15, 2017.

Sec. 29.0111. Beginning of Transition Planning.

Appropriate state transition planning under the procedure adopted under Section 29.011 must begin for a student not later than when the student reaches 14 years of age.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1250 (S.B. 1788), § 3, effective June 17, 2011.

Sec. 29.0112. Transition and Employment Guide.

(a) The agency, with assistance from the Health and Human Services Commission, shall develop a transition and employment guide for students enrolled in special education programs and their parents to provide information on statewide services and programs that assist in the transition to life outside the public school system. The agency may contract with a private entity to prepare the guide.

(b) The transition and employment guide must be written in plain language and contain information specific to this state regarding:

- (1) transition services;
- (2) employment and supported employment services;
- (3) social security programs;
- (4) community and long-term services and support, including the option to place the student on a waiting list with a governmental agency for public benefits available to the student, such as a waiver program established under Section 1915(c), Social Security Act (42 U.S.C. Section 1396n(c));
- (5) postsecondary educational programs and services, including the inventory maintained by the Texas Higher Education Coordinating Board under Section 61.0663;

(6) information sharing with health and human services agencies and providers;

(7) guardianship and alternatives to guardianship, including a supported decision-making agreement under Chapter 1357, Estates Code;

(8) self-advocacy, person-directed planning, and self-determination; and

(9) contact information for all relevant state agencies.

(c) The transition and employment guide must be produced in an electronic format and posted on the agency's website in a manner that permits the guide to be easily identified and accessed.

(d) The agency must update the transition and employment guide posted on the agency's website at least once every two years.

(e) A school district shall:

(1) post the transition and employment guide on the district's website if the district maintains a website;

(2) provide written information and, if necessary, assistance to a student or parent regarding how to access the electronic version of the guide at:

(A) the first meeting of the student's admission, review, and dismissal committee at which transition is discussed; and

(B) the first committee meeting at which transition is discussed that occurs after the date on which the guide is updated; and

(3) on request, provide a printed copy of the guide to a student or parent.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 257 (H.B. 617), § 3, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 747 (H.B. 1807), § 2, effective June 17, 2015; am. Acts 2017, 85th Leg., ch. 574 (S.B. 748), § 2, effective June 9, 2017; am. Acts 2017, 85th Leg., ch. 1044 (H.B. 1886), § 3, effective June 15, 2017.

Sec. 29.012. Residential Facilities.

(a) Except as provided by Subsection (b)(2), not later than the third day after the date a person 22 years of age or younger is placed in a residential facility, the residential facility shall:

(1) if the person is three years of age or older, notify the school district in which the facility is located, unless the facility is an open-enrollment charter school; or

(2) if the person is younger than three years of age, notify a local early intervention program in the area in which the facility is located.

(b) An agency or political subdivision that funds, licenses, certifies, contracts with, or regulates a residential facility must:

(1) require the facility to comply with Subsection (a) as a condition of the funding, licensing, certification, or contracting; or

(2) if the agency or political subdivision places a person in a residential facility, provide the notice under Subsection (a) for that person.

(c) For purposes of enrollment in a school, a person who resides in a residential facility is considered a resident of the school district or geographical area served by the open-enrollment charter school in which the facility is located.

(c-1) The commissioner by rule shall require each school district and open-enrollment charter school to in-

clude in the district's or school's Public Education Information Management System (PEIMS) report the number of children with disabilities residing in a residential facility who:

- (1) are required to be tracked by the Residential Facility Monitoring (RFM) System; and
 - (2) receive educational services from the district or school.
- (d) The Texas Education Agency, the Health and Human Services Commission, the Department of Family and Protective Services, and the Texas Juvenile Justice Department by a cooperative effort shall develop and by rule adopt a memorandum of understanding. The memorandum must:

- (1) establish the respective responsibilities of school districts and of residential facilities for the provision of a free, appropriate public education, as required by the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) and its subsequent amendments, including each requirement for children with disabilities who reside in those facilities;
 - (2) coordinate regulatory and planning functions of the parties to the memorandum;
 - (3) establish criteria for determining when a public school will provide educational services;
 - (4) provide for appropriate educational space when education services will be provided at the residential facility;
 - (5) establish measures designed to ensure the safety of students and teachers; and
 - (6) provide for binding arbitration consistent with Chapter 2009, Government Code, and Section 154.027, Civil Practice and Remedies Code.
- (e) This section does not apply to a residential treatment facility for juveniles established under Section 221.056, Human Resources Code.
- (f) Except as provided by Subsection (g), a residential facility shall provide to a school district or open-enrollment charter school that provides educational services to a student placed in the facility any information retained by the facility relating to:

- (1) the student's school records, including records regarding:
 - (A) special education eligibility or services;
 - (B) behavioral intervention plans;
 - (C) school-related disciplinary actions; and
 - (D) other documents related to the student's educational needs;
 - (2) any other behavioral history information regarding the student that is not confidential under another provision of law; and
 - (3) the student's record of convictions or the student's probation, community supervision, or parole status, as provided to the facility by a law enforcement agency, local juvenile probation department or juvenile parole office, community supervision and corrections department, or parole office, if the information is needed to provide educational services to the student.
- (g) Subsection (f) does not apply to a:
- (1) juvenile pre-adjudication secure detention facility; or
 - (2) juvenile post-adjudication secure correctional facility.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 1999, 76th Leg., ch. 396 (S.B. 4), art. 2, § 2.13, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 767 (S.B. 1735), § 5, effective June 13, 2001; am. Acts 2009, 81st Leg., ch. 1187 (H.B. 3689), § 4.002, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 3.003, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 734 (H.B. 1549), § 22, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 764 (S.B. 2080), § 1, effective June 12, 2017; am. Acts 2017, 85th Leg., ch. 1026 (H.B. 1569), § 1, effective June 15, 2017; am. Acts 2019, 86th Leg., ch. 1279 (H.B. 965), § 3, effective September 1, 2019.

Sec. 29.013. Noneducational Community-Based Support Services for Certain Students with Disabilities.

- (a) The agency shall establish procedures and criteria for the allocation of funds appropriated under this section to school districts for the provision of noneducational community-based support services to certain students with disabilities and their families so that those students may receive an appropriate free public education in the least restrictive environment.
- (b) The funds may be used only for eligible students with disabilities who would remain or would have to be placed in residential facilities primarily for educational reasons without the provision of noneducational community-based support services.
- (c) The support services may include in-home family support, respite care, and case management for families with a student who otherwise would have been placed by a district in a private residential facility.
- (d) The provision of services under this section does not supersede or limit the responsibility of other agencies to provide or pay for costs of noneducational community-based support services to enable any student with disabilities to receive a free appropriate public education in the least restrictive environment. Specifically, services provided under this section may not be used for a student with disabilities who is currently placed or who needs to be placed in a residential facility primarily for noneducational reasons.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995.

Sec. 29.014. School Districts That Provide Education Solely to Students Confined to or Educated in Hospitals.

- (a) This section applies only to a school district that provides education and related services only to students who are confined in or receive educational services in a hospital.
- (b) A school district to which this section applies may operate an extended year program for a period not to exceed 45 days. The district's average daily attendance shall be computed for the regular school year plus the extended year.
- (c) Notwithstanding any other provision of this code, a student whose appropriate education program is a regular education program may receive services and be counted for attendance purposes for the number of hours per week appropriate for the student's condition if the student:
 - (1) is temporarily classified as eligible for participation in a special education program because of the student's confinement in a hospital; and

(2) the student's education is provided by a district to which this section applies.

(d) The basic allotment for a student enrolled in a district to which this section applies is adjusted by the weight for a homebound student under Section 48.102(a).

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 2019, 86th Leg., ch. 943 (H.B. 3), § 3.026, effective September 1, 2019.

Sec. 29.015. Special Education Decision-Making for Children in Foster Care.

(a) A foster parent may act as a parent of a child with a disability, as authorized under 20 U.S.C. Section 1415(b) and its subsequent amendments, if:

(1) the Department of Family and Protective Services is appointed as the temporary or permanent managing conservator of the child;

(2) the rights and duties of the department to make decisions regarding education provided to the child under Section 153.371, Family Code, have not been limited by court order; and

(3) the foster parent agrees to:

(A) participate in making special education decisions on the child's behalf; and

(B) complete a training program that complies with minimum standards established by agency rule.

(b) A foster parent who will act as a parent of a child with a disability as provided by Subsection (a) must complete a training program before the next scheduled admission, review, and dismissal committee meeting for the child but not later than the 90th day after the date the foster parent begins acting as the parent for the purpose of making special education decisions.

(b-1) A school district may not require a foster parent to retake a training program to continue serving as a child's parent or to serve as the surrogate parent for another child if the foster parent has completed a training program to act as a parent of a child with a disability provided by:

(1) the Department of Family and Protective Services;

(2) a school district;

(3) an education service center; or

(4) any other entity that receives federal funds to provide special education training to parents.

(c) A foster parent who is denied the right to act as a parent under this section by a school district may file a complaint with the agency in accordance with federal law and regulations.

(d) Not later than the fifth day after the date a child with a disability is enrolled in a school, the Department of Family and Protective Services must inform the appropriate school district if the child's foster parent is unwilling or unable to serve as a parent for the purposes of this subchapter.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 430 (S.B. 1141), § 2, effective September 1, 1999; am. Acts 2017, 85th Leg., ch. 1025 (H.B. 1556), § 1, effective September 1, 2017.

Sec. 29.0151. Appointment of Surrogate Parent for Certain Children.

(a) This section applies to a child with a disability for whom:

(1) the Department of Family and Protective Services is appointed as the temporary or permanent managing conservator of the child; and

(2) the rights and duties of the department to make decisions regarding the child's education under Section 153.371, Family Code, have not been limited by court order.

(b) Except as provided by Section 263.0025, Family Code, a school district must appoint an individual to serve as the surrogate parent for a child if:

(1) the district is unable to identify or locate a parent for a child with a disability; or

(2) the foster parent of a child is unwilling or unable to serve as a parent for the purposes of this subchapter.

(c) A surrogate parent appointed by a school district may not:

(1) be an employee of the agency, the school district, or any other agency involved in the education or care of the child; or

(2) have any interest that conflicts with the interests of the child.

(d) A surrogate parent appointed by a district must:

(1) be willing to serve in that capacity;

(2) exercise independent judgment in pursuing the child's interests;

(3) ensure that the child's due process rights under applicable state and federal laws are not violated;

(4) complete a training program that complies with minimum standards established by agency rule within the time specified in Section 29.015(b);

(5) visit the child and the school where the child is enrolled;

(6) review the child's educational records;

(7) consult with any person involved in the child's education, including the child's:

(A) teachers;

(B) caseworkers;

(C) court-appointed volunteers;

(D) guardian ad litem;

(E) attorney ad litem;

(F) foster parent; and

(G) caregiver; and

(8) attend meetings of the child's admission, review, and dismissal committee.

(e) The district may appoint a person who has been appointed to serve as a child's guardian ad litem or as a court-certified volunteer advocate, as provided under Section 107.031(c), Family Code, as the child's surrogate parent.

(e-1) As soon as practicable after appointing a surrogate parent under this section, a school district shall provide written notice of the appointment to the child's educational decision-maker and caseworker as required under Section 25.007(b)(10)(H).

(f) If a court appoints a surrogate parent for a child with a disability under Section 263.0025, Family Code, and the school district determines that the surrogate parent is not properly performing the duties listed under Subsection (d), the district shall consult with the Department of Family and Protective Services regarding whether another person should be appointed to serve as the surrogate parent for the child.

(g) On receiving notice from a school district under Subsection (f), if the Department of Family and Protective Services agrees with the district that the appointed surrogate parent is unable or unwilling to properly perform the duties required under this section:

- (1) the department shall promptly notify the court of the agreement; and
- (2) as soon as practicable after receiving notice under Subdivision (1), the court shall:
 - (A) review the appointment; and
 - (B) enter any orders necessary to ensure the child has a surrogate parent who performs the duties required under this section.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 1025 (H.B. 1556), § 2, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 781 (H.B. 1709), § 2, effective June 10, 2019.

Sec. 29.016. Evaluation Conducted Pursuant to a Special Education Due Process Hearing.

A special education hearing officer in an impartial due process hearing brought under 20 U.S.C. Section 1415 may issue an order or decision that authorizes one or more evaluations of a student who is eligible for, or who is suspected as being eligible for, special education services. Such an order or decision authorizes the evaluation of the student without parental consent as if it were a court order for purposes of any state or federal law providing for consent by order of a court.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 767 (S.B. 1735), § 8, effective June 13, 2001.

Sec. 29.0161. Contract with State Office of Administrative Hearings for Special Education Due Process Hearings.

Not later than December 1, 2003, the agency and the State Office of Administrative Hearings shall jointly determine whether it would be cost-effective for the agency to enter an interagency contract with the office under which the office would conduct all or part of the agency's special education due process hearings under 20 U.S.C. Section 1415 and its subsequent amendments.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 201 (H.B. 3459), § 18, effective September 1, 2003.

Sec. 29.0162. Representation in Special Education Due Process Hearing.

(a) A person in an impartial due process hearing brought under 20 U.S.C. Section 1415 may be represented by:

- (1) an attorney who is licensed in this state; or
- (2) an individual who is not an attorney licensed in this state but who has special knowledge or training with respect to problems of children with disabilities and who satisfies qualifications under Subsection (b).

(b) The commissioner by rule shall adopt additional qualifications and requirements for a representative for purposes of Subsection (a)(2). The rules must:

- (1) prohibit an individual from being a representative under Subsection (a)(2) opposing a school district if:
 - (A) the individual has prior employment experience with the district; and

(B) the district raises an objection to the individual serving as a representative;

(2) include requirements that the representative have knowledge of:

- (A) special education due process rules, hearings, and procedure; and
 - (B) federal and state special education laws;
- (3) require, if the representative receives monetary compensation from a person for representation in an impartial due process hearing, that the representative agree to abide by a voluntary code of ethics and professional conduct during the period of representation; and
- (4) require, if the representative receives monetary compensation from a person for representation in an impartial due process hearing, that the representative enter into a written agreement for representation with the person who is the subject of the special education due process hearing that includes a process for resolving any disputes between the representative and the person.

(c) A special education due process hearing officer shall determine whether an individual satisfies qualifications under Subsections (a)(2) and (b).

(d) The agency is not required to license or in any way other than as provided by Subsection (b) regulate representatives described by Subsection (a)(2) in a special education impartial due process hearing.

(e) The written agreement for representation required under Subsection (b)(4) is considered confidential and may not be disclosed.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1333 (S.B. 709), § 1, effective June 14, 2013; am. Acts 2017, 85th Leg., ch. 767 (S.B. 2141), § 1, effective June 12, 2017.

Sec. 29.0163. Protection of the Rights of Military Families with Children with Disabilities.

(a) In this section, "servicemember" means a member of:

- (1) the armed forces;
- (2) the Commissioned Corps of the National Oceanic and Atmospheric Administration; or
- (3) the Commissioned Corps of the United States Public Health Service.

(b) The agency must include in the notice of procedural safeguards that the statute of limitations for the parent of a student to request an impartial due process hearing under 20 U.S.C. Section 1415(b) may be tolled if the parent is an active-duty servicemember and 50 U.S.C. Section 3936 applies to the parent.

(c) The commissioner shall adopt rules to implement this section.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 1089 (H.B. 3632), § 1, effective June 15, 2017.

Sec. 29.017. Transfer of Parental Rights at Age of Majority.

(a) A student with a disability who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, shall have the same right to make educational decisions as a student without a disability, except that the school district shall provide any notice required by this subchapter or 20

U.S.C. Section 1415 to both the student and the parents. All other rights accorded to parents under this subchapter or 20 U.S.C. Section 1415 transfer to the student.

(b) All rights accorded to parents under this subchapter or 20 U.S.C. Section 1415 transfer to students who are incarcerated in an adult or juvenile, state or local correctional institution.

(c) Not later than one year before the 18th birthday of a student with a disability, the school district at which the student is enrolled shall:

(1) provide to the student and the student's parents:

(A) written notice regarding the transfer of rights under this section; and

(B) information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement under Chapter 1357, Estates Code, and other supports and services that may enable the student to live independently; and

(2) ensure that the student's individualized education program includes a statement that the district provided the notice, information, and resources required under Subdivision (1).

(c-1) In accordance with 34 C.F.R. Section 300.520, the school district shall provide written notice to the student and the student's parents of the transfer of rights under this section. The notice must include the information and resources provided under Subsection (c)(1)(B).

(c-2) If a student with a disability or the student's parent requests information regarding guardianship or alternatives to guardianship from the school district at which the student is enrolled, the school district shall provide to the student or parent information and resources on supported decision-making agreements under Chapter 1357, Estates Code.

(c-3) The commissioner shall develop and post on the agency's Internet website a model form for use by school districts in notifying students and parents as required by Subsections (c) and (c-1). The form must include the information and resources described by Subsection (c). The commissioner shall review and update the form, including the information and resources, as necessary.

(d) The commissioner shall develop and post on the agency's Internet website the information and resources described by Subsections (c), (c-1), and (c-2).

(e) Nothing in this section prohibits a student from entering into a supported decision-making agreement under Chapter 1357, Estates Code, after the transfer of rights under this section.

(f) The commissioner shall adopt rules implementing the provisions of 34 C.F.R. Section 300.520(b).

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 767 (S.B. 1735), § 8, effective June 13, 2001; am. Acts 2017, 85th Leg., ch. 574 (S.B. 748), § 3, effective June 9, 2017; am. Acts 2017, 85th Leg., ch. 1044 (H.B. 1886), § 4, effective June 15, 2017.

Sec. 29.018. Special Education Grant.

(a) From funds appropriated for the purposes of this section, federal funds, or any other funds available, the commissioner shall make grants available to school districts to assist districts in covering the cost of educating students with disabilities.

(b) A school district is eligible to apply for a grant under this section if:

(1) the district does not receive sufficient funds, including state funds provided under Section 48.102 and federal funds, for a student with disabilities to pay for the special education services provided to the student; or

(2) the district does not receive sufficient funds, including state funds provided under Section 48.102 and federal funds, for all students with disabilities in the district to pay for the special education services provided to the students.

(c) A school district that applies for a grant under this section must provide the commissioner with a report comparing the state and federal funds received by the district for students with disabilities and the expenses incurred by the district in providing special education services to students with disabilities.

(d) Expenses that may be included by a school district in applying for a grant under this section include the cost of training personnel to provide special education services to a student with disabilities.

(e) A school district that receives a grant under this section must educate students with disabilities in the least restrictive environment that is appropriate to meet the student's educational needs.

(f) The commissioner shall adopt rules as necessary to administer this section.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1328 (H.B. 3646), § 16, effective September 1, 2009; am. Acts 2019, 86th Leg., ch. 943 (H.B. 3), § 3.027, effective September 1, 2019.

Sec. 29.019. Individualized Education Program Facilitation.

(a) The agency shall provide information to parents regarding individualized education program facilitation as an alternative dispute resolution method that may be used to avoid a potential dispute between a school district and a parent of a student with a disability. A district that chooses to use individualized education program facilitation shall provide information to parents regarding individualized education program facilitation. The information:

(1) must be included with other information provided to the parent of a student with a disability, although it may be provided as a separate document; and

(2) may be provided in a written or electronic format.

(b) Information provided by the agency under this section must indicate that individualized education program facilitation is an alternative dispute resolution method that some districts may choose to provide.

(c) If a school district chooses to offer individualized education program facilitation as an alternative dispute resolution method:

(1) the district may determine whether to use independent contractors, district employees, or other qualified individuals as facilitators;

(2) the information provided by the district under this section must include a description of any applicable procedures for requesting the facilitation; and

(3) the facilitation must be provided at no cost to a parent.

(d) The use of any alternative dispute resolution method, including individualized education program facilitation, must be voluntary on the part of the participants, and the use or availability of any such method may not in any manner be used to deny or delay the right to pursue a special education complaint, mediation, or due process hearing in accordance with federal law.

(e) Nothing in this section prohibits a school district from using individualized education program facilitation as the district's preferred method of conducting initial and annual admission, review, and dismissal committee meetings.

(f) The commissioner shall adopt rules necessary to implement this section.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 539 (S.B. 542), § 1, effective June 14, 2013.

Sec. 29.020. Individualized Education Program Facilitation Project.

(a) The agency shall develop rules in accordance with this section applicable to the administration of a state individualized education program facilitation project. The program shall include the provision of an independent individualized education program facilitator to facilitate an admission, review, and dismissal committee meeting with parties who are in a dispute about decisions relating to the provision of a free appropriate public education to a student with a disability. Facilitation implemented under the project must comply with rules developed under this subsection.

(b) The rules must include:

(1) a definition of independent individualized education program facilitation;

(2) forms and procedures for requesting, conducting, and evaluating independent individualized education program facilitation;

(3) training, knowledge, experience, and performance requirements for independent facilitators; and

(4) conditions required to be met in order for the agency to provide individualized education program facilitation at no cost to the parties.

(c) If the commissioner determines that adequate funding is available, the commissioner may authorize the use of federal funds to implement the individualized education program facilitation project in accordance with this section.

(d) The commissioner shall adopt rules necessary to implement this section.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 539 (S.B. 542), § 1, effective June 14, 2013.

Secs. 29.021 to 29.050. [Reserved for expansion].

Sec. 29.022. Video Surveillance of Special Education Settings.

(a) In order to promote student safety, on receipt of a written request authorized under Subsection (a-1), a school district or open-enrollment charter school shall provide equipment, including a video camera, to the school or schools in the district or the charter school campus or campuses specified in the request. A school or campus that receives equipment as provided by this subsection shall

place, operate, and maintain one or more video cameras in self-contained classrooms and other special education settings in which a majority of the students in regular attendance are provided special education and related services and are assigned to one or more self-contained classrooms or other special education settings for at least 50 percent of the instructional day, provided that:

(1) a school or campus that receives equipment as a result of the request by a parent or staff member is required to place equipment only in classrooms or settings in which the parent's child is in regular attendance or to which the staff member is assigned, as applicable; and

(2) a school or campus that receives equipment as a result of the request by a board of trustees, governing body, principal, or assistant principal is required to place equipment only in classrooms or settings identified by the requestor, if the requestor limits the request to specific classrooms or settings subject to this subsection.

(a-1) For purposes of Subsection (a):

(1) a parent of a child who receives special education services in one or more self-contained classrooms or other special education settings may request in writing that equipment be provided to the school or campus at which the child receives those services;

(2) a board of trustees or governing body may request in writing that equipment be provided to one or more specified schools or campuses at which one or more children receive special education services in self-contained classrooms or other special education settings;

(3) the principal or assistant principal of a school or campus at which one or more children receive special education services in self-contained classrooms or other special education settings may request in writing that equipment be provided to the principal's or assistant principal's school or campus; and

(4) a staff member assigned to work with one or more children receiving special education services in self-contained classrooms or other special education settings may request in writing that equipment be provided to the school or campus at which the staff member works.

(a-2) Each school district or open-enrollment charter school shall designate an administrator at the primary administrative office of the district or school with responsibility for coordinating the provision of equipment to schools and campuses in compliance with this section.

(a-3) A written request must be submitted and acted on as follows:

(1) a parent, staff member, or assistant principal must submit a request to the principal or the principal's designee of the school or campus addressed in the request, and the principal or designee must provide a copy of the request to the administrator designated under Subsection (a-2);

(2) a principal must submit a request by the principal to the administrator designated under Subsection (a-2); and

(3) a board of trustees or governing body must submit a request to the administrator designated under Subsection (a-2), and the administrator must provide a copy of the request to the principal or the principal's designee of the school or campus addressed in the request.

(b) A school or campus that places a video camera in a classroom or other special education setting in accordance with Subsection (a) shall operate and maintain the video camera in the classroom or setting, as long as the classroom or setting continues to satisfy the requirements under Subsection (a), for the remainder of the school year in which the school or campus received the request, unless the requestor withdraws the request in writing. If for any reason a school or campus will discontinue operation of a video camera during a school year, not later than the fifth school day before the date the operation of the video camera will be discontinued, the school or campus must notify the parents of each student in regular attendance in the classroom or setting that operation of the video camera will not continue unless requested by a person eligible to make a request under Subsection (a-1). Not later than the 10th school day before the end of each school year, the school or campus must notify the parents of each student in regular attendance in the classroom or setting that operation of the video camera will not continue during the following school year unless a person eligible to make a request for the next school year under Subsection (a-1) submits a new request.

(c) Except as provided by Subsection (c-1), video cameras placed under this section must be capable of:

- (1) covering all areas of the classroom or other special education setting, including a room attached to the classroom or setting used for time-out; and
- (2) recording audio from all areas of the classroom or other special education setting, including a room attached to the classroom or setting used for time-out.

(c-1) The inside of a bathroom or any area in the classroom or other special education setting in which a student's clothes are changed may not be visually monitored, except for incidental coverage of a minor portion of a bathroom or changing area because of the layout of the classroom or setting.

(d) Before a school or campus activates a video camera in a classroom or other special education setting under this section, the school or campus shall provide written notice of the placement to all school or campus staff and to the parents of each student attending class or engaging in school activities in the classroom or setting.

(e) Except as provided by Subsection (e-1), a school district or open-enrollment charter school shall retain video recorded from a video camera placed under this section for at least three months after the date the video was recorded.

(e-1) If a person described by Subsection (i) requests to view a video recording from a video camera placed under this section, a school district or open-enrollment charter school must retain the recording from the date of receipt of the request until the person has viewed the recording and a determination has been made as to whether the recording documents an alleged incident. If the recording documents an alleged incident, the district or school shall retain the recording until the alleged incident has been resolved, including the exhaustion of all appeals.

(f) A school district or open-enrollment charter school may solicit and accept gifts, grants, and donations from any person for use in placing video cameras in classrooms or other special education settings under this section.

(g) This section does not:

(1) waive any immunity from liability of a school district or open-enrollment charter school, or of district or school officers or employees; or

(2) create any liability for a cause of action against a school district or open-enrollment charter school or against district or school officers or employees.

(h) A school district or open-enrollment charter school may not:

(1) allow regular or continual monitoring of video recorded under this section; or

(2) use video recorded under this section for teacher evaluation or for any other purpose other than the promotion of safety of students receiving special education services in a self-contained classroom or other special education setting.

(i) A video recording of a student made according to this section is confidential and may not be released or viewed except as provided by this subsection or Subsection (i-1) or (j). A school district or open-enrollment charter school shall release a recording for viewing by:

(1) an employee who is involved in an alleged incident that is documented by the recording and has been reported to the district or school, on request of the employee;

(2) a parent of a student who is involved in an alleged incident that is documented by the recording and has been reported to the district or school, on request of the parent;

(3) appropriate Department of Family and Protective Services personnel as part of an investigation under Section 261.406, Family Code;

(4) a peace officer, a school nurse, a district or school administrator trained in de-escalation and restraint techniques as provided by commissioner rule, or a human resources staff member designated by the board of trustees of the school district or the governing body of the open-enrollment charter school in response to a report of an alleged incident or an investigation of district or school personnel or a report of alleged abuse committed by a student; or

(5) appropriate agency or State Board for Educator Certification personnel or agents as part of an investigation.

(i-1) A contractor or employee performing job duties relating to the installation, operation, or maintenance of video equipment or the retention of video recordings who incidentally views a video recording is not in violation of Subsection (i).

(j) If a person described by Subsection (i)(4) or (5) who views the video recording believes that the recording documents a possible violation under Subchapter E, Chapter 261, Family Code, the person shall notify the Department of Family and Protective Services for investigation in accordance with Section 261.406, Family Code. If any person described by Subsection (i)(3), (4), or (5) who views the recording believes that the recording documents a possible violation of district or school policy, the person may allow access to the recording to appropriate legal and human resources personnel. A recording believed to document a possible violation of district or school policy relating to the neglect or abuse of a student may be used as

part of a disciplinary action against district or school personnel and shall be released at the request of the student's parent in a legal proceeding. This subsection does not limit the access of a student's parent to a record regarding the student under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) or other law.

(k) The commissioner may adopt rules to implement and administer this section, including rules regarding the special education settings to which this section applies.

(l) A school district or open-enrollment charter school policy relating to the placement, operation, or maintenance of video cameras under this section must:

(1) include information on how a person may appeal an action by the district or school that the person believes to be in violation of this section or a policy adopted in accordance with this section, including the appeals process under Section 7.057;

(2) require that the district or school provide a response to a request made under this section not later than the seventh school business day after receipt of the request by the person to whom it must be submitted under Subsection (a-3) that authorizes the request or states the reason for denying the request;

(3) except as provided by Subdivision (5), require that a school or a campus begin operation of a video camera in compliance with this section not later than the 45th school business day, or the first school day after the 45th school business day if that day is not a school day, after the request is authorized unless the agency grants an extension of time;

(4) permit the parent of a student whose admission, review, and dismissal committee has determined that the student's placement for the following school year will be in a classroom or other special education setting in which a video camera may be placed under this section to make a request for the video camera by the later of:

(A) the date on which the current school year ends; or

(B) the 10th school business day after the date of the placement determination by the admission, review, and dismissal committee; and

(5) if a request is made by a parent in compliance with Subdivision (4), unless the agency grants an extension of time, require that a school or campus begin operation of a video camera in compliance with this section not later than the later of:

(A) the 10th school day of the fall semester; or

(B) the 45th school business day, or the first school day after the 45th school business day if that day is not a school day, after the date the request is made.

(m) A school district, parent, staff member, or administrator may request an expedited review by the agency of the district's:

(1) denial of a request made under this section;

(2) request for an extension of time to begin operation of a video camera under Subsection (1)(3) or (5); or

(3) determination to not release a video recording to a person described by Subsection (i).

(n) If a school district, parent, staff member, or administrator requests an expedited review under Subsection

(m), the agency shall notify all other interested parties of the request.

(o) If an expedited review has been requested under Subsection (m), the agency shall issue a preliminary judgment as to whether the district is likely to prevail on the issue under a full review by the agency. If the agency determines that the district is not likely to prevail, the district must fully comply with this section notwithstanding an appeal of the agency's decision. The agency shall notify the requestor and the district, if the district is not the requestor, of the agency's determination.

(p) The commissioner:

(1) shall adopt rules relating to the expedited review process under Subsections (m), (n), and (o), including standards for making a determination under Subsection (o); and

(2) may adopt rules relating to an expedited review process under Subsections (m), (n), and (o) for an open-enrollment charter school.

(q) The agency shall collect data relating to requests made under this section and actions taken by a school district or open-enrollment charter school in response to a request, including the number of requests made, authorized, and denied.

(r) A video recording under this section is a governmental record only for purposes of Section 37.10, Penal Code.

(s) This section applies to the placement, operation, and maintenance of a video camera in a self-contained classroom or other special education setting during the regular school year and extended school year services.

(t) A video camera placed under this section is not required to be in operation for the time during which students are not present in the classroom or other special education setting.

(u) In this section:

(1) "Parent" includes a guardian or other person standing in parental relation to a student.

(2) "School business day" means a day that campus or school district administrative offices are open.

(3) "Self-contained classroom" does not include a classroom that is a resource room instructional arrangement under Section 48.102.

(4) "Staff member" means a teacher, related service provider, paraprofessional, counselor, or educational aide assigned to work in a self-contained classroom or other special education setting.

(5) "Time-out" has the meaning assigned by Section 37.0021.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1147 (S.B. 507), § 2, effective June 19, 2015; am. Acts 2017, 85th Leg., ch. 751 (S.B. 1398), § 1, effective June 12, 2017; am. Acts 2019, 86th Leg., ch. 943 (H.B. 3), § 3.028, effective September 1, 2019.

Sec. 29.023. Notice of Rights. [Effective until September 2, 2023]

(a) The agency shall develop a notice for distribution as provided by Subsection (c) and posting on the agency's Internet website that indicates:

(1) the change made from 2016 to 2017 in reporting requirements for school districts and open-enrollment charter schools regarding the special education representation indicator adopted in the Performance-Based Monitoring Analysis System Manual; and

(2) in plain language, the rights of a child under both federal and state law and the general process available to initiate a referral of a child for a full individual and initial evaluation under Section 29.004 to determine the child's eligibility for special education services.

(b) A school district or open-enrollment charter school shall include in the notice developed by the agency under Subsection (a) information indicating where the local processes and procedures for initiating a referral for special education services eligibility evaluation may be found.

(c) By a date established by the commissioner, each school district or open-enrollment charter school shall provide the notice to the parent of each child who attends school in the district or at the school at any time during the 2019-2020 school year. A school district or open-enrollment charter school shall also make the notice available on request to any person. The notice must be available in English and Spanish, and a school district or open-enrollment charter school shall make a good faith effort to provide the notice in the parent's native language if the parent's native language is a language other than English or Spanish.

(d) The notice is in addition to requirements imposed by Section 26.0081.

(e) The commissioner may adopt rules necessary to implement this section.

(f) This section expires September 1, 2023.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 954 (S.B. 139), § 1, effective June 14, 2019.

Sec. 29.026. Grant Program Providing Services to Students with Autism. [Expires September 1, 2021]

(a) The commissioner shall establish a program to award grants to school districts and open-enrollment charter schools that provide innovative services to students with autism.

(b) A school district, including a school district acting through a district charter issued under Subchapter C, Chapter 12, and an open-enrollment charter school, including a charter school that primarily serves students with disabilities, as provided under Section 12.1014, may apply for a grant under this section.

(c) A program is eligible for a grant under this section if:

- (1) the program operates as an independent campus or a separate program from the campus in which the program is located, with a separate budget;
- (2) the program incorporates:
 - (A) evidence-based and research-based design;
 - (B) the use of empirical data on student achievement and improvement;
 - (C) parental support and collaboration;
 - (D) the use of technology;
 - (E) meaningful inclusion; and
 - (F) the ability to replicate the program for students statewide;
- (3) the program gives priority for enrollment to students with autism;
- (4) the program limits enrollment and services to students who are:
 - (A) at least three years of age; and

(B) younger than nine years of age or are enrolled in the third grade or a lower grade level; and

(5) the program allows a student who turns nine years of age or older during a school year to remain in the program until the end of that school year.

(d) A school district or open-enrollment charter school may not:

- (1) charge a fee for the program, other than those authorized by law for students in public schools;
- (2) require a parent to enroll a child in the program;
- (3) allow an admission, review, and dismissal committee to place a student in the program without the written consent of the student's parent or guardian; or
- (4) continue the placement of a student in the program after the student's parent or guardian revokes consent, in writing, to the student's placement in the program.

(e) A program under this section may:

- (1) alter the length of the school day or school year or the number of minutes of instruction received by students;
- (2) coordinate services with private or community-based providers;
- (3) allow the enrollment of students without disabilities or with other disabilities, if approved by the commissioner; and
- (4) adopt staff qualifications and staff to student ratios that differ from the applicable requirements of this title.

(f) The commissioner shall adopt rules creating an application and selection process for grants awarded under this section.

(g) The commissioner shall create an external panel of stakeholders, including parents of students with disabilities, to provide assistance in the selection of applications for the award of grants under this section.

(h) The commissioner shall award grants to fund not more than 10 programs that meet the eligibility criteria under Subsection (c). In selecting programs, the commissioner shall prioritize programs that are collaborations between multiple school districts, multiple charter schools, or school districts and charter schools. The selected programs must reflect the diversity of this state.

(i) The commissioner shall select programs and award grant funds to those programs beginning in the 2018-2019 school year. The selected programs are to be funded for two years.

(j) A grant awarded to a school district or open-enrollment charter school under this section is in addition to the Foundation School Program funds that the district or charter school is otherwise entitled to receive. A grant awarded under this section may not come out of Foundation School Program funds.

(k) The commissioner shall set aside an amount not to exceed \$20 million from the total amount of funds appropriated for the 2018-2019 fiscal biennium to fund grants under this section. The commissioner shall use \$10 million for the purposes of this section for each school year in the state fiscal biennium. A grant recipient may not receive more than \$1 million for the 2018-2019 fiscal biennium. The commissioner shall reduce each district's and charter school's allotment proportionally to account for funds allocated under this section.

(l) The commissioner and any program selected under this section may accept gifts, grants, and donations from any public or private source, person, or group to implement and administer the program. The commissioner and any program selected under this section may not require any financial contribution from parents to implement and administer the program.

(m) The commissioner may consider a student with autism who is enrolled in a program funded under this section as funded in a mainstream placement, regardless of the amount of time the student receives services in a regular classroom setting.

(n) Not later than December 31, 2020, the commissioner shall publish a report on the grant program established under this section. The report must include:

(1) recommendations for statutory or funding changes necessary to implement successful innovations in the education of students with autism; and

(2) data on the academic and functional achievements of students enrolled in a program that received a grant under this section.

(o) This section expires September 1, 2021.

Sec. 29.027. Grant Program Providing Services to Students with Dyslexia. [Expires September 1, 2021]

(a) The commissioner shall establish a program to award grants to school districts and open-enrollment charter schools that provide innovative services to students with dyslexia.

(b) A school district, including a school district acting through a district charter issued under Subchapter C, Chapter 12, and an open-enrollment charter school, including a charter school that primarily serves students with disabilities, as provided under Section 12.1014, may apply for a grant under this section.

(c) A program is eligible for a grant under this section if:

(1) the program operates as an independent campus or a separate program from the campus in which the program is located, with a separate budget;

(2) the program incorporates:

(A) evidence-based and research-based design;

(B) the use of empirical data on student achievement and improvement;

(C) parental support and collaboration;

(D) the use of technology;

(E) meaningful inclusion; and

(F) the ability to replicate the program for students statewide;

(3) the program gives priority for enrollment to students with dyslexia;

(4) the program limits enrollment and services to students who are:

(A) at least three years of age; and

(B) younger than nine years of age or are enrolled in the third grade or a lower grade level; and

(5) the program allows a student who turns nine years of age or older during a school year to remain in the program until the end of that school year.

(d) A school district or open-enrollment charter school may not:

(1) charge a fee for the program, other than those authorized by law for students in public schools;

(2) require a parent to enroll a child in the program;

(3) allow an admission, review, and dismissal committee to place a student in the program without the written consent of the student's parent or guardian; or

(4) continue the placement of a student in the program after the student's parent or guardian revokes consent, in writing, to the student's placement in the program.

(e) A program under this section may:

(1) alter the length of the school day or school year or the number of minutes of instruction received by students;

(2) coordinate services with private or community-based providers;

(3) allow the enrollment of students without disabilities or with other disabilities, if approved by the commissioner; and

(4) adopt staff qualifications and staff to student ratios that differ from the applicable requirements of this title.

(f) The commissioner shall adopt rules creating an application and selection process for grants awarded under this section.

(g) The commissioner shall create an external panel of stakeholders, including parents of students with disabilities, to provide assistance in the selection of applications for the award of grants under this section.

(h) The commissioner shall award grants to fund not more than 10 programs that meet the eligibility criteria under Subsection (c). In selecting programs, the commissioner shall prioritize programs that are collaborations between multiple school districts, multiple charter schools, or school districts and charter schools. The selected programs must reflect the diversity of this state.

(i) The commissioner shall select programs and award grant funds to those programs beginning in the 2018-2019 school year. The selected programs are to be funded for two years.

(j) A grant awarded to a school district or open-enrollment charter school under this section is in addition to the Foundation School Program funds that the district or charter school is otherwise entitled to receive. A grant awarded under this section may not come out of Foundation School Program funds.

(k) The commissioner shall set aside an amount not to exceed \$20 million from the total amount of funds appropriated for the 2018-2019 fiscal biennium to fund grants under this section. The commissioner shall use \$10 million for the purposes of this section for each school year in the state fiscal biennium. A grant recipient may not receive more than \$1 million for the 2018-2019 fiscal biennium. The commissioner shall reduce each district's and charter school's allotment proportionally to account for funds allocated under this section.

(l) The commissioner and any program selected under this section may accept gifts, grants, and donations from any public or private source, person, or group to implement and administer the program. The commissioner and any program selected under this section may not require any financial contribution from parents to implement and administer the program.

(m) The commissioner may consider a student with dyslexia who is enrolled in a program funded under this section as funded in a mainstream placement, regardless of the amount of time the student receives services in a regular classroom setting.

(n) Not later than December 31, 2020, the commissioner shall publish a report on the grant program established under this section. The report must include:

(1) recommendations for statutory or funding changes necessary to implement successful innovations in the education of students with dyslexia; and

(2) data on the academic and functional achievements of students enrolled in a program that received a grant under this section.

(o) This section expires September 1, 2021.

Subchapter L

School District Program for Residents of Forensic State Supported Living Center

Sec. 29.451. Definitions.

In this subchapter, “alleged offender resident,” “interdisciplinary team,” and “state supported living center” have the meanings assigned by Section 555.001, Health and Safety Code.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 2, effective June 11, 2009.

Sec. 29.452. Applicability.

This subchapter applies only to an alleged offender resident of a forensic state supported living center designated under Section 555.002, Health and Safety Code.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 2, effective June 11, 2009; am. Acts 2017, 85th Leg., ch. 207 (S.B. 1300), § 3, effective September 1, 2017.

Sec. 29.453. School District Services.

(a) A school district shall provide educational services, including services required under Subchapter A, to each alleged offender resident who is under 22 years of age and otherwise eligible under Section 25.001 to attend school in the district. The district shall provide educational services to each alleged offender resident who is 21 years of age on September 1 of the school year and otherwise eligible to attend school in the district until the earlier of:

- (1) the end of that school year; or
- (2) the student's graduation from high school.

(b) The educational placement of an alleged offender resident and the educational services to be provided by a school district to the resident shall be determined by the resident's admission, review, and dismissal committee consistent with federal law and regulations regarding the placement of students with disabilities in the least restrictive environment. The resident's admission, review, and dismissal committee shall:

(1) inform the resident's interdisciplinary team of a determination the committee makes in accordance with this subsection; and

(2) consult, to the extent practicable, with the resident's interdisciplinary team concerning such a determination.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 2, effective June 11, 2009.

Sec. 29.454. Behavior Management; Behavior Support Specialists.

(a) The discipline of an alleged offender resident by a school district is subject to Sections 37.0021 and 37.004 and to federal law governing the discipline of students with disabilities.

(b) A school district in which alleged offender residents are enrolled shall employ one or more behavior support specialists to serve the residents while at school. A behavior support specialist must:

- (1) hold a baccalaureate degree;
- (2) have training in providing to students positive behavioral support and intervention, as determined by the commissioner of education; and
- (3) meet any other requirement jointly determined by the commissioner of education and the commissioner of the Department of Aging and Disability Services.

(c) A behavior support specialist shall conduct for each alleged offender resident enrolled in the school district a functional behavioral assessment that includes:

- (1) data collection, through interviews with and observation of the resident;
- (2) data analysis; and
- (3) development of an individualized school behavioral intervention plan for the resident.

(d) Each behavior support specialist shall:

- (1) ensure that each alleged offender resident enrolled in the school district is provided behavior management services under a school behavioral intervention plan based on the resident's functional behavioral assessment, as described by Subsection (c);
- (2) communicate and coordinate with the resident's interdisciplinary team to ensure that behavioral intervention actions of the district and of the forensic state supported living center do not conflict;
- (3) in the case of a resident who regresses:

(A) ensure that necessary corrective action is taken in the resident's individualized education program or school behavioral intervention plan, as appropriate; and

(B) communicate with the resident's interdisciplinary team concerning the regression and encourage the team to aggressively address the regression;

(4) participate in the resident's admission, review, and dismissal committee meetings in conjunction with:

(A) developing and implementing the resident's school behavioral intervention plan; and

(B) determining the appropriate educational placement for each resident, considering all available academic and behavioral information;

(5) coordinate each resident's school behavioral intervention plan with the resident's program of active treatment provided by the forensic state supported living center to ensure consistency of approach and response to the resident's identified behaviors;

(6) provide training for school district staff and, as appropriate, state supported living center staff in implementing behavioral intervention plans for each resident; and

(7) remain involved with the resident during the school day.

(e) Section 22.0511 applies to a behavior support specialist employed under this section by a school district.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 2, effective June 11, 2009.

Sec. 29.455. Memorandum of Understanding.

(a) A school district in which alleged offender residents are enrolled in school and the forensic state supported living center shall enter into a memorandum of understanding to:

(1) establish the duties and responsibilities of the behavior support specialist to ensure the safety of all students and teachers while educational services are provided to a resident at a school in the district; and

(2) ensure the provision of appropriate facilities for providing educational services and of necessary technological equipment if a resident’s admission, review, and dismissal committee determines that the resident must receive educational services at the forensic state supported living center.

(b) A memorandum of understanding under Subsection (a) remains in effect until superseded by a subsequent memorandum of understanding between the school district and the forensic state supported living center or until otherwise rescinded.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 2, effective June 11, 2009.

Sec. 29.456. Failure of School District and Center to Agree.

(a) If a school district in which alleged offender residents are enrolled in school and the forensic state supported living center fail to agree on the services required for residents or responsibility for those services, the district or center may refer the issue in disagreement to the commissioner of education and the commissioner of the Department of Aging and Disability Services.

(b) If the commissioner of education and the executive commissioner of the Health and Human Services Commission are unable to bring the school district and forensic state supported living center to agreement, the commissioners shall jointly submit a written request to the attorney general to appoint a neutral third party knowledgeable in special education and intellectual and developmental disability issues to resolve each issue on which the district and the center disagree. The decision of the neutral third party is final and may not be appealed. The district and the center shall implement the decision of the neutral third party. The commissioner of education or the executive commissioner of the Health and Human Services Commission shall ensure that the district and the center implement the decision of the neutral third party.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 2, effective June 11, 2009; am. Acts 2019, 86th Leg., ch. 1279 (H.B. 965), § 4, effective September 1, 2019.

Sec. 29.457. Funding.

(a) In addition to other funding to which a school district is entitled under this code, each district in which alleged offender residents attend school is entitled to an

annual allotment of \$5,100 for each resident in average daily attendance or a different amount for any year provided by appropriation.

(b) Not later than December 1 of each year, a school district that receives an allotment under this section shall submit a report accounting for the expenditure of funds received under this section to the governor, the lieutenant governor, the speaker of the house of representatives, the chairs of the standing committees of the senate and house of representatives with primary jurisdiction regarding persons with intellectual and developmental disabilities and public education, and each member of the legislature whose district contains any portion of the territory included in the school.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 2, effective June 11, 2009; am. Acts 2019, 86th Leg., ch. 1279 (H.B. 965), § 5, effective September 1, 2019.

Sec. 29.458. Rules.

The commissioner may adopt rules as necessary to administer this subchapter.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 2, effective June 11, 2009.

Secs. 29.459 to 29.900. [Reserved].

CHAPTER 30

State and Regional Programs and Services

Subchapter A

General Provisions

Section 30.001.	Coordination of Services to Children with Disabilities.
30.0015.	Transfer of Assistive Technology Devices.
30.004.	Information Concerning Programs.

Sec. 30.001. Coordination of Services to Children with Disabilities.

(a) In this section, “children with disabilities” means students eligible to participate in a school district’s special education program under Section 29.003.

(b) The commissioner, with the approval of the State Board of Education, shall develop and implement a plan for the coordination of services to children with disabilities in each region served by a regional education service center. The plan must include procedures for:

(1) identifying existing public or private educational and related services for children with disabilities in each region;

(2) identifying and referring children with disabilities who cannot be appropriately served by the school district in which they reside to other appropriate programs;

(3) assisting school districts to individually or cooperatively develop programs to identify and provide appropriate services for children with disabilities;

(4) expanding and coordinating services provided by regional education service centers for children with disabilities; and

(5) providing for special services, including special seats, books, instructional media, and other supplemental supplies and services required for proper instruction.

(c) The commissioner may allocate appropriated funds to regional education service centers or may otherwise spend those funds, as necessary, to implement this section.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995.

Sec. 30.0015. Transfer of Assistive Technology Devices.

(a) In this section:

(1) "Assistive technology device" means any device, including equipment or a product system, that is used to increase, maintain, or improve functional capabilities of a student with a disability.

(2) "Student with a disability" means a student who is eligible to participate in a school district's special education program under Section 29.003.

(3) "Transfer" means the process by which a school district that has purchased an assistive technology device may sell, lease, or loan the device for the continuing use of a student with a disability changing the school of attendance in the district or leaving the district.

(b) The agency by rule shall develop and annually disseminate standards for a school district's transfer of an assistive technology device to an entity listed in this subsection when a student with a disability using the device changes the school of attendance in the district or ceases to attend school in the district that purchased the device and the student's parents, or the student if the student has the legal capacity to enter into a contract, agrees to the transfer. The device may be transferred to:

(1) the school or school district in which the student enrolls;

(2) a state agency, including the Health and Human Services Commission, that provides services to the student following the student's graduation from high school; or

(3) the student's parents, or the student if the student has the legal capacity to enter into a contract.

(c) The standards developed under this section must include:

(1) a uniform transfer agreement to convey title to an assistive technology device and applicable warranty information;

(2) a method for computing the fair market value of an assistive technology device, including a reasonable allowance for use; and

(3) a process to obtain written consent by the student's parents, or the student where appropriate, to the transfer.

(d) This section does not alter any existing obligation under federal or state law to provide assistive technology devices to students with disabilities.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 682 (H.B. 633), § 1, effective June 18, 1999; am. Acts 2019, 86th Leg., ch. 1279 (H.B. 965), § 6, effective September 1, 2019.

Sec. 30.004. Information Concerning Programs.

(a) Each school district shall provide each parent or

other person having lawful control of a student with written information about:

(1) the availability of programs offered by state institutions for which the district's students may be eligible;

(2) the eligibility requirements and admission conditions imposed by each of those state institutions; and

(3) the rights of students in regard to admission to those state institutions and in regard to appeal of admission decisions.

(b) The State Board of Education shall adopt rules prescribing the form and content of information required by Subsection (a).

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995.

CHAPTER 33

Service Programs and Extracurricular Activities

Subchapter A

School Counselors and Counseling Programs

Section
33.004.
33.005.

Parental Involvement.
Comprehensive School Counseling Programs.

Sec. 33.004. Parental Involvement.

(a) Each school shall obtain, and keep as part of the student's permanent record, written consent of the parent or legal guardian as required under Section 33.003. The consent form shall include specific information on the content of the program and the types of activities in which the student will be involved.

(b) Each school, before implementing a comprehensive school counseling program under Section 33.005, shall annually conduct a preview of the program for parents and guardians. All materials, including curriculum to be used during the year, must be available for a parent or guardian to preview during school hours. Materials or curriculum not included in the materials available on the campus for preview may not be used.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 2019, 86th Leg., ch. 352 (H.B. 18), § 1.10, effective December 1, 2019.

Sec. 33.005. Comprehensive School Counseling Programs.

(a) A school counselor shall work with the school faculty and staff, students, parents, and the community to plan, implement, and evaluate a comprehensive school counseling program that conforms to the most recent edition of the Texas Model for Comprehensive School Counseling Programs developed by the Texas Counseling Association.

(b) The school counselor shall design the program to include:

(1) a guidance curriculum to help students develop their full educational potential, including the student's interests and career objectives;

(2) a responsive services component to intervene on behalf of any student whose immediate personal con-

cerns or problems put the student’s continued educational, career, personal, or social development at risk;

(3) an individual planning system to guide a student as the student plans, monitors, and manages the student’s own educational, career, personal, and social development; and

(4) system support to support the efforts of teachers, staff, parents, and other members of the community in promoting the educational, career, personal, and social development of students.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 2001, 77th Leg., ch. 1487 (S.B. 518), § 2, effective June 17, 2001; am. Acts 2013, 83rd Leg., ch. 443 (S.B. 715), § 29, effective June 14, 2013; am. Acts 2019, 86th Leg., ch. 352 (H.B. 18), § 1.11, effective December 1, 2019.

SUBTITLE G

SAFE SCHOOLS

Chapter 37.	Discipline; Law and Order
38.	Health and Safety

CHAPTER 37

Discipline; Law and Order

Subchapter A. Alternative Settings for Behavior Management

Section 37.0023.	Prohibited Aversive Techniques.
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Subchapter D. Protection of Buildings and Grounds

37.108.	Multihazard Emergency Operations Plan; Safety and Security Audit.
37.115.	Threat Assessment and Safe and Supportive School Program and Team.

Subchapter G. Texas School Safety Center

37.220.	Model Threat Assessment Team Policies and Procedures.
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Subchapter A

Alternative Settings for Behavior Management

Sec. 37.0023. Prohibited Aversive Techniques.

(a) In this section, “aversive technique” means a technique or intervention that is intended to reduce the likelihood of a behavior reoccurring by intentionally inflicting on a student significant physical or emotional discomfort or pain. The term includes a technique or intervention that:

(1) is designed to or likely to cause physical pain, other than an intervention or technique permitted under Section 37.0011;

(2) notwithstanding Section 37.0011, is designed to or likely to cause physical pain through the use of electric shock or any procedure that involves the use of pressure points or joint locks;

(3) involves the directed release of a noxious, toxic, or otherwise unpleasant spray, mist, or substance near the student’s face;

(4) denies adequate sleep, air, food, water, shelter, bedding, physical comfort, or access to a restroom facility;

(5) ridicules or demeans the student in a manner that adversely affects or endangers the learning or mental health of the student or constitutes verbal abuse;

(6) employs a device, material, or object that simultaneously immobilizes all four extremities, including any procedure that results in such immobilization known as prone or supine floor restraint;

(7) impairs the student’s breathing, including any procedure that involves:

(A) applying pressure to the student’s torso or neck; or

(B) obstructing the student’s airway, including placing an object in, on, or over the student’s mouth or nose or placing a bag, cover, or mask over the student’s face;

(8) restricts the student’s circulation;

(9) secures the student to a stationary object while the student is in a sitting or standing position;

(10) inhibits, reduces, or hinders the student’s ability to communicate;

(11) involves the use of a chemical restraint;

(12) constitutes a use of timeout that precludes the student from being able to be involved in and progress appropriately in the required curriculum and, if applicable, toward the annual goals included in the student’s individualized education program, including isolating the student by the use of physical barriers; or

(13) except as provided by Subsection (c), deprives the student of the use of one or more of the student’s senses.

(b) A school district or school district employee or volunteer or an independent contractor of a school district may not apply an aversive technique, or by authorization, order, or consent, cause an aversive technique to be applied, to a student.

(c) Notwithstanding Subsection (a)(13), an aversive technique described by Subsection (a)(13) may be used if the technique is executed in a manner that:

(1) does not cause the student discomfort or pain; or

(2) complies with the student’s individualized education program or behavior intervention plan.

(d) Nothing in this section may be construed to prohibit a teacher from removing a student from class under Section 37.002.

(e) In adopting procedures under this section, the commissioner shall provide guidance to school district employees, volunteers, and independent contractors of school districts in avoiding a violation of Subsection (b).

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 598 (S.B. 712), § 1, effective June 10, 2019.

Subchapter D

Protection of Buildings and Grounds

Sec. 37.108. Multihazard Emergency Operations Plan; Safety and Security Audit.

(a) Each school district or public junior college district shall adopt and implement a multihazard emergency

operations plan for use in the district's facilities. The plan must address prevention, mitigation, preparedness, response, and recovery as defined by the Texas School Safety Center in conjunction with the governor's office of homeland security and the commissioner of education or commissioner of higher education, as applicable. The plan must provide for:

- (1) training in responding to an emergency for district employees, including substitute teachers;
- (2) measures to ensure district employees, including substitute teachers, have classroom access to a telephone, including a cellular telephone, or another electronic communication device allowing for immediate contact with district emergency services or emergency services agencies, law enforcement agencies, health departments, and fire departments;
- (3) measures to ensure district communications technology and infrastructure are adequate to allow for communication during an emergency;
- (4) if the plan applies to a school district, mandatory school drills and exercises, including drills required under Section 37.114, to prepare district students and employees for responding to an emergency;
- (5) measures to ensure coordination with the Department of State Health Services and local emergency management agencies, law enforcement, health departments, and fire departments in the event of an emergency; and
- (6) the implementation of a safety and security audit as required by Subsection (b).

(b) At least once every three years, each school district or public junior college district shall conduct a safety and security audit of the district's facilities. To the extent possible, a district shall follow safety and security audit procedures developed by the Texas School Safety Center or a person included in the registry established by the Texas School Safety Center under Section 37.2091.

(b-1) In a school district's safety and security audit required under Subsection (b), the district must certify that the district used the funds provided to the district through the school safety allotment under Section 42.168 only for the purposes provided by that section.

(c) A school district or public junior college district shall report the results of the safety and security audit conducted under Subsection (b) to the district's board of trustees and, in the manner required by the Texas School Safety Center, to the Texas School Safety Center. The report provided to the Texas School Safety Center under this subsection must be signed by:

- (1) for a school district, the district's board of trustees and superintendent; or
- (2) for a public junior college district, the president of the junior college district.

(c-1) Except as provided by Subsection (c-2), any document or information collected, developed, or produced during a safety and security audit conducted under Subsection (b) is not subject to disclosure under Chapter 552, Government Code.

(c-2) A document relating to a school district's or public junior college district's multihazard emergency operations plan is subject to disclosure if the document enables a person to:

(1) verify that the district has established a plan and determine the agencies involved in the development of the plan and the agencies coordinating with the district to respond to an emergency, including the Department of State Health Services, local emergency services agencies, law enforcement agencies, health departments, and fire departments;

(2) verify that the district's plan was reviewed within the last 12 months and determine the specific review dates;

(3) verify that the plan addresses the four phases of emergency management under Subsection (a);

(4) verify that district employees have been trained to respond to an emergency and determine the types of training, the number of employees trained, and the person conducting the training;

(5) verify that each campus in the district has conducted mandatory emergency drills and exercises in accordance with the plan and determine the frequency of the drills;

(6) if the district is a school district, verify that the district has established a plan for responding to a train derailment if required under Subsection (d);

(7) verify that the district has completed a safety and security audit under Subsection (b) and determine the date the audit was conducted, the person conducting the audit, and the date the district presented the results of the audit to the district's board of trustees;

(8) verify that the district has addressed any recommendations by the district's board of trustees for improvement of the plan and determine the district's progress within the last 12 months; and

(9) if the district is a school district, verify that the district has established a visitor policy and identify the provisions governing access to a district building or other district property.

(d) A school district shall include in its multihazard emergency operations plan a policy for responding to a train derailment near a district school. A school district is only required to adopt the policy described by this subsection if a district school is located within 1,000 yards of a railroad track, as measured from any point on the school's real property boundary line. The school district may use any available community resources in developing the policy described by this subsection.

(e) A school district shall include in its multihazard emergency operations plan a policy for school district property selected for use as a polling place under Section 43.031, Election Code. In developing the policy under this subsection, the board of trustees may consult with the local law enforcement agency with jurisdiction over the school district property selected as a polling place regarding reasonable security accommodations that may be made to the property. This subsection may not be interpreted to require the board of trustees to obtain or contract for the presence of law enforcement or security personnel for the purpose of securing a polling place located on school district property. Failure to comply with this subsection does not affect the requirement of the board of trustees to make a school facility available for use as a polling place under Section 43.031, Election Code.

(f) A school district shall include in its multihazard emergency operations plan:

(1) a chain of command that designates the individual responsible for making final decisions during a disaster or emergency situation and identifies other individuals responsible for making those decisions if the designated person is unavailable;

(2) provisions that address physical and psychological safety for responding to a natural disaster, active shooter, and any other dangerous scenario identified for purposes of this section by the agency or the Texas School Safety Center;

(3) provisions for ensuring the safety of students in portable buildings;

(4) provisions for ensuring that students and district personnel with disabilities are provided equal access to safety during a disaster or emergency situation;

(5) provisions for providing immediate notification to parents, guardians, and other persons standing in parental relation in circumstances involving a significant threat to the health or safety of students, including identification of the individual with responsibility for overseeing the notification;

(6) provisions for supporting the psychological safety of students, district personnel, and the community during the response and recovery phase following a disaster or emergency situation that:

(A) are aligned with best practice-based programs and research-based practices recommended under Section 161.325, Health and Safety Code;

(B) include strategies for ensuring any required professional development training for suicide prevention and grief-informed and trauma-informed care is provided to appropriate school personnel;

(C) include training on integrating psychological safety and suicide prevention strategies into the district's plan, such as psychological first aid for schools training, from an approved list of recommended training established by the commissioner and Texas School Safety Center for:

(i) members of the district's school safety and security committee under Section 37.109;

(ii) district school counselors and mental health professionals; and

(iii) educators and other district personnel as determined by the district;

(D) include strategies and procedures for integrating and supporting physical and psychological safety that align with the provisions described by Subdivision (2); and

(E) implement trauma-informed policies;

(7) a policy for providing a substitute teacher access to school campus buildings and materials necessary for the substitute teacher to carry out the duties of a district employee during an emergency or a mandatory emergency drill; and

(8) the name of each individual on the district's school safety and security committee established under Section 37.109 and the date of each committee meeting during the preceding year.

(g) A school district shall include in its multihazard emergency operations plan a policy for responding to an active shooter emergency. The school district may use any available community resources in developing the policy described by this subsection.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 780 (S.B. 11), § 1, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 258 (S.B. 11), art. 3, § 3.02, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 1326 (S.B. 1504), § 2, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 1280 (H.B. 1831), art. 6, §§ 6.01, 6.02, effective September 1, 2009; am. Acts 2017, 85th Leg., ch. 809 (H.B. 332), § 1, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 10, effective June 6, 2019; am. Acts 2019, 86th Leg., ch. 1108 (H.B. 2195), § 1, effective June 14, 2019.

Sec. 37.115. Threat Assessment and Safe and Supportive School Program and Team.

(a) In this section:

(1) "Harmful, threatening, or violent behavior" includes behaviors, such as verbal threats, threats of self harm, bullying, cyberbullying, fighting, the use or possession of a weapon, sexual assault, sexual harassment, dating violence, stalking, or assault, by a student that could result in:

(A) specific interventions, including mental health or behavioral supports;

(B) in-school suspension;

(C) out-of-school suspension; or

(D) the student's expulsion or removal to a disciplinary alternative education program or a juvenile justice alternative education program.

(2) "Team" means a threat assessment and safe and supportive school team established by the board of trustees of a school district under this section.

(b) The agency, in coordination with the Texas School Safety Center, shall adopt rules to establish a safe and supportive school program. The rules shall incorporate research-based best practices for school safety, including providing for:

(1) physical and psychological safety;

(2) a multiphase and multihazard approach to prevention, mitigation, preparedness, response, and recovery in a crisis situation;

(3) a systemic and coordinated multitiered support system that addresses school climate, the social and emotional domain, and behavioral and mental health; and

(4) multidisciplinary and multiagency collaboration to assess risks and threats in schools and provide appropriate interventions, including rules for the establishment and operation of teams.

(c) The board of trustees of each school district shall establish a threat assessment and safe and supportive school team to serve at each campus of the district and shall adopt policies and procedures for the teams. The team is responsible for developing and implementing the safe and supportive school program under Subsection (b) at the district campus served by the team. The policies and procedures adopted under this section must:

(1) be consistent with the model policies and procedures developed by the Texas School Safety Center;

(2) require each team to complete training provided by the Texas School Safety Center or a regional education service center regarding evidence-based threat assessment programs; and

(3) require each team established under this section to report the information required under Subsection (k) regarding the team's activities to the agency.

(d) The superintendent of the district shall ensure that the members appointed to each team have expertise in counseling, behavior management, mental health and substance use, classroom instruction, special education, school administration, school safety and security, emergency management, and law enforcement. A team may serve more than one campus of a school district, provided that each district campus is assigned a team.

(e) The superintendent of a school district may establish a committee, or assign to an existing committee established by the district, the duty to oversee the operations of teams established for the district. A committee with oversight responsibility under this subsection must include members with expertise in human resources, education, special education, counseling, behavior management, school administration, mental health and substance use, school safety and security, emergency management, and law enforcement.

(f) Each team shall:

(1) conduct a threat assessment that includes:

(A) assessing and reporting individuals who make threats of violence or exhibit harmful, threatening, or violent behavior in accordance with the policies and procedures adopted under Subsection (c); and

(B) gathering and analyzing data to determine the level of risk and appropriate intervention, including:

(i) referring a student for mental health assessment; and

(ii) implementing an escalation procedure, if appropriate based on the team's assessment, in accordance with district policy;

(2) provide guidance to students and school employees on recognizing harmful, threatening, or violent behavior that may pose a threat to the community, school, or individual; and

(3) support the district in implementing the district's multihazard emergency operations plan.

(g) A team may not provide a mental health care service to a student who is under 18 years of age unless the team obtains written consent from the parent or person standing in parental relation to the student before providing the mental health care service. The consent required by this subsection must be submitted on a form developed by the school district that complies with all applicable state and federal law. The student's parent or person standing in parental relation to the student may give consent for a student to receive ongoing services or may limit consent to one or more services provided on a single occasion.

(h) On a determination that a student or other individual poses a serious risk of violence to self or others, a team shall immediately report the team's determination to the superintendent. If the individual is a student, the superintendent shall immediately attempt to inform the parent or person standing in parental relation to the student. The requirements of this subsection do not prevent an employee of the school from acting immediately to prevent an imminent threat or respond to an emergency.

(i) A team identifying a student at risk of suicide shall act in accordance with the district's suicide prevention program. If the student at risk of suicide also makes a threat of violence to others, the team shall conduct a

threat assessment in addition to actions taken in accordance with the district's suicide prevention program.

(j) A team identifying a student using or possessing tobacco, drugs, or alcohol shall act in accordance with district policies and procedures related to substance use prevention and intervention.

(k) A team must report to the agency in accordance with guidelines developed by the agency the following information regarding the team's activities and other information for each school district campus the team serves:

(1) the occupation of each person appointed to the team;

(2) the number of threats and a description of the type of the threats reported to the team;

(3) the outcome of each assessment made by the team, including:

(A) any disciplinary action taken, including a change in school placement;

(B) any action taken by law enforcement; or

(C) a referral to or change in counseling, mental health, special education, or other services;

(4) the total number, disaggregated by student gender, race, and status as receiving special education services, being at risk of dropping out of school, being in foster care, experiencing homelessness, being a dependent of military personnel, being pregnant or a parent, having limited English proficiency, or being a migratory child, of, in connection with an assessment or reported threat by the team:

(A) citations issued for Class C misdemeanor offenses;

(B) arrests;

(C) incidents of uses of restraint;

(D) changes in school placement, including placement in a juvenile justice alternative education program or disciplinary alternative education program;

(E) referrals to or changes in counseling, mental health, special education, or other services;

(F) placements in in-school suspension or out-of-school suspension and incidents of expulsion;

(G) unexcused absences of 15 or more days during the school year; and

(H) referrals to juvenile court for truancy; and

(5) the number and percentage of school personnel trained in:

(A) a best-practices program or research-based practice under Section 161.325, Health and Safety Code, including the number and percentage of school personnel trained in:

(i) suicide prevention; or

(ii) grief and trauma-informed practices;

(B) mental health or psychological first aid for schools;

(C) training relating to the safe and supportive school program established under Subsection (b); or

(D) any other program relating to safety identified by the commissioner.

(l) The commissioner may adopt rules to implement this section.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 13, effective June 6, 2019.

Subchapter G
Texas School Safety Center

Sec. 37.220. Model Threat Assessment Team Policies and Procedures.

(a) The center, in coordination with the agency, shall develop model policies and procedures to assist school districts in establishing and training threat assessment teams.

(b) The model policies and procedures developed under Subsection (a) must include procedures, when appropriate, for:

- (1) the referral of a student to a local mental health authority or health care provider for evaluation or treatment;
- (2) the referral of a student for a full individual and initial evaluation for special education services under Section 29.004; and
- (3) a student or school personnel to anonymously report dangerous, violent, or unlawful activity that occurs or is threatened to occur on school property or that relates to a student or school personnel.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 17, effective June 6, 2019.

CHAPTER 38
Health and Safety

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Subchapter A
General Provisions

Sec. 38.003. Screening and Treatment for Dyslexia and Related Disorders.

(a) Students enrolling in public schools in this state shall be screened or tested, as appropriate, for dyslexia and related disorders at appropriate times in accordance with a program approved by the State Board of Education. The program must include screening at the end of the school year of each student in kindergarten and each student in the first grade.

(b) In accordance with the program approved by the State Board of Education, the board of trustees of each school district shall provide for the treatment of any student determined to have dyslexia or a related disorder.

(b-1) Unless otherwise provided by law, a student determined to have dyslexia during screening or testing under Subsection (a) or accommodated because of dyslexia may not be rescreened or retested for dyslexia for the purpose of reassessing the student's need for accommodations until the district reevaluates the information obtained from previous screening or testing of the student.

(c) Subject to Subsection (c-1), the State Board of Education shall adopt any rules and standards necessary to administer this section.

(c-1) The agency by rule shall develop procedures designed to allow the agency to:

(1) effectively audit and monitor and periodically conduct site visits of all school districts to ensure that districts are complying with this section, including the program approved by the State Board of Education under this section;

(2) identify any problems school districts experience in complying with this section, including the program approved by the State Board of Education under this section; and

(3) develop reasonable and appropriate remedial strategies to address school district noncompliance and ensure the purposes of this section are accomplished.

(d) In this section:

(1) "Dyslexia" means a disorder of constitutional origin manifested by a difficulty in learning to read, write, or spell, despite conventional instruction, adequate intelligence, and sociocultural opportunity.

(2) "Related disorders" includes disorders similar to or related to dyslexia, such as developmental auditory imperception, dysphasia, specific developmental dyslexia, developmental dysgraphia, and developmental spelling disability.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 2011, 82nd Leg., ch. 635 (S.B. 866), § 3, effective June 17, 2011; am. Acts 2017, 85th Leg., ch. 1044 (H.B. 1886), § 5, effective June 15, 2017; am. Acts 2019, 86th Leg., ch. 450 (S.B. 2075), § 3, effective June 4, 2019.

Sec. 38.0031. Classroom Technology Plan for Students with Dyslexia.

(a) The agency shall establish a committee to develop a plan for integrating technology into the classroom to help accommodate students with dyslexia. The plan must:

(1) determine the classroom technologies that are useful and practical in assisting public schools in accommodating students with dyslexia, considering budget constraints of school districts; and

(2) develop a strategy for providing those effective technologies to students.

(b) The agency shall provide the plan and information about the availability and benefits of the technologies identified under Subsection (a)(1) to school districts.

(c) A member of the committee established under Subsection (a) is not entitled to reimbursement for travel expenses incurred by the member under this section unless agency funds are available for that purpose.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 635 (S.B. 866), § 4, effective June 17, 2011.

Sec. 38.0032. Dyslexia Training Opportunities.

(a) The agency shall annually develop a list of training opportunities regarding dyslexia that satisfy the requirements of Section 21.054(b). The list of training opportunities must include at least one opportunity that is available online.

(b) A training opportunity included in the list developed under Subsection (a) must:

(1) comply with the knowledge and practice standards of an international organization on dyslexia; and

(2) enable an educator to:

(A) understand and recognize dyslexia; and

(B) implement instruction that is systematic, explicit, and evidence-based to meet the educational needs of a student with dyslexia.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 1044 (H.B. 1886), § 6, effective June 15, 2017.

Sec. 38.0041. Policies Addressing Sexual Abuse and Other Maltreatment of Children.

(a) Each school district and open-enrollment charter school shall adopt and implement a policy addressing sexual abuse, sex trafficking, and other maltreatment of children, to be included in the district improvement plan under Section 11.252 and any informational handbook provided to students and parents.

(a-1) A school district may collaborate with local law enforcement and outside consultants with expertise in the prevention of sexual abuse and sex trafficking to create the policy required under Subsection (a), and to create a referral protocol for high-risk students.

(b) A policy required by this section must address:

(1) methods for increasing staff, student, and parent awareness of issues regarding sexual abuse, sex trafficking, and other maltreatment of children, including prevention techniques and knowledge of likely warning signs indicating that a child may be a victim of sexual abuse, sex trafficking, or other maltreatment, using resources developed by the agency or the commissioner regarding those issues, including resources developed by the agency under Section 38.004;

(2) actions that a child who is a victim of sexual abuse, sex trafficking, or other maltreatment should take to obtain assistance and intervention; and

(3) available counseling options for students affected by sexual abuse, sex trafficking, or other maltreatment.

(c) The methods under Subsection (b)(1) for increasing awareness of issues regarding sexual abuse, sex trafficking, and other maltreatment of children must include training, as provided by this subsection, concerning prevention techniques for and recognition of sexual abuse, sex trafficking, and all other maltreatment of children, including the sexual abuse, sex trafficking, and other maltreatment of children with significant cognitive disabilities. The training:

(1) must be provided, as part of a new employee orientation, to all new school district and open-enrollment charter school employees and to existing district and open-enrollment charter school employees on a schedule adopted by the agency by rule until all district and open-enrollment charter school employees have taken the training; and

(2) must include training concerning:

(A) factors indicating a child is at risk for sexual abuse, sex trafficking, or other maltreatment;

(B) likely warning signs indicating a child may be a victim of sexual abuse, sex trafficking, or other maltreatment;

(C) internal procedures for seeking assistance for a child who is at risk for sexual abuse, sex trafficking, or other maltreatment, including referral to a school counselor, a social worker, or another mental health professional;

(D) techniques for reducing a child's risk of sexual abuse, sex trafficking, or other maltreatment; and

(E) community organizations that have relevant existing research-based programs that are able to provide training or other education for school district or open-enrollment charter school staff members, students, and parents.

(d) For any training under Subsection (c), each school district and open-enrollment charter school shall maintain records that include the name of each district or charter school staff member who participated in the training.

(e) If a school district or open-enrollment charter school determines that the district or charter school does not have sufficient resources to provide the training required under Subsection (c), the district or charter school shall work in conjunction with a community organization to provide the training at no cost to the district or charter school.

(f) The training under Subsection (c) may be included in staff development under Section 21.451.

(g) A school district or open-enrollment charter school employee may not be subject to any disciplinary proceeding, as defined by Section 22.0512(b), resulting from an action taken in compliance with this section. The requirements of this section are considered to involve an employee's judgment and discretion and are not considered ministerial acts for purposes of immunity from liability under Section 22.0511. Nothing in this section may be considered to limit the immunity from liability provided under Section 22.0511.

(h) For purposes of this section, "other maltreatment" has the meaning assigned by Section 42.002, Human Resources Code.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1115 (H.B. 1041), § 2, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 1323 (S.B. 471), § 2, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 443 (S.B. 715), § 34, effective June 14, 2013; am. Acts 2013, 83rd Leg., ch. 592 (S.B. 939), § 2, effective September 1, 2013; am. Acts 2017, 85th Leg., ch. 762 (S.B. 2039), § 2, effective June 12, 2017; am. Acts 2019, 86th Leg., ch. 303 (H.B. 111), § 1, effective May 31, 2019.

Sec. 38.010. Outside Counselors.

(a) A school district or school district employee may not refer a student to an outside counselor for care or treatment of a chemical dependency or an emotional or psychological condition unless the district:

- (1) obtains prior written consent for the referral from the student's parent;
- (2) discloses to the student's parent any relationship between the district and the outside counselor;
- (3) informs the student and the student's parent of any alternative public or private source of care or treatment reasonably available in the area;
- (4) requires the approval of appropriate school district personnel before a student may be referred for care or treatment or before a referral is suggested as being warranted; and
- (5) specifically prohibits any disclosure of a student record that violates state or federal law.

(b) In this section, "parent" includes a managing conservator or guardian.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995.

Sec. 38.0101. Authority to Employ or Contract with Nonphysician Mental Health Professional.

(a) A school district may employ or contract with one or more nonphysician mental health professionals.

(b) In this section, "nonphysician mental health professional" means:

- (1) a psychologist licensed to practice in this state and designated as a health-service provider;
- (2) a registered nurse with a master's or doctoral degree in psychiatric nursing;
- (3) a licensed clinical social worker;
- (4) a professional counselor licensed to practice in this state; or
- (5) a marriage and family therapist licensed to practice in this state.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 352 (H.B. 18), § 1.12, effective December 1, 2019.

Sec. 38.013. Coordinated Health Program for Elementary, Middle, and Junior High School Students.

(a) The agency shall make available to each school district one or more coordinated health programs in elementary school, middle school, and junior high school. Each program must provide for coordinating education and services related to:

- (1) physical health education, including programs designed to prevent obesity, cardiovascular disease, oral diseases, and Type 2 diabetes and programs designed to promote the role of proper nutrition;
- (2) mental health education, including education about mental health conditions, mental health well-being, skills to manage emotions, establishing and maintaining positive relationships, and responsible decision-making;
- (3) substance abuse education, including education about alcohol abuse, prescription drug abuse, and abuse of other controlled substances;
- (4) physical education and physical activity; and
- (5) parental involvement.

(a-1) The commissioner by rule shall adopt criteria for evaluating a coordinated health program before making the program available under Subsection (a). Before adopting the criteria, the commissioner shall request review and comment concerning the criteria from the Department of State Health Services School Health Advisory Committee. The commissioner may make available under Subsection (a) only those programs that meet criteria adopted under this subsection.

(b) The agency shall notify each school district of the availability of the programs.

(c) The commissioner by rule shall adopt criteria for evaluating the nutritional services component of a program under this section that includes an evaluation of program compliance with the Department of Agriculture guidelines relating to foods of minimal nutritional value.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 907 (S.B. 19), § 3, effective June 14, 2001; am. Acts 2003, 78th Leg., ch. 944 (S.B. 1357), § 3, effective September 1, 2003; am. Acts 2005, 79th

Leg., ch. 784 (S.B. 42), § 3, effective June 17, 2005; am. Acts 2005, 79th Leg., ch. 784 (S.B. 42), § 4, effective June 17, 2005; am. Acts 2013, 83rd Leg., ch. 1399 (H.B. 2483), § 1, effective June 14, 2013; am. Acts 2019, 86th Leg., ch. 352 (H.B. 18), § 1.13, effective December 1, 2019.

Sec. 38.016. Psychotropic Drugs and Psychiatric Evaluations or Examinations.

(a) In this section:

(1) “Nonphysician mental health professional” has the meaning assigned by Section 38.0101.

(2) “Parent” includes a guardian or other person standing in parental relation.

(3) “Psychotropic drug” means a substance that is:

(A) used in the diagnosis, treatment, or prevention of a disease or as a component of a medication; and

(B) intended to have an altering effect on perception, emotion, or behavior.

(b) A school district employee may not:

(1) recommend that a student use a psychotropic drug; or

(2) suggest any particular diagnosis; or

(3) use the refusal by a parent to consent to administration of a psychotropic drug to a student or to a psychiatric evaluation or examination of a student as grounds, by itself, for prohibiting the child from attending a class or participating in a school-related activity.

(c) Subsection (b) does not:

(1) prevent an appropriate referral under the child find system required under 20 U.S.C. Section 1412, as amended;

(2) prohibit a school district employee, or an employee of an entity with which the district contracts, who is a registered nurse, advanced nurse practitioner, physician, or nonphysician mental health professional licensed or certified to practice in this state from recommending that a child be evaluated by a physician or nonphysician mental health professional; or

(3) prohibit a school employee from discussing any aspect of a child’s behavior or academic progress with the child’s parent or another school district employee.

(d) The board of trustees of each school district shall adopt a policy to ensure implementation and enforcement of this section.

(e) An act in violation of Subsection (b) does not override the immunity from personal liability granted in Section 22.0511 or other law or the district’s sovereign and governmental immunity.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1058 (H.B. 1406), § 1, effective June 20, 2003; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), art. 4, § 4.008, effective September 1, 2007; am. Acts 2019, 86th Leg., ch. 352 (H.B. 18), § 1.14, effective December 1, 2019.

Sec. 38.036. Trauma-Informed Care Policy.

(a) Each school district shall adopt and implement a policy requiring the integration of trauma-informed practices in each school environment. A district must include the policy in the district improvement plan required under Section 11.252.

(b) A policy required by this section must address:

(1) using resources developed by the agency, methods for:

(A) increasing staff and parent awareness of trauma-informed care; and

(B) implementation of trauma-informed practices and care by district and campus staff; and

(2) available counseling options for students affected by trauma or grief.

(c) The methods under Subsection (b)(1) for increasing awareness and implementation of trauma-informed care must include training as provided by this subsection. The training must be provided:

(1) through a program selected from the list of recommended best practice-based programs and research-based practices established under Section 161.325, Health and Safety Code;

(2) as part of any new employee orientation for all new school district educators; and

(3) to existing school district educators on a schedule adopted by the agency by rule that requires educators to be trained at intervals necessary to keep educators informed of developments in the field.

(d) For any training under Subsection (c), each school district shall maintain records that include the name of each district staff member who participated in the training.

(e) Each school district shall report annually to the agency the following information for the district as a whole and for each school campus:

(1) the number of teachers, principals, and counselors employed by the district who have completed training under this section; and

(2) the total number of teachers, principals, and counselors employed by the district.

(f) If a school district determines that the district does not have sufficient resources to provide the training required under Subsection (c), the district may partner with a community mental health organization to provide training that meets the requirements of Subsection (c) at no cost to the district.

(g) The commissioner shall adopt rules as necessary to administer this section.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 18, effective June 6, 2019.

Subchapter B

School-Based Health Centers

Sec. 38.051. Establishment of School-Based Health Centers.

(a) A school district in this state may, if the district identifies the need, design a model in accordance with this subchapter for the delivery of cooperative health care programs for students and their families and may compete for grants awarded under this subchapter. The model may provide for the delivery of conventional health services and disease prevention of emerging health threats that are specific to the district.

(b) On the recommendation of an advisory council established under Section 38.058 or on the initiative of the board of trustees or the governing body of an open-enrollment charter school, a school district or open-enrollment charter school may establish a school-based health

center at one or more campuses to meet the health care needs of students and their families.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1418 (H.B. 2202), § 1, effective June 19, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), art. 4, § 4.005, effective September 1, 2001 (renumbered from Sec. 38.011); am. Acts 2019, 86th Leg., ch. 352 (H.B. 18), § 1.15, effective December 1, 2019.

Sec. 38.052. Contract for Services.

A district may contract with a person to provide services at a school-based health center.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1418 (H.B. 2202), § 1, effective June 19, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), art. 4, § 4.005, effective September 1, 2001 (renumbered from Sec. 38.011).

Sec. 38.053. Parental Consent Required.

(a) A school-based health center may provide services to a student only if the district or the provider with whom the district contracts obtains the written consent of the student's parent or guardian or another person having legal control of the student on a consent form developed by the district or provider. The student's parent or guardian or another person having legal control of the student may give consent for a student to receive ongoing services or may limit consent to one or more services provided on a single occasion.

(b) The consent form must list every service the school-based health center delivers in a format that complies with all applicable state and federal laws and allows a person to consent to one or more categories of services.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1418 (H.B. 2202), § 1, effective June 19, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), art. 4, § 4.005, effective September 1, 2001 (renumbered from Sec. 38.011).

Sec. 38.054. Categories of Services.

The permissible categories of services are:

- (1) family and home support;
- (2) physical health care, including immunizations;
- (3) dental health care;
- (4) health education;
- (5) preventive health strategies;
- (6) treatment for mental health conditions; and
- (7) treatment for substance abuse.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1418 (H.B. 2202), § 1, effective June 19, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), art. 4, § 4.005, effective September 1, 2001 (renumbered from Sec. 38.011); am. Acts 2019, 86th Leg., ch. 352 (H.B. 18), § 1.16, effective December 1, 2019.

Sec. 38.055. Use of Grant Funds for Reproductive Services Prohibited.

Reproductive services, counseling, or referrals may not be provided through a school-based health center using grant funds awarded under this subchapter.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1418 (H.B. 2202), § 1, effective June 19, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), art. 4, § 4.005, effective September 1, 2001 (renumbered from Sec. 38.011).

Sec. 38.056. Provision of Certain Services by Licensed Health Care Provider Required.

Any service provided using grant funds awarded under this subchapter must be provided by an appropriate

professional who is properly licensed, certified, or otherwise authorized under state law to provide the service.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1418 (H.B. 2202), § 1, effective June 19, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), art. 4, § 4.005, effective September 1, 2001 (renumbered from Sec. 38.011).

Sec. 38.057. Identification of Health-Related Concerns.

(a) The staff of a school-based health center and the person whose consent is obtained under Section 38.053 shall jointly identify any health-related concerns of a student that may be interfering with the student's well-being or ability to succeed in school.

(b) If it is determined that a student is in need of a referral for physical health services or mental health services, the staff of the center shall notify the person whose consent is required under Section 38.053 verbally and in writing of the basis for the referral. The referral may not be provided unless the person provides written consent for the type of service to be provided and provides specific written consent for each treatment occasion or for a course of treatment that includes multiple treatment occasions of the same type of service.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1418 (H.B. 2202), § 1, effective June 19, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), art. 4, § 4.005, effective September 1, 2001 (renumbered from Sec. 38.011); am. Acts 2019, 86th Leg., ch. 352 (H.B. 18), § 1.17, effective December 1, 2019.

Sec. 38.058. Health Education and Health Care Advisory Council.

(a) The board of trustees of a school district or the governing body of an open-enrollment charter school may establish and appoint members to a local health education and health care advisory council to make recommendations to the district or school on the establishment of school-based health centers and to assist the district or school in ensuring that local community values are reflected in the operation of each center and in the provision of health education.

(b) A majority of the members of the council must be parents of students enrolled in the school district or open-enrollment charter school. In addition to the appointees who are parents of students, the board of trustees or governing body shall also appoint at least one person from each of the following groups:

- (1) classroom teachers;
- (2) school administrators;
- (3) school counselors;
- (4) health care professionals licensed or certified to practice in this state;
- (5) the clergy;
- (6) law enforcement;
- (7) the business community;
- (8) senior citizens; and
- (9) students.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1418 (H.B. 2202), § 1, effective June 19, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), art. 4, § 4.005, effective September 1, 2001 (renumbered from Sec. 38.011); am. Acts 2019, 86th Leg., ch. 352 (H.B. 18), § 1.18, effective December 1, 2019.

Sec. 38.059. Assistance of Public Health Agency.

(a) A school district may seek assistance in establishing and operating a school-based health center from any public health agency in the community. On request, a public health agency shall cooperate with a district and to the extent practicable, considering the resources of the agency, may provide assistance.

(b) A district and a public health agency may, by agreement, jointly establish, operate, and fund a school-based health center.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1418 (H.B. 2202), § 1, effective June 19, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), art. 4, § 4.005, effective September 1, 2001 (renumbered from Sec. 38.011).

Sec. 38.0591. Access to Mental Health Services.

The agency, in cooperation with the Health and Human Services Commission, shall develop guidelines for school districts regarding:

- (1) partnering with a local mental health authority and with community or other private mental health services providers and substance abuse services providers to increase student access to mental health services; and
- (2) obtaining mental health services through the medical assistance program under Chapter 32, Human Resources Code.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 352 (H.B. 18), § 1.19, effective December 1, 2019.

Sec. 38.060. Coordination with Existing Providers in Certain Areas.

(a) This section applies only to a school-based health center serving an area that:

- (1) is located in a county with a population not greater than 50,000; or
- (2) has been designated under state or federal law as:
 - (A) a health professional shortage area;
 - (B) a medically underserved area; or
 - (C) a medically underserved community by the Texas Department of Rural Affairs.

(b) If a school-based health center is located in an area described by Subsection (a), the school district and the advisory council established under Section 38.058 shall make a good faith effort to identify and coordinate with existing providers to preserve and protect existing health care systems and medical relationships in the area.

(c) The school district or open-enrollment charter school shall keep a record of efforts made to coordinate with existing providers.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1418 (H.B. 2202), § 1, effective June 19, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), art. 4, § 4.005, effective September 1, 2001 (renumbered from Sec. 38.011); am. Acts 2003, 78th Leg., ch. 609 (H.B. 1877), § 7, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), art. 9, § 9.006(f), effective September 1, 2003; am. Acts 2009, 81st Leg., ch. 112 (H.B. 1918), § 2, effective September 1, 2009; am. Acts 2019, 86th Leg., ch. 352 (H.B. 18), § 1.20, effective December 1, 2019.

Sec. 38.061. Communication with Primary Care Physician.

(a) If a person receiving a medical service from a school-based health center has a primary care physician,

the staff of the center shall provide notice of the service the person received to the primary care physician in order to allow the physician to maintain a complete medical history of the person.

(b) The staff of a school-based health center shall, before delivering a medical service to a person with a primary care physician under the state Medicaid program, a state children's health plan program, or a private health insurance or health benefit plan, notify the physician for the purpose of sharing medical information and obtaining authorization for delivering the medical service.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1418 (H.B. 2202), § 1, effective June 19, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), art. 4, § 4.005, effective September 1, 2001 (renumbered from Sec. 38.011).

Sec. 38.062. Funding for Provision of Services.

A school district or the provider with whom the district contracts shall seek all available sources of funding to compensate the district or provider for services provided by a school-based health center, including money available under the state Medicaid program, a state children's health plan program, or private health insurance or health benefit plans or available from those persons using a school-based health center who have the ability to pay for the services.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1418 (H.B. 2202), § 1, effective June 19, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), art. 4, § 4.005, effective September 1, 2001 (renumbered from Sec. 38.011).

Sec. 38.063. Grants.

(a) Subject to the availability of federal or state appropriated funds, the commissioner of state health services shall administer a program under which grants are awarded to assist school districts and local health departments, hospitals, health care systems, universities, or nonprofit organizations that contract with school districts with the costs of school-based health centers in accordance with this section.

(b) The commissioner of state health services, by rules adopted in accordance with this section, shall establish procedures for awarding grants. The rules must provide that:

- (1) grants are awarded annually through a competitive process to:
 - (A) school districts; and
 - (B) local health departments, hospitals, health care systems, universities, or nonprofit organizations that have contracted with school districts to establish and operate school-based health centers;
- (2) subject to the availability of federal or state appropriated funds, each grant is for a term of five years; and
- (3) a preference is given to school-based health centers in school districts that are located in rural areas or that have low property wealth per student.

(c) All health care programs should be designed to meet the following goals:

- (1) reducing student absenteeism;
- (2) increasing a student's ability to meet the student's academic potential; and

(3) stabilizing the physical well-being of a student.

(d) A school district, local health department, hospital, health care system, university, or nonprofit organization may not receive more than \$250,000 per state fiscal biennium through grants awarded under this section.

(e) To be eligible to receive a grant, a school district, local health department, hospital, health care system, university, or nonprofit organization must provide matching funds in accordance with rules adopted under Subsection (b). The matching funds may be obtained from any source available to the district, local health department, hospital, health care system, university, or nonprofit organization, including in-kind contributions, community or foundation grants, individual contributions, and local governmental agency operating funds.

(e-1) A grant under this section may not be given to a nonprofit organization that offers reproductive services, contraceptive services, counseling, or referrals, or any other services that require a license under Chapter 245, Health and Safety Code, or that is affiliated with a nonprofit organization that is licensed under Chapter 245, Health and Safety Code.

(e-2) A school district, local health department, hospital, health care system, university, or nonprofit organization receiving a grant under this section may use the grant funds to:

- (1) establish a new school-based health center;
- (2) expand an existing school-based health center; or
- (3) operate a school-based health center.

(f) The commissioner of state health services shall adopt rules establishing standards for health care centers funded through grants that place primary emphasis on delivery of health services and secondary emphasis on population-based models that prevent emerging health threats.

(g) The commissioner of state health services shall require client surveys to be conducted in school-based health centers funded through grants awarded under this section.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1418 (H.B. 2202), § 1, effective June 19, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), art. 4, § 4.005, effective September 1, 2001 (renumbered from Sec. 38.011); am. Acts 2009, 81st Leg., ch. 598 (H.B. 281), § 1, effective June 19, 2009.

Sec. 38.064. Report to Legislature.

(a) Based on statistics obtained from every school-based health center in this state that receives funding through the Department of State Health Services, the Department of State Health Services shall issue a biennial report to the legislature about the relative efficacy of services delivered by the centers during the preceding two years and any increased academic success of students at campuses served by those centers, with special emphasis on any:

- (1) increased attendance, including attendance information regarding students with chronic illnesses;
- (2) decreased drop-out rates;
- (3) improved student health;
- (4) increased student immunization rates;
- (5) increased student participation in preventive health measures, including routine physical examina-

tions and checkups conducted in accordance with the Texas Health Steps program; and

(6) improved performance on student assessment instruments administered under Subchapter B, Chapter 39.

(b) The Department of State Health Services may modify any requirement imposed by Subsection (a) if necessary to comply with federal law regarding confidentiality of student medical or educational information, including the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) and the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1418 (H.B. 2202), § 1, effective June 19, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), art. 4, § 4.005, effective September 1, 2001 (renumbered from Sec. 38.011); am. Acts 2009, 81st Leg., ch. 598 (H.B. 281), § 2, effective June 19, 2009.

Secs. 38.065 to 38.100. [Reserved for expansion].

Subchapter F

Mental Health Resources

Sec. 38.251. Rubric to Identify Resources.

(a) The agency shall develop a rubric for use by regional education service centers in identifying resources related to student mental health that are available to schools in their respective regions. The agency shall develop the rubric in conjunction with:

- (1) the Health and Human Services Commission;
- (2) the Department of Family and Protective Services;
- (3) the Texas Juvenile Justice Department;
- (4) the Texas Higher Education Coordinating Board;
- (5) the Texas Child Mental Health Care Consortium;
- (6) the Texas Workforce Commission; and
- (7) any other state agency the agency considers appropriate.

(b) The rubric developed by the agency must provide for the identification of resources relating to:

- (1) training and technical assistance on practices that support the mental health of students;
- (2) school-based programs that provide prevention or intervention services to students;
- (3) community-based programs that provide school-based or school-connected prevention or intervention services to students;
- (4) Communities In Schools programs described by Subchapter E, Chapter 33;
- (5) school-based mental health providers; and
- (6) public and private funding sources available to address the mental health of students.

(c) Not later than December 1 of each odd-numbered year, the agency shall revise the rubric as necessary to reflect changes in resources that may be available to schools and provide the rubric to each regional education service center.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 19, effective June 6, 2019.

Sec. 38.252. Regional Inventory of Mental Health Resources.

(a) Each regional education service center shall use the rubric developed under Section 38.251 to identify resources related to student mental health available to schools in the center's region, including evidence-based and promising programs and best practices, that:

- (1) create school environments that support the social, emotional, and academic development of students;
- (2) identify students who may need additional behavioral or mental health support before issues arise;
- (3) provide early, effective interventions to students in need of additional support;
- (4) connect students and their families to specialized services in the school or community when needed; and
- (5) assist schools in aligning resources necessary to address the mental health of students.

(b) A regional education service center may consult with any entity the center considers necessary in identifying resources under Subsection (a), including:

- (1) school districts;
- (2) local mental health authorities;
- (3) community mental health services providers;
- (4) education groups;
- (5) hospitals; and
- (6) institutions of higher education.

(c) Not later than March 1 of each even-numbered year, each regional education service center shall:

- (1) use the revised rubric received from the agency under Section 38.251 to identify, in the manner provided by this section, any additional resources that may be available to schools in the center's region; and
- (2) submit to the agency a report on resources identified through the process, including any additional resources identified under Subdivision (1).

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 19, effective June 6, 2019.

Sec. 38.253. Statewide Inventory of Mental Health Resources.

(a) The agency shall develop a list of statewide resources available to school districts to address the mental health of students, including:

- (1) training and technical assistance on practices that support the mental health of students;
- (2) school-based programs that provide prevention or intervention services to students;
- (3) community-based programs that provide school-based or school-connected prevention or intervention services to students;
- (4) school-based mental health providers; and
- (5) public and private funding sources available to address the mental health of students.

(b) In developing the list required under Subsection (a), the agency shall collaborate with:

- (1) the Health and Human Services Commission;
- (2) the Department of Family and Protective Services;
- (3) the Texas Juvenile Justice Department;
- (4) the Texas Higher Education Coordinating Board;
- (5) the Texas Child Mental Health Care Consortium;
- (6) the Texas Workforce Commission;

(7) one or more representatives of Communities In Schools programs described by Subchapter E, Chapter 33, who are designated by the Communities In Schools State Office;

(8) hospitals or other health care providers;

(9) community service providers;

(10) parent, educator, and advocacy groups; and

(11) any entity the agency determines can assist the agency in compiling the list.

(c) The agency shall include on the list any resource available through an entity identified as a resource under Subsection (b), including an entity described by Subsection (b), that provides evidence-based and promising programs and best practices that:

(1) create school environments that support the social, emotional, and academic development of students;

(2) identify students who may need additional behavioral or mental health support before issues arise;

(3) provide early, effective interventions to students in need of additional support; and

(4) connect students and their families to specialized services in the school or community when needed.

(d) The agency shall revise the list not later than March 1 of each even-numbered year.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 19, effective June 6, 2019.

Sec. 38.254. Statewide Plan for Student Mental Health.

(a) The agency shall develop a statewide plan to ensure all students have access to adequate mental health resources. The agency shall include in the plan:

(1) a description of any revisions made to the rubric required by Section 38.251;

(2) the results of the most recent regional inventory of mental health resources required by Section 38.252, including any additional resources identified;

(3) the results of the most recent statewide inventory of mental health resources required by Section 38.253, including any additional resources identified;

(4) the agency's goals for student mental health access to be applied across the state, including goals relating to:

(A) methods to objectively measure positive school climate;

(B) increasing the availability of early, effective school-based or school-connected mental health interventions and resources for students in need of additional support; and

(C) increasing the availability of referrals for students and families to specialized services for students in need of additional support outside the school;

(5) a list of actions the commissioner may take without legislative action to help all districts reach the agency's goals described by the plan; and

(6) recommendations to the legislature on methods to ensure that all districts can meet the agency's goals described in the plan through legislative appropriations or other action by the legislature.

(b) In developing the agency's goals under Subsection (a)(4), the agency shall consult with any person the agency

believes is necessary to the development of the goals, including:

- (1) educators;
- (2) mental health practitioners;
- (3) advocacy groups; and
- (4) parents.

(c) The agency shall revise the plan not later than April 1 of each even-numbered year.

(d) As soon as practicable after completing or revising the plan, the agency shall:

- (1) submit an electronic copy of the plan to the legislature;
- (2) post the plan on the agency's Internet website; and
- (3) hold public meetings in each regional education service center's region to present the statewide plan and shall provide an opportunity for public comment at each meeting.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 19, effective June 6, 2019.

Sec. 38.255. Agency Use of Statewide Plan.

(a) The agency shall use the statewide plan for student mental health required by Section 38.254 to develop and revise the agency's long-term strategic plan.

(b) The agency shall use the recommendations to the legislature required by Section 38.254(a)(6) to develop each agency legislative appropriations request.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 19, effective June 6, 2019.

Sec. 38.256. Reports to Legislature.

In addition to any other information required to be provided to the legislature under this chapter, not later than November 1 of each even-numbered year the agency shall provide to the legislature:

- (1) a description of any changes the agency has made to the rubric required by Section 38.251; and
- (2) an analysis of each region's progress toward meeting the agency's goals developed under Section 38.254.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 19, effective June 6, 2019.

Subchapter F

Collaborative Task Force on Public School Mental Health Services [Expires December 1, 2025]

Sec. 38.301. Definitions.

In this subchapter:

- (1) "Institution of higher education" has the meaning assigned by Section 61.003.
- (2) "Task force" means the Collaborative Task Force on Public School Mental Health Services.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1278 (H.B. 906), § 1, effective June 14, 2019.

Sec. 38.302. Establishment.

The Collaborative Task Force on Public School Mental Health Services is established to study and evaluate:

(1) mental health services that are funded by this state and provided at a school district or open-enrollment charter school directly to:

- (A) a student enrolled in the district or school;
- (B) a parent or family member of or person standing in parental relation to a student enrolled in the district or school; or
- (C) an employee of the district or school;

(2) training provided to an educator employed by the district or school to provide the mental health services described by Subdivision (1); and

(3) the impact the mental health services described by Subdivision (1) have on:

- (A) the number of violent incidents that occur at school districts or open-enrollment charter schools;
- (B) the suicide rate of the individuals who are provided the mental health services described by Subdivision (1);
- (C) the number of public school students referred to the Department of Family and Protective Services for investigation services and the reasons for those referrals;
- (D) the number of individuals who are transported from each school district or open-enrollment charter school for an emergency detention under Chapter 573, Health and Safety Code; and
- (E) the number of public school students referred to outside counselors in accordance with Section 38.010.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1278 (H.B. 906), § 1, effective June 14, 2019.

Sec. 38.303. Membership.

(a) The task force is composed of:

- (1) the commissioner or the commissioner's designee;
- (2) the following additional members appointed by the commissioner:

(A) three parents of students who are enrolled in school districts or open-enrollment charter schools and receive the mental health services described by Section 38.302(1);

(B) one person who provides the mental health services described by Section 38.302(1) or the training described by Section 38.302(2) and who is:

- (i) a licensed professional counselor, as defined by Section 503.002, Occupations Code;
- (ii) a licensed clinical social worker, as defined by Section 505.002, Occupations Code; or
- (iii) a school counselor certified under Subchapter B, Chapter 21;

(C) one person who is a psychiatrist;

(D) two persons who are administrators of districts or schools that provide the mental health services described by Section 38.302(1) or the training described by Section 38.302(2);

(E) one person who is a member of a foundation that invests in the mental health services described by Section 38.302(1) or the training described by Section 38.302(2);

(F) one person who is an employee of an institution of higher education designated under Section 38.307; and

(G) one person who is a licensed specialist in school psychology, as defined by Section 501.002, Occupations Code; and

(3) for any other entity the task force considers necessary, one person appointed by the task force for each such entity.

(b) Appointments to the task force shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(c) Chapter 2110, Government Code, does not apply to the task force.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1278 (H.B. 906), § 1, effective June 14, 2019.

Sec. 38.304. Officers.

(a) The commissioner is designated as the interim presiding officer for purposes of calling and conducting the initial meeting of the task force.

(b) The task force:

(1) shall at its initial meeting select a presiding officer from among its members for the purpose of calling and conducting meetings; and

(2) may select an assistant presiding officer and a secretary from among its members.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1278 (H.B. 906), § 1, effective June 14, 2019.

Sec. 38.305. Compensation; Reimbursement.

A member of the task force may not receive compensation or reimbursement for service on the task force.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1278 (H.B. 906), § 1, effective June 14, 2019.

Sec. 38.306. Meetings.

(a) After its initial meeting, the task force shall meet at least twice each year at a time and place determined by the presiding officer.

(b) The task force may meet at other times the task force considers appropriate. The presiding officer may call a meeting on the officer's own motion.

(c) The task force may meet by teleconference.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1278 (H.B. 906), § 1, effective June 14, 2019.

Sec. 38.307. Support Services for Task Force.

(a) The commissioner shall designate one institution of higher education with experience in evaluating mental health services to serve as the lead institution for the task force. The institution designated under this subsection shall provide faculty, staff, and administrative support services to the task force as determined necessary by the task force to administer this subchapter.

(b) The commissioner shall designate two institutions of higher education with experience in evaluating mental health services to assist the task force and the lead institution designated under Subsection (a) as determined necessary by the task force to administer this subchapter.

(c) In making a designation under this section, the commissioner shall give preference to at least one predominantly black institution, as defined by 20 U.S.C. Section 1067q(c)(9).

(d) On request of the task force, the agency, a school district, or an open-enrollment charter school shall provide information or other assistance to the task force.

(e) The agency shall maintain the data collected by the task force and the work product of the task force in accordance with:

(1) the agency's information security plan under Section 2054.133, Government Code; and

(2) the agency's records retention schedule under Section 441.185, Government Code.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1278 (H.B. 906), § 1, effective June 14, 2019.

Sec. 38.308. Duties of Task Force.

The task force shall:

(1) gather data on:

(A) the number of students enrolled in each school district and open-enrollment charter school;

(B) the number of individuals to whom each school district or open-enrollment charter school provides the mental health services described by Section 38.302(1);

(C) the number of individuals for whom each school district or open-enrollment charter school has the resources to provide the mental health services described by Section 38.302(1);

(D) the number of individuals described by Paragraph (B) who are referred to an inpatient or outpatient mental health provider;

(E) the number of individuals who are transported from each school district or open-enrollment charter school for an emergency detention under Chapter 573, Health and Safety Code; and

(F) the race, ethnicity, gender, special education status, educationally disadvantaged status, and geographic location of:

(i) individuals who are provided the mental health services described by Section 38.302(1);

(ii) individuals who are described by Paragraph (D); and

(iii) individuals who are described by Paragraph (E); and

(2) study, evaluate, and make recommendations regarding the mental health services described by Section 38.302(1), the training described by Section 38.302(2), and the impact of those mental health services, as described by Section 38.302(3), including addressing:

(A) the outcomes and the effectiveness of the services and training provided, including the outcomes and effectiveness of the service and training providers and the programs under which services and training are provided, in:

(i) improving student academic achievement and attendance;

(ii) reducing student disciplinary proceedings, suspensions, placements in a disciplinary alternative education program, and expulsions; and

(iii) delivering prevention and intervention services to promote early mental health skills, including:

(a) building skills relating to managing emotions, establishing and maintaining positive relationships, and making responsible decisions;

- (b) preventing substance abuse;
 - (c) preventing suicides;
 - (d) adhering to the purpose of the relevant program services or training;
 - (e) promoting trauma-informed practices;
 - (f) promoting a positive school climate, as defined by Section 161.325(a-3), Health and Safety Code, in the district or school; and
 - (g) improving physical and emotional safety and well-being in the district or school and reducing violence in the district or school;
- (B) best practices for districts and schools in implementing the services or training;
- (C) disparities in the race, ethnicity, gender, special education status, and geographic location of individuals receiving the services; and
- (D) best practices to replicate the services or training for all districts and schools.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1278 (H.B. 906), § 1, effective June 14, 2019.

Sec. 38.309. Privacy of Information.

The task force shall ensure that data gathered, information studied, and evaluations conducted under this subchapter:

- (1) comply with federal law regarding confidentiality of student medical or educational information, including the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) and the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), and any state law relating to the privacy of student information; and
- (2) may not be shared with a federal agency or state agency, including an institution of higher education, except as otherwise provided by this subchapter or other law.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1278 (H.B. 906), § 1, effective June 14, 2019.

Sec. 38.310. Reports.

Not later than November 1 of each even-numbered year, the task force shall submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the agency a report of the results of the task force's activities conducted under Section 38.308 and any recommendations for legislative or other action.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1278 (H.B. 906), § 1, effective June 14, 2019.

Sec. 38.311. Funding; Administrative Cost Restriction; Gifts and Grants.

(a) Of state funds allocated to the agency for public school mental health services, the commissioner may provide not more than 10 percent for purposes of the task force established under this subchapter.

(b) The task force may not spend for the administration of the task force more than 10 percent of any money allocated to the task force for the purposes of this subchapter.

(c) The task force may accept a gift or grant from a person other than the federal government.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1278 (H.B. 906), § 1, effective June 14, 2019.

Sec. 38.312. Expiration.

The task force is abolished and this subchapter expires December 1, 2025.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1278 (H.B. 906), § 1, effective June 14, 2019.

Subchapter G.

Mental Health, Substance Abuse, and Youth Suicide

Sec. 38.351. Mental Health Promotion and Intervention, Substance Abuse Prevention and Intervention, and Suicide Prevention.

(a) The agency, in coordination with the Health and Human Services Commission and regional education service centers, shall provide and annually update a list of recommended best practice-based programs and research-based practices in the areas specified under Subsection (c) for implementation in public elementary, junior high, middle, and high schools within the general education setting.

(b) Each school district may select from the list provided under Subsection (a) a program or programs appropriate for implementation in the district.

(c) The list provided under Subsection (a) must include programs and practices in the following areas:

- (1) early mental health prevention and intervention;
- (2) building skills related to managing emotions, establishing and maintaining positive relationships, and responsible decision-making;
- (3) substance abuse prevention and intervention;
- (4) suicide prevention, intervention, and postvention;
- (5) grief-informed and trauma-informed practices;
- (6) positive school climates;
- (7) positive behavior interventions and supports;
- (8) positive youth development; and
- (9) safe, supportive, and positive school climate.

(d)

For purposes of Subsection (c), "school climate" means the quality and character of school life, including interpersonal relationships, teaching and learning practices, and organizational structures, as experienced by students enrolled in the school district, parents of those students, and personnel employed by the district.

(e) The suicide prevention programs on the list provided under Subsection (a) must include components that provide for training school counselors, teachers, nurses, administrators, and other staff, as well as law enforcement officers and social workers who regularly interact with students, to:

- (1) recognize students at risk of attempting suicide, including students who are or may be the victims of or who engage in bullying;
- (2) recognize students displaying early warning signs and a possible need for early mental health or substance abuse intervention, which warning signs may include declining academic performance, depression, anxiety,

isolation, unexplained changes in sleep or eating habits, and destructive behavior toward self and others;

(3) intervene effectively with students described by Subdivision (1) or (2) by providing notice and referral to a parent or guardian so appropriate action, such as seeking mental health or substance abuse services, may be taken by a parent or guardian; and

(4) assist students in returning to school following treatment of a mental health concern or suicide attempt.

(f) In developing the list of best practice-based programs and research-based practices, the agency and the Health and Human Services Commission shall consider:

(1) any existing suicide prevention method developed by a school district; and

(2) any Internet or online course or program developed in this state or another state that is based on best practices recognized by the Substance Abuse and Mental Health Services Administration or the Suicide Prevention Resource Center.

(g) Except as otherwise provided by this subsection, each school district shall provide training described in the components set forth under Subsection (e) for teachers, school counselors, principals, and all other appropriate personnel. A school district is required to provide the training at an elementary school campus only to the extent that sufficient funding and programs are available. A school district may implement a program on the list to satisfy the requirements of this subsection.

(h) If a school district provides the training under Subsection (g):

(1) a school district employee described under that subsection must participate in the training at least one time; and

(2) the school district shall maintain records that include the name of each district employee who participated in the training.

(i) A school district shall develop practices and procedures concerning each area listed in Subsection (c), including mental health promotion and intervention, substance abuse prevention and intervention, and suicide prevention, that:

(1) include a procedure for providing notice of a recommendation for early mental health or substance abuse intervention regarding a student to a parent or guardian of the student within a reasonable amount of time after the identification of early warning signs as described by Subsection (e)(2);

(2) include a procedure for providing notice of a student identified as at risk of attempting suicide to a parent or guardian of the student within a reasonable amount of time after the identification of early warning signs as described by Subsection (e)(2);

(3) establish that the district may develop a reporting mechanism and may designate at least one person to act as a liaison officer in the district for the purposes of identifying students in need of early mental health or substance abuse intervention or suicide prevention;

(4) set out available counseling alternatives for a parent or guardian to consider when their child is identified as possibly being in need of early mental health or substance abuse intervention or suicide prevention; and

(5) include procedures:

(A) to support the return of a student to school following hospitalization or residential treatment for a mental health condition or substance abuse; and

(B) for suicide prevention, intervention, and postvention.

(j) The practices and procedures developed under Subsection (i):

(1) may address multiple areas listed in Subsection (c) together; and

(2) must prohibit the use without the prior consent of a student's parent or guardian of a medical screening of the student as part of the process of identifying whether the student is possibly in need of early mental health or substance abuse intervention or suicide prevention.

(k) The practices and procedures developed under Subsection (i) must be included in:

(1) the annual student handbook; and

(2) the district improvement plan under Section 11.252.

(l) The agency shall develop and make available to school districts guiding principles on the coordination of programs and practices in areas listed under Subsection (c).

(m) The agency, the Health and Human Services Commission, and each regional education service center:

(1) may accept donations for purposes of this section from sources without a conflict of interest; and

(2) may not accept donations for purposes of this section from an anonymous source.

(n) Nothing in this section is intended to interfere with the rights of parents or guardians and the decision-making regarding the best interest of the child. Practices and procedures developed in accordance with this section are intended to notify a parent or guardian of a need for mental health or substance abuse intervention so that a parent or guardian may take appropriate action. Nothing in this section shall be construed as giving school districts the authority to prescribe medications. Any and all medical decisions are to be made by a parent or guardian of a student.

(o) In this section, "postvention" includes activities that promote healing necessary to reduce the risk of suicide by a person affected by the suicide of another.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1134 (H.B. 1386), § 3, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 578 (S.B. 831), §§ 2, 3, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1321 (S.B. 460), § 4, effective September 1, 2013; am. Acts 2017, 85th Leg., ch. 522 (S.B. 179), § 12, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 714 (H.B. 4056), § 1, effective June 12, 2017; am. Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 23, effective June 6, 2019; Renumbered from Tex. Health & Safety Code § 161.325 by Acts 2019, 86th Leg., ch. 352 (H.B. 18), § 1.21, effective December 1, 2019.

Sec. 38.352. Immunity.

This subchapter does not:

(1) waive any immunity from liability of a school district or of district school officers or employees;

(2) create any liability for a cause of action against a school district or against district school officers or employees; or

(3) waive any immunity from liability under Section 74.151, Civil Practice and Remedies Code.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1134 (H.B. 1386), § 3, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 578 (S.B. 831), §§ 2, 3, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1321 (S.B. 460), § 4, effective September 1, 2013; am. Acts 2017, 85th Leg., ch. 522 (S.B. 179), § 12, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 714 (H.B. 4056), § 1, effective June 12, 2017; am. Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 23, effective June 6, 2019; Renumbered from Tex. Health & Safety Code § 161.325 by Acts 2019, 86th Leg., ch. 352 (H.B. 18), § 1.21, effective December 1, 2019.

SUBTITLE I

SCHOOL FINANCE AND FISCAL MANAGEMENT

Chapter 42.

[Heading Repealed – See Editor’s Note]

CHAPTER 42

[Heading Repealed]

Subchapter C

[Heading Repealed]

Sec. 42.168. School Safety Allotment.

(a) From funds appropriated for that purpose, the commissioner shall provide to a school district an annual allotment in the amount provided by appropriation for each student in average daily attendance.

(b) Funds allocated under this section must be used to improve school safety and security, including costs associated with:

- (1) securing school facilities, including:
 - (A) improvements to school infrastructure;
 - (B) the use or installation of physical barriers; and
 - (C) the purchase and maintenance of:
 - (i) security cameras or other security equipment; and
 - (ii) technology, including communications systems or devices, that facilitates communication and information sharing between students, school personnel, and first responders in an emergency;
- (2) providing security for the district, including:
 - (A) employing school district peace officers, private security officers, and school marshals; and
 - (B) collaborating with local law enforcement agencies, such as entering into a memorandum of understanding for the assignment of school resource officers to schools in the district;
- (3) school safety and security training and planning, including:
 - (A) active shooter and emergency response training;
 - (B) prevention and treatment programs relating to addressing adverse childhood experiences; and
 - (C) the prevention, identification, and management of emergencies and threats, including:
 - (i) providing mental health personnel and support;
 - (ii) providing behavioral health services; and
 - (iii) establishing threat reporting systems; and
- (4) providing programs related to suicide prevention, intervention, and postvention.

(c) A school district may use funds allocated under this section for equipment or software that is used for a school safety and security purpose and an instructional purpose, provided that the instructional use does not compromise the safety and security purpose of the equipment or software.

(d) A school district that is required to take action under Chapter 41 to reduce its wealth per student to the equalized wealth level is entitled to a credit, in the amount of the allotments to which the district is to receive as provided by appropriation, against the total amount required under Section 41.093 for the district to purchase attendance credits.

(e) The commissioner may adopt rules to implement this section.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 20, effective June 6, 2019.

TITLE 3

HIGHER EDUCATION

Subtitle

- A. Higher Education in General
- B. State Coordination of Higher Education
- C. The University of Texas System

SUBTITLE A

HIGHER EDUCATION IN GENERAL

CHAPTER 51

Provisions Generally Applicable to Higher Education

Subchapter Z

Miscellaneous Provisions

Section

- 51.9193. Required Posting of Mental Health Resources.
- 51.9194. Required Information for Entering Students Regarding Mental Health and Suicide Prevention Services.

Sec. 51.9193. Required Posting of Mental Health Resources.

(a) In this section, “local mental health authority” has the meaning assigned by Section 531.002, Health and Safety Code.

(b) This section applies only to a general academic teaching institution, medical and dental unit, public junior college, public state college, or public technical institute as those terms are defined by Section 61.003.

(c) Each institution to which this section applies shall:

- (1) create a web page on the institution’s Internet website that:

- (A) is dedicated solely to information regarding the mental health resources available to students at the institution, regardless of whether the resources are provided by the institution; and
- (B) includes the address of the nearest local mental health authority; and

(2) maintain a conspicuous link on the institution's Internet website home page to the web page described by Subdivision (1).

(d) Not later than August 1 of each year, the president or the president's designee of an institution to which this section applies shall certify to the Texas Higher Education Coordinating Board the institution's compliance with this section.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 452 (H.B. 197), § 1, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 278 (H.B. 2895), § 1, effective September 1, 2017.

Sec. 51.9194. Required Information for Entering Students Regarding Mental Health and Suicide Prevention Services.

(a) A general academic teaching institution shall provide to each entering full-time undergraduate, graduate, or professional student, including each full-time undergraduate, graduate, or professional student who transfers to the institution, information about:

- (1) available mental health and suicide prevention services offered by the institution or by any associated organizations or programs; and
- (2) early warning signs that are often present in and appropriate intervention for a person who may be considering suicide.

(b) The information required under this section:

- (1) may be provided through:
 - (A) a live presentation; or
 - (B) a format that allows for student interaction, such as an online program or video; and
- (2) may not be provided in a paper format only.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 961 (S.B. 1624), § 1, effective September 1, 2015.

SUBTITLE B

STATE COORDINATION OF HIGHER EDUCATION

CHAPTER 61

**Texas Higher Education Coordinating Board
[Expires September 1, 2025]**

Subchapter C

*Powers and Duties of Board
[Expires September 1, 2025]*

Section
61.06641.

Access to Higher Education for Persons with Intellectual and Developmental Disabilities; Advisory Council.

Sec. 61.06641. Access to Higher Education for Persons with Intellectual and Developmental Disabilities; Advisory Council.

(a) The board, with the assistance of the advisory council established under this section, shall:

- (1) periodically review the policies and practices that increase access to higher education opportunities for

persons with intellectual and developmental disabilities; and

(2) distribute educational outreach materials developed by the advisory council to increase awareness regarding postsecondary opportunities for persons with intellectual and developmental disabilities.

(b) The board shall establish an advisory council on postsecondary education for persons with intellectual and developmental disabilities, in accordance with Section 61.026, to advise the board on policies and practices to improve postsecondary education opportunities for persons with intellectual and developmental disabilities.

(c) The advisory council is composed of the following members appointed as follows:

- (1) one member appointed by the executive director of the Texas Workforce Commission;
- (2) one member appointed by the commissioner of the Texas Education Agency;
- (3) a representative of the continuing advisory committee established under Section 29.006 appointed by the governor; and
- (4) the following members appointed by the board:
 - (A) a representative of a University Centers for Excellence in Developmental Disabilities program in this state;
 - (B) a representative of a disability advocacy group;
 - (C) a parent or guardian of a person with an intellectual or developmental disability;
 - (D) a parent or guardian of a person with an intellectual or developmental disability who is currently enrolled in an institution of higher education;
 - (E) a person with an intellectual or developmental disability enrolled in an institution of higher education;
 - (F) a person with an intellectual or developmental disability who has completed a program at an institution of higher education;
 - (G) a high school counselor;
 - (H) a specialist in the transition to employment from a regional education service center, school district, or other state agency; and
 - (I) additional representatives with relevant experience, as needed.

(d) Members of the advisory council serve two-year terms.

(e) A member of the advisory council is not entitled to compensation but is entitled to reimbursement for actual and necessary expenses incurred by the member while conducting the business of the advisory council.

(f) The members of the advisory council shall elect a presiding officer from among the membership.

(g) The advisory council shall:

- (1) study the accessibility of higher education for persons with intellectual and developmental disabilities;
- (2) provide advice regarding resolving barriers to accessing higher education for persons with intellectual and developmental disabilities; and
- (3) identify, evaluate, and develop recommendations to address barriers to accessing higher education for persons with intellectual and developmental disabilities who are or have been in the foster care system and any data collection issues in relation to those persons.

(h) The advisory council shall meet at least quarterly at the call of the presiding officer.

(i) Notwithstanding Chapter 551, Government Code, or any other law, the advisory council may meet by telephone conference call, videoconference, or other similar telecommunication method. A meeting held by telephone conference call, videoconference, or other similar telecommunication method is subject to the requirements of Sections 551.125(c)-(f), Government Code.

(j) The advisory council shall submit a report to the board annually, at a time determined by the board. The report must include information regarding:

- (1) the advisory council's activities;
- (2) any relevant rule changes necessary to decrease barriers to accessing higher education for persons with intellectual and developmental disabilities; and
- (3) recommendations for potential outreach and education materials to increase public awareness of the availability of higher education opportunities and resources for persons with intellectual and developmental disabilities, including information regarding available grants, loan programs, and other resources that may require statewide outreach efforts.

(k) Not later than December 1 of each even-numbered year, the advisory council shall provide a report to the board and to the governor, the lieutenant governor, the speaker of the house of representatives, the members of the legislature, and, as necessary, other state agencies or relevant stakeholders. The report must include:

- (1) historic and current higher education data and related information regarding persons with intellectual and developmental disabilities, including:
 - (A) graduation rates;
 - (B) the geographic distribution of institutions of higher education providing appropriate opportunities;
 - (C) a description of available programs; and
 - (D) any other relevant data; and
- (2) recommendations for changes to support success and achievement for persons with intellectual and developmental disabilities in accessing higher education, including recommendations for:
 - (A) addressing gaps in data; and
 - (B) identifying problems with and barriers to accessing higher education.

(l) The board shall provide administrative support for the advisory council.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 617 (S.B. 1017), § 2, effective June 10, 2019.

SUBTITLE C

THE UNIVERSITY OF TEXAS SYSTEM

CHAPTER 73

The University of Texas at Houston

Subchapter G

Harris County Psychiatric Center

Section
73.401.

Establishment.

Section 73.402.	Mission.
73.403.	Operation of Commitment Center.
73.404.	Funding.
73.405.	Operations.
73.406.	Revenues.
73.407 to 73.500.	[Reserved].

Sec. 73.401. Establishment.

The Harris County Psychiatric Center has been developed and built by Harris County, Texas, and a former state agency that provided services to persons with mental illness, persons with intellectual disabilities, and persons with developmental disabilities . The facilities of the Harris County Psychiatric Center to be operated by The University of Texas System shall be operated consistent with the rules and regulations of the board of regents and with the provisions of this subchapter.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 848 (S.B. 1295), § 1, effective September 1, 1985; am. Acts 2019, 86th Leg., ch. 1279 (H.B. 965), § 8, effective September 1, 2019.

Sec. 73.402. Mission.

The Harris County Psychiatric Center has been established with the mission of caring for mentally ill persons; other major parts of this mission include research into the causes and cures of mental illness and the education of professionals in the care of the mentally ill.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 848 (S.B. 1295), § 1, effective September 1, 1985.

Sec. 73.403. Operation of Commitment Center.

Harris County, the Harris Center for Mental Health and IDD, or both of those entities, may operate on the premises of the Harris County Psychiatric Center a commitment center, the functions of which may include patient screening, intake, and admissions (both voluntary and involuntary) to the Harris County Psychiatric Center as may be provided for in a lease and operating agreement or a sublease and operating agreement as authorized under Section 73.405. The functions of the Harris County Psychiatric Commitment Center located on the premises of the Harris County Psychiatric Center both in terms of operation and in terms of funding shall not be the responsibility of the Health and Human Services Commission or The University of Texas System. As may be provided for in a lease and operating agreement or a sublease and operating agreement, The University of Texas System may charge for any support services provided by the Harris County Psychiatric Center to the commitment center.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 848 (S.B. 1295), § 1, effective September 1, 1985; am. Acts 2019, 86th Leg., ch. 1279 (H.B. 965), § 9, effective September 1, 2019.

Sec. 73.404. Funding.

(a) Funding for the state-supported facilities and operations of the Harris County Psychiatric Center shall be provided through legislative appropriations to the Health and Human Services Commission and to The University of Texas System, and any appropriations to the commission for the Harris County Psychiatric Center shall be transferred to The University of Texas System in accordance with the General Appropriations Act and the lease and

operating agreement or sublease and operating agreement provided for in Section 73.405. Legislative appropriations may be for any further construction at the Harris County Psychiatric Center; for equipment, both fixed and movable; for utilities, including data processing and communications; for maintenance, repairs, renovations, and additions; for any damage or destruction; and for operations of the Harris County Psychiatric Center; provided, however, that as to funding for Harris County Psychiatric Center operations, legislative appropriations shall not exceed 85 percent of the total operating costs of the entire Harris County Psychiatric Center, exclusive of any costs of the commitment center.

(b) Any funding, under a lease and operating agreement or sublease and operating agreement wherein The University of Texas System is the lessee, for facilities and operations of the Harris County Psychiatric Center supported by the county or the Health and Human Services Commission, which may be provided through county appropriations, including funds made available by the Harris Center for Mental Health and IDD, or from gifts and grants, shall be transferred in accordance with the lease and operating agreement or sublease and operating agreement provided for in Section 73.405. Such funds may be for any further construction at the Harris County Psychiatric Center; for equipment, both fixed and movable; for utilities, including data processing and communications; for maintenance, repairs, renovations, and additions; for any damage or destruction; and for Harris County Psychiatric Center operations which latter funding may be proportional to the total costs of The University of Texas System operating the entire Harris County Psychiatric Center, exclusive of any additional cost incurred by Harris County or the Health and Human Services Commission for operating the commitment center, which costs shall remain the sole responsibility of the entity or entities that incurred those costs .

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 848 (S.B. 1295), § 1, effective September 1, 1985; am. Acts 2019, 86th Leg., ch. 1279 (H.B. 965), § 10, effective September 1, 2019.

Sec. 73.405. Operations.

(a) The state-supported facilities of the Harris County Psychiatric Center shall be leased to and operated and administered by The University of Texas System in accordance with a lease and operating agreement. The facilities supported by the county or the Harris Center for Mental Health and IDD, exclusive of the commitment center, may be leased or subleased by The University of Texas System in the same lease and operating agreement or sublease and operating agreement. Any lease and operating agreement or sublease and operating agreement shall provide

for a lease payment by The University of Texas System of no more than \$1 per year plus other good and valuable consideration as provided for in Section 73.406.

(b) In any lease and/or sublease and operating agreement, the board of regents of The University of Texas System shall be the governing board of the Harris County Psychiatric Center facilities that are leased and/or subleased and operated by The University of Texas System.

(c) Any lease and/or sublease and operating agreement may provide all necessary or desirable terms for the operation of the Harris County Psychiatric Center and may provide for duties and powers with respect to medical and legal matters, Harris County Psychiatric Center administration, staffing, patient services, reports, annual operating budgets of the Harris County Psychiatric Center, and transfers of appropriated funds as provided for in Section 73.404 of this code.

(d) Any lease and operating agreement or sublease and operating agreement shall provide that The University of Texas System shall cause the Harris County Psychiatric Center to be operated in accordance with the standards for accreditation of The Joint Commission; that all financial transactions and performance programs may be appropriately audited; that an admission, discharge, and transfer coordination policy be established; that appropriate patient data be made available to the Health and Human Services Commission, the Harris Center for Mental Health and IDD, and the county, including but not limited to diagnosis and lengths of stay; and that a priority of patient treatment policy be established.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 848 (S.B. 1295), § 1, effective September 1, 1985; am. Acts 2019, 86th Leg., ch. 1279 (H.B. 965), § 11, effective September 1, 2019.

Sec. 73.406. Revenues.

That portion of any revenues related to the provision of patient services through the operation of the Harris County Psychiatric Center facilities that are leased or subleased by and to The University of Texas System shall be accounted for and expended in accordance with the rules, regulations, and bylaws of The University of Texas System and in such manner that such revenues will reduce appropriated and funded requirements by both the state and county or the Harris Center for Mental Health and IDD on a prorated basis, all as may be provided for in a lease and operating agreement or sublease and operating agreement.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 848 (S.B. 1295), § 1, effective September 1, 1985; am. Acts 2019, 86th Leg., ch. 1279 (H.B. 965), § 12, effective September 1, 2019.

Secs. 73.407 to 73.500. [Reserved for expansion].

ESTATES CODE

TITLE 1 GENERAL PROVISIONS

CHAPTER 22

Definitions

Section
22.007. Court; County Court, Probate Court, and
Statutory Probate Court.

Sec. 22.007. Court; County Court, Probate Court, and Statutory Probate Court.

(a) "Court" means and includes:

(1) a county court in the exercise of its probate jurisdiction;

(2) a court created by statute and authorized to exercise original probate jurisdiction; and

(3) a district court exercising original probate jurisdiction in a contested matter.

(b) The terms "county court" and "probate court" are synonymous and mean:

(1) a county court in the exercise of its probate jurisdiction;

(2) a court created by statute and authorized to exercise original probate jurisdiction; and

(3) a district court exercising probate jurisdiction in a contested matter.

(c) "Statutory probate court" means a court created by statute and designated as a statutory probate court under Chapter 25, Government Code. For purposes of this code, the term does not include a county court at law exercising probate jurisdiction unless the court is designated a statutory probate court under Chapter 25, Government Code.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 680 (H.B. 2502), § 1, effective January 1, 2014.

TITLE 2 ESTATE OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE P

DURABLE POWERS OF ATTORNEY

Chapter
751. General Provisions Regarding Durable
Powers of Attorney
752. Statutory Durable Power of Attorney
753. Removal of Attorney in Fact or Agent

CHAPTER 751

General Provisions Regarding Durable Powers of Attorney

Subchapter A. General Provisions

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751.033. Authority to Create or Change Certain
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751.052. Relation of Attorney in Fact or Agent to
Court-Appointed Guardian of Estate.
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751.055. Affidavit Regarding Lack of Knowledge of
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Subchapter D. Recording Durable Power of Attorney for Certain Real Property Transactions

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Subchapter E. Acceptance of and Reliance on Durable Power of Attorney

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Subchapter A

General Provisions

Sec. 751.001. Short Title.

This subtitle may be cited as the Durable Power of Attorney Act.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Sec. 751.002. Definitions.

In this subtitle:

(1) "Actual knowledge" means the knowledge of a person without that person making any due inquiry, and

without any imputed knowledge, except as expressly set forth in Section 751.211(c).

(2) "Affiliate" means a business entity that directly or indirectly controls, is controlled by, or is under common control with another business entity.

(3) "Agent" includes:

(A) an attorney in fact; and

(B) a co-agent, successor agent, or successor co-agent.

(4) "Durable power of attorney" means a writing or other record that complies with the requirements of Section 751.0021(a) or is described by Section 751.0021(b).

(5) "Principal" means an adult person who signs or directs the signing of the person's name on a power of attorney that designates an agent to act on the person's behalf.

(6) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 2, effective September 1, 2017.

Sec. 751.00201. Meaning of Disabled or Incapacitated for Purposes of Durable Power of Attorney.

Unless otherwise defined by a durable power of attorney, a person is considered disabled or incapacitated for purposes of the durable power of attorney if a physician certifies in writing at a date later than the date the durable power of attorney is executed that, based on the physician's medical examination of the person, the person is determined to be mentally incapable of managing the person's financial affairs.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 2, effective September 1, 2017.

Sec. 751.0021. Requirements of Durable Power of Attorney.

(a) An instrument is a durable power of attorney for purposes of this subtitle if the instrument:

(1) is a writing or other record that designates another person as agent and grants authority to that agent to act in the place of the principal, regardless of whether the term "power of attorney" is used;

(2) is signed by an adult principal or in the adult principal's conscious presence by another adult directed by the principal to sign the principal's name on the instrument;

(3) contains:

(A) the words:

(i) "This power of attorney is not affected by subsequent disability or incapacity of the principal"; or

(ii) "This power of attorney becomes effective on the disability or incapacity of the principal"; or

(B) words similar to those of Paragraph (A) that clearly indicate that the authority conferred on the agent shall be exercised notwithstanding the principal's subsequent disability or incapacity; and

(4) is acknowledged by the principal or another adult directed by the principal as authorized by Subdivision

(2) before an officer authorized under the laws of this state or another state to:

- (A) take acknowledgments to deeds of conveyance; and
- (B) administer oaths.

(b) If the law of a jurisdiction other than this state determines the meaning and effect of a writing or other record that grants authority to an agent to act in the place of the principal, regardless of whether the term “power of attorney” is used, and that law provides that the authority conferred on the agent is exercisable notwithstanding the principal’s subsequent disability or incapacity, the writing or other record is considered a durable power of attorney under this subtitle.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 2, effective September 1, 2017.

Sec. 751.0022. Presumption of Genuine Signature.

A signature on a durable power of attorney that purports to be the signature of the principal or of another adult directed by the principal as authorized by Section 751.0021(a)(2) is presumed to be genuine, and the durable power of attorney is presumed to have been executed under Section 751.0021(a) if the officer taking the acknowledgment has complied with the requirements of Section 121.004(b), Civil Practice and Remedies Code.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 2, effective September 1, 2017.

Sec. 751.0023. Validity of Power of Attorney.

(a) A durable power of attorney executed in this state is valid if the execution of the instrument complies with Section 751.0021(a).

(b) A durable power of attorney executed in a jurisdiction other than this state is valid in this state if, when executed, the execution of the durable power of attorney complied with:

- (1) the law of the jurisdiction that determines the meaning and effect of the durable power of attorney as provided by Section 751.0024; or
- (2) the requirements for a military power of attorney as provided by 10 U.S.C. Section 1044b.

(c) Except as otherwise provided by statute other than this subtitle or by the durable power of attorney, a photocopy or electronically transmitted copy of an original durable power of attorney has the same effect as the original instrument and may be relied on, without liability, by a person who is asked to accept the durable power of attorney to the same extent as the original.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 2, effective September 1, 2017.

Sec. 751.0024. Meaning and Effect of Durable Power of Attorney.

The meaning and effect of a durable power of attorney is determined by the law of the jurisdiction indicated in the durable power of attorney and, in the absence of an indication of jurisdiction, by:

- (1) the law of the jurisdiction of the principal’s domicile, if the principal’s domicile is indicated in the power of attorney; or

(2) the law of the jurisdiction in which the durable power of attorney was executed, if the principal’s domicile is not indicated in the power of attorney.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 2, effective September 1, 2017.

Sec. 751.003. Uniformity of Application and Construction.

This subtitle shall be applied and construed to effect the general purpose of this subtitle, which is to make uniform to the fullest extent possible the law with respect to the subject of this subtitle among states enacting these provisions.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 2, effective September 1, 2017.

Sec. 751.004. Duration of Durable Power of Attorney. [Repealed]

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Repealed by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 15(1), effective September 1, 2017.

Sec. 751.005. Extension of Principal’s Authority to Other Persons.

If, in this subtitle, a principal is given an authority to act, that authority includes:

- (1) any person designated by the principal;
- (2) a guardian of the estate of the principal; or
- (3) another personal representative of the principal.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Sec. 751.006. Remedies Under Other Law.

The remedies under this chapter are not exclusive and do not abrogate any right or remedy under any law of this state other than this chapter.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 2, effective September 1, 2017.

Sec. 751.007. Conflict with or Effect on Other Law.

This subtitle does not:

- (1) supersede any other law applicable to financial institutions or other entities, and to the extent of any conflict between this subtitle and another law applicable to an entity, the other law controls; or
- (2) have the effect of validating a conveyance of an interest in real property executed by an agent under a durable power of attorney if the conveyance is determined under a statute or common law to be void but not voidable.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 2, effective September 1, 2017.

Secs. 751.008 to 751.050. [Reserved for expansion].

Sec. 751.0015. Applicability of Subtitle.

This subtitle applies to all durable powers of attorney except:

(1) a power of attorney to the extent it is coupled with an interest in the subject of the power, including a power of attorney given to or for the benefit of a creditor in connection with a credit transaction;

(2) a medical power of attorney, as defined by Section 166.002, Health and Safety Code;

(3) a proxy or other delegation to exercise voting rights or management rights with respect to an entity; or

(4) a power of attorney created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 1, effective September 1, 2017.

Subchapter A-1

Appointment of Agents

Sec. 751.021. Co-Agents.

A principal may designate in a durable power of attorney two or more persons to act as co-agents. Unless the durable power of attorney otherwise provides, each co-agent may exercise authority independently of the other co-agent.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 3, effective September 1, 2017.

Sec. 751.022. Acceptance of Appointment As Agent.

Except as otherwise provided in the durable power of attorney, a person accepts appointment as an agent under a durable power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance of the appointment.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 3, effective September 1, 2017.

Sec. 751.023. Successor Agents.

(a) A principal may designate in a durable power of attorney one or more successor agents to act if an agent resigns, dies, or becomes incapacitated, is not qualified to serve, or declines to serve.

(b) A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function.

(c) Unless the durable power of attorney otherwise provides, a successor agent:

(1) has the same authority as the authority granted to the predecessor agent; and

(2) is not considered an agent under this subtitle and may not act until all predecessor agents, including co-agents, to the successor agent have resigned, died, or become incapacitated, are not qualified to serve, or have declined to serve.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 3, effective September 1, 2017.

Sec. 751.024. Reimbursement and Compensation of Agent.

Unless the durable power of attorney otherwise provides, an agent is entitled to:

(1) reimbursement of reasonable expenses incurred on the principal's behalf; and

(2) compensation that is reasonable under the circumstances.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 3, effective September 1, 2017.

Subchapter A-2

Authority of Agent under Durable Power of Attorney

Sec. 751.031. Grants of Authority in General and Certain Limitations.

(a) Subject to Subsections (b), (c), and (d) and Section 751.032, if a durable power of attorney grants to an agent the authority to perform all acts that the principal could perform, the agent has the general authority conferred by Subchapter C, Chapter 752.

(b) An agent may take the following actions on the principal's behalf or with respect to the principal's property only if the durable power of attorney designating the agent expressly grants the agent the authority and the exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

(1) create, amend, revoke, or terminate an inter vivos trust;

(2) make a gift;

(3) create or change rights of survivorship;

(4) create or change a beneficiary designation; or

(5) delegate authority granted under the power of attorney.

(c) Notwithstanding a grant of authority to perform an act described by Subsection (b), unless the durable power of attorney otherwise provides, an agent who is not an ancestor, spouse, or descendant of the principal may not exercise authority under the power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

(d) Subject to Subsections (b) and (c) and Section 751.032, if the subjects over which authority is granted in a durable power of attorney are similar or overlap, the broadest authority controls.

(e) Authority granted in a durable power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, regardless of whether:

(1) the property is located in this state; and

(2) the authority is exercised in this state or the power of attorney is executed in this state.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 3, effective September 1, 2017.

Sec. 751.032. Gift Authority.

(a) In this section, a gift for the benefit of a person includes a gift to:

(1) a trust;

(2) an account under the Texas Uniform Transfers to Minors Act (Chapter 141, Property Code) or a similar law of another state; and

(3) a qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986.

(b) Unless the durable power of attorney otherwise provides, a grant of authority to make a gift is subject to the limitations prescribed by this section.

(c) Language in a durable power of attorney granting general authority with respect to gifts authorizes the agent to only:

(1) make outright to, or for the benefit of, a person a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed:

(A) the annual dollar limits of the federal gift tax exclusion under Section 2503(b), Internal Revenue Code of 1986, regardless of whether the federal gift tax exclusion applies to the gift; or

(B) if the principal's spouse agrees to consent to a split gift as provided by Section 2513, Internal Revenue Code of 1986, twice the annual federal gift tax exclusion limit; and

(2) consent, as provided by Section 2513, Internal Revenue Code of 1986, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual federal gift tax exclusions for both spouses.

(d) An agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if the agent actually knows those objectives. If the agent does not know the principal's objectives, the agent may make a gift of the principal's property only as the agent determines is consistent with the principal's best interest based on all relevant factors, including the factors listed in Section 751.122 and the principal's personal history of making or joining in making gifts.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 3, effective September 1, 2017.

Sec. 751.033. Authority to Create or Change Certain Beneficiary Designations.

(a) Unless the durable power of attorney otherwise provides, and except as provided by Section 751.031(c), authority granted to an agent under Section 751.031(b)(4) empowers the agent to:

(1) create or change a beneficiary designation under an account, contract, or another arrangement that authorizes the principal to designate a beneficiary, including an insurance or annuity contract, a qualified or nonqualified retirement plan, including a retirement plan as defined by Section 752.113, an employment agreement, including a deferred compensation agreement, and a residency agreement;

(2) enter into or change a P.O.D. account or trust account under Chapter 113; or

(3) create or change a nontestamentary payment or transfer under Chapter 111.

(b) If an agent is granted authority under Section 751.031(b)(4) and the durable power of attorney grants the authority to the agent described in Section 752.108 or 752.113, then, unless the power of attorney otherwise provides, the authority of the agent to designate the agent

as a beneficiary is not subject to the limitations prescribed by Sections 752.108(b) and 752.113(c).

(c) If an agent is not granted authority under Section 751.031(b)(4) but the durable power of attorney grants the authority to the agent described in Section 752.108 or 752.113, then, unless the power of attorney otherwise provides and notwithstanding Section 751.031, the agent's authority to designate the agent as a beneficiary is subject to the limitations prescribed by Sections 752.108(b) and 752.113(c).

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 3, effective September 1, 2017.

Sec. 751.034. Incorporation of Authority.

(a) An agent has authority described in this chapter if the durable power of attorney refers to general authority with respect to the descriptive term for the subjects stated in Chapter 752 or cites the section in which the authority is described.

(b) A reference in a durable power of attorney to general authority with respect to the descriptive term for a subject in Chapter 752 or a citation to one of those sections incorporates the entire section as if the section were set out in its entirety in the power of attorney.

(c) A principal may modify authority incorporated by reference.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 3, effective September 1, 2017.

Subchapter B

Effect of Certain Acts on Exercise of Durable Power of Attorney

Sec. 751.051. Effect of Acts Performed by Agent.

An act performed by an agent under a durable power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 4, effective September 1, 2017.

Sec. 751.052. Relation of Attorney in Fact or Agent to Court-Appointed Guardian of Estate.

(a) If, after execution of a durable power of attorney, a court appoints a:

(1) permanent guardian of the estate for a ward who is the principal who executed the power of attorney, on the qualification of the guardian the powers and authority granted to the attorney in fact or agent named in the power of attorney are automatically revoked; or

(2) temporary guardian of the estate for a ward who is the principal who executed the power of attorney, on the qualification of the guardian the powers and authority granted to the attorney in fact or agent named in the power of attorney are automatically suspended for the duration of the guardianship unless the court enters an order that:

(A) affirms and states the effectiveness of the power of attorney; and

(B) confirms the validity of the appointment of the named attorney in fact or agent.

(b) If the powers and authority of an attorney in fact or agent are revoked as provided by Subsection (a), the attorney in fact or agent shall:

(1) deliver to the guardian of the estate all assets of the ward's estate that are in the possession of the attorney in fact or agent; and

(2) account to the guardian of the estate as the attorney in fact or agent would account to the principal if the principal had terminated the powers of the attorney in fact or agent.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 6, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 2, effective September 1, 2017.

Sec. 751.052. Relation of Attorney in Fact or Agent to Court-Appointed Guardian of Estate. [Renumbered]

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Renumbered to Tex. Estates Code § 751.133 by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 6, effective September 1, 2017.

Sec. 751.053. Effect of Principal's Divorce or Marriage Annulment if Former Spouse Is Attorney in Fact or Agent. [Repealed]

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Repealed by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 15(2), effective September 1, 2017.

Sec. 751.054. Knowledge of Termination of Power; Good-Faith Acts.

(a) The revocation by, the death of, or the qualification of a temporary or permanent guardian of the estate of a principal who has executed a durable power of attorney or the removal of an attorney in fact or agent under Chapter 753 does not revoke, suspend, or terminate the agency as to the attorney in fact, agent, or other person who acts in good faith under or in reliance on the power without actual knowledge of the termination or suspension, as applicable, of the power by:

- (1) the revocation;
- (2) the principal's death;
- (3) the qualification of a temporary or permanent guardian of the estate of the principal; or
- (4) the attorney in fact's or agent's removal.

(b) The divorce of a principal from a person who has been appointed the principal's attorney in fact or agent before the date the divorce is granted, or the annulment of the marriage of a principal and a person who has been appointed the principal's attorney in fact or agent before the date the annulment is granted, does not revoke or terminate the agency as to a person other than the principal's former spouse if the person acts in good faith under or in reliance on the power of attorney.

(c) An action taken under this section, unless otherwise invalid or unenforceable, binds the principal's successors in interest.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 3, effective September 1, 2017.

Sec. 751.054. Knowledge of Termination of Power; Good-Faith Acts. [Repealed]

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 3, effective September 1, 2017; Repealed by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 15(3), effective September 1, 2017.

Sec. 751.055. Affidavit Regarding Lack of Knowledge of Termination of Power or of Disability or Incapacity; Good-Faith Reliance.

(a) As to an act undertaken in good-faith reliance on a durable power of attorney, an affidavit executed by the attorney in fact or agent under the durable power of attorney stating that the attorney in fact or agent did not have, at the time the power was exercised, actual knowledge of the termination or suspension of the power, as applicable, by revocation, the principal's death, the principal's divorce or the annulment of the principal's marriage if the attorney in fact or agent was the principal's spouse, the qualification of a temporary or permanent guardian of the estate of the principal, or the attorney in fact's or agent's removal, is conclusive proof as between the attorney in fact or agent and a person other than the principal or the principal's personal representative dealing with the attorney in fact or agent of the nonrevocation, nonsuspension, or nontermination of the power at that time.

(b) As to an act undertaken in good-faith reliance on a durable power of attorney, an affidavit executed by the attorney in fact or agent under the durable power of attorney stating that the principal is disabled or incapacitated, as defined by the power of attorney, is conclusive proof as between the attorney in fact or agent and a person other than the principal or the principal's personal representative dealing with the attorney in fact or agent of the principal's disability or incapacity at that time.

(c) If the exercise of the power of attorney requires execution and delivery of an instrument that is to be recorded, an affidavit executed under Subsection (a) or (b), authenticated for record, may also be recorded.

(d) This section and Section 751.056 do not affect a provision in a durable power of attorney for the termination of the power by:

- (1) expiration of time; or
- (2) the occurrence of an event other than express revocation.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 4, effective September 1, 2017.

Sec. 751.055. Affidavit Regarding Lack of Knowledge of Termination of Power or of Disability or Incapacity; Good-Faith Reliance. [Repealed]

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Repealed by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 15(4), effective September 1, 2017.

Sec. 751.056. Nonliability of Third Party on Good-Faith Reliance. [Repealed]

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Repealed by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 15(5), effective September 1, 2017.

Sec. 751.057. Effect of Bankruptcy Proceeding.

(a) The filing of a voluntary or involuntary petition in bankruptcy in connection with the debts of a principal who has executed a durable power of attorney does not revoke or terminate the agency as to the principal's agent.

(b) Any act the agent may undertake with respect to the principal's property is subject to the limitations and requirements of the United States Bankruptcy Code (11 U.S.C. Section 101 et seq.) until a final determination is made in the bankruptcy proceeding.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 4, effective September 1, 2017.

Sec. 751.058. Effect of Revocation of Durable Power of Attorney on Third Party. [Repealed]

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Repealed by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 15(6), effective September 1, 2017.

Secs. 751.059 to 751.100. [Reserved for expansion].*Subchapter C**Duty to Inform and Account***Sec. 751.101. Fiduciary Duties.**

A person who accepts appointment as an agent under a durable power of attorney as provided by Section 751.022 is a fiduciary as to the principal only when acting as an agent under the power of attorney and has a duty to inform and to account for actions taken under the power of attorney.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 4, effective September 1, 2017.

Sec. 751.102. Duty to Timely Inform Principal.

(a) The agent shall timely inform the principal of each action taken under a durable power of attorney.

(b) Failure of an agent to timely inform, as to third parties, does not invalidate any action of the agent.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 4, effective September 1, 2017.

Sec. 751.103. Maintenance of Records.

(a) The agent shall maintain records of each action taken or decision made by the agent.

(b) The agent shall maintain all records until delivered to the principal, released by the principal, or discharged by a court.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 4, effective September 1, 2017.

Sec. 751.104. Accounting.

(a) The principal may demand an accounting by the agent.

(b) Unless otherwise directed by the principal, an accounting under Subsection (a) must include:

(1) the property belonging to the principal that has come to the agent's knowledge or into the agent's possession;

(2) each action taken or decision made by the agent;

(3) a complete account of receipts, disbursements, and other actions of the agent that includes the source and nature of each receipt, disbursement, or action, with receipts of principal and income shown separately;

(4) a listing of all property over which the agent has exercised control that includes:

(A) an adequate description of each asset; and

(B) the asset's current value, if the value is known to the agent;

(5) the cash balance on hand and the name and location of the depository at which the cash balance is kept;

(6) each known liability; and

(7) any other information and facts known to the agent as necessary for a full and definite understanding of the exact condition of the property belonging to the principal.

(c) Unless directed otherwise by the principal, the agent shall also provide to the principal all documentation regarding the principal's property.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 4, effective September 1, 2017.

Sec. 751.105. Effect of Failure to Comply; Suit.

If the agent fails or refuses to inform the principal, provide documentation, or deliver an accounting under Section 751.104 within 60 days of a demand under that section, or a longer or shorter period as demanded by the principal or ordered by a court, the principal may file suit to:

(1) compel the agent to deliver the accounting or the assets; or

(2) terminate the durable power of attorney.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 4, effective September 1, 2017.

Sec. 751.106. Effect of Subchapter on Principal's Rights.

This subchapter does not limit the right of the principal to terminate the durable power of attorney or to make additional requirements of or to give additional instructions to the agent.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 4, effective September 1, 2017.

Secs. 751.107 to 751.150. [Reserved for expansion].*Subchapter C-1**Other Duties of Agent***Sec. 751.121. Duty to Notify of Breach of Fiduciary Duty by other Agent.**

(a) An agent who has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall

notify the principal and, if the principal is incapacitated, take any action reasonably appropriate under the circumstances to safeguard the principal's best interest. An agent who fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken the action.

(b) Except as otherwise provided by Subsection (a) or the durable power of attorney, an agent who does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 5, effective September 1, 2017.

Sec. 751.122. Duty to Preserve Principal's Estate Plan.

An agent shall preserve to the extent reasonably possible the principal's estate plan to the extent the agent has actual knowledge of the plan if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:

- (1) the value and nature of the principal's property;
- (2) the principal's foreseeable obligations and need for maintenance;
- (3) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; and
- (4) eligibility for a benefit, a program, or assistance under a statute or regulation.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 5, effective September 1, 2017.

Subchapter C-2

Duration of Durable Power of Attorney and Agent's Authority

Sec. 751.131. Termination of Durable Power of Attorney.

A durable power of attorney terminates when:

- (1) the principal dies;
- (2) the principal revokes the power of attorney;
- (3) the power of attorney provides that it terminates;
- (4) the purpose of the power of attorney is accomplished;
- (5) one of the circumstances with respect to an agent described by Section 751.132(a)(1), (2), or (3) arises and the power of attorney does not provide for another agent to act under the power of attorney; or
- (6) a permanent guardian of the estate of the principal has qualified to serve in that capacity as provided by Section 751.133.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 5, effective September 1, 2017.

Sec. 751.132. Termination of Agent's Authority.

(a) An agent's authority under a durable power of attorney terminates when:

- (1) the principal revokes the authority;

(2) the agent dies, becomes incapacitated, is no longer qualified, or resigns;

(3) the agent's marriage to the principal is dissolved by court decree of divorce or annulment or is declared void by a court, unless the power of attorney otherwise provides; or

(4) the power of attorney terminates.

(b) Unless the durable power of attorney otherwise provides, an agent's authority may be exercised until the agent's authority terminates under Subsection (a), notwithstanding a lapse of time since the execution of the power of attorney.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 5, effective September 1, 2017.

Sec. 751.133. Relation of Agent to Court-Appointed Guardian of Estate.

(a) If, after execution of a durable power of attorney, a court of the principal's domicile appoints a permanent guardian of the estate of the principal, the powers of the agent terminate on the qualification of the guardian of the estate. The agent shall:

- (1) deliver to the guardian of the estate all assets of the incapacitated person's estate that are in the possession of the agent; and
- (2) account to the guardian of the estate as the agent would account to the principal if the principal had terminated the powers of the agent.

(b) If, after execution of a durable power of attorney, a court of the principal's domicile appoints a temporary guardian of the estate of the principal, the court may suspend the powers of the agent on the qualification of the temporary guardian of the estate until the date the term of the temporary guardian expires. This subsection may not be construed to prohibit the application for or issuance of a temporary restraining order under applicable law.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Renumbered from Tex. Estates Code § 751.052 by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 6, effective September 1, 2017.

Sec. 751.134. Effect on Certain Persons of Termination of Durable Power of Attorney or Agent's Authority.

Termination of an agent's authority or of a durable power of attorney is not effective as to the agent or another person who, without actual knowledge of the termination, acts in good faith under or in reliance on the power of attorney. An act performed as described by this section, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 5, effective September 1, 2017.

Sec. 751.135. Previous Durable Power of Attorney Continues in Effect Until Revoked.

The execution of a durable power of attorney does not revoke a durable power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other durable powers of attorney are revoked.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 5, effective September 1, 2017.

Subchapter D

Recording Durable Power of Attorney for Certain Real Property Transactions

Sec. 751.151. Recording for Real Property Transactions Requiring Execution and Delivery of Instruments.

A durable power of attorney for a real property transaction requiring the execution and delivery of an instrument that is to be recorded, including a release, assignment, satisfaction, mortgage, including a reverse mortgage, security agreement, deed of trust, encumbrance, deed of conveyance, oil, gas, or other mineral lease, memorandum of a lease, lien, including a home equity lien, or other claim or right to real property, must be recorded in the office of the county clerk of the county in which the property is located not later than the 30th day after the date the instrument is filed for recording.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 808 (H.B. 3316), § 1, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 7, effective September 1, 2017.

Subchapter E

Acceptance of and Reliance on Durable Power of Attorney

Sec. 751.201. Acceptance of Durable Power of Attorney Required; Exceptions.

(a) Unless one or more grounds for refusal under Section 751.206 exist, a person who is presented with and asked to accept a durable power of attorney by an agent with authority to act under the power of attorney shall:

- (1) accept the power of attorney; or
- (2) before accepting the power of attorney:

(A) request an agent's certification under Section 751.203 or an opinion of counsel under Section 751.204 not later than the 10th business day after the date the power of attorney is presented, except as provided by Subsection (c); or

(B) if applicable, request an English translation under Section 751.205 not later than the fifth business day after the date the power of attorney is presented, except as provided by Subsection (c).

(b) Unless one or more grounds for refusal under Section 751.206 exist and except as provided by Subsection (c), a person who requests:

(1) an agent's certification must accept the durable power of attorney not later than the seventh business day after the date the person receives the requested certification; and

(2) an opinion of counsel must accept the durable power of attorney not later than the seventh business day after the date the person receives the requested opinion.

(c) An agent presenting a durable power of attorney for acceptance and the person to whom the power of attorney

is presented may agree to extend a period prescribed by Subsection (a) or (b).

(d) If an English translation of a durable power of attorney is requested as authorized by Subsection (a)(2)(B), the power of attorney is not considered presented for acceptance under Subsection (a) until the date the requestor receives the translation. On and after that date, the power of attorney shall be treated as a power of attorney originally prepared in English for all the purposes of this subchapter.

(e) A person is not required to accept a durable power of attorney under this section if the agent refuses to or does not provide a requested certification, opinion of counsel, or English translation under this subchapter.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Sec. 751.202. Other Form or Recording of Durable Power of Attorney As Condition of Acceptance Prohibited.

A person who is asked to accept a durable power of attorney under Section 751.201 may not require that:

- (1) an additional or different form of the power of attorney be presented for authority that is granted in the power of attorney presented to the person; or
- (2) the power of attorney be recorded in the office of a county clerk unless the recording of the instrument is required by Section 751.151 or another law of this state.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Sec. 751.203. Agent's Certification.

(a) Before accepting a durable power of attorney under Section 751.201, the person to whom the power of attorney is presented may request that the agent presenting the power of attorney provide to the person an agent's certification, under penalty of perjury, of any factual matter concerning the principal, agent, or power of attorney. If under its terms the power of attorney becomes effective on the disability or incapacity of the principal, the person to whom the power of attorney is presented may request that the certification include a written statement from a physician attending the principal that states that the principal is presently disabled or incapacitated.

(b) A certification described by Subsection (a) may be in the following form:

CERTIFICATION OF DURABLE POWER OF ATTORNEY BY AGENT

I, _____ (agent), certify under penalty of perjury that:

1. I am the agent named in the power of attorney validly executed by _____ (principal) ("principal") on _____ (date), and the power of attorney is now in full force and effect.

2. The principal is not deceased and is presently domiciled in _____ (city and state/territory or foreign country).

3. To the best of my knowledge after diligent search and inquiry:

a. The power of attorney has not been revoked by the principal or suspended or terminated by the occur-

rence of any event, whether or not referenced in the power of attorney;

b. At the time the power of attorney was executed, the principal was mentally competent to transact legal matters and was not acting under the undue influence of any other person;

c. A permanent guardian of the estate of the principal has not qualified to serve in that capacity;

d. My powers under the power of attorney have not been suspended by a court in a temporary guardianship or other proceeding;

e. If I am (or was) the principal's spouse, my marriage to the principal has not been dissolved by court decree of divorce or annulment or declared void by a court, or the power of attorney provides specifically that my appointment as the agent for the principal does not terminate if my marriage to the principal has been dissolved by court decree of divorce or annulment or declared void by a court;

f. No proceeding has been commenced for a temporary or permanent guardianship of the person or estate, or both, of the principal; and

g. The exercise of my authority is not prohibited by another agreement or instrument.

4. If under its terms the power of attorney becomes effective on the disability or incapacity of the principal or at a future time or on the occurrence of a contingency, the principal now has a disability or is incapacitated or the specified future time or contingency has occurred.

5. I am acting within the scope of my authority under the power of attorney, and my authority has not been altered or terminated.

6. If applicable, I am the successor to _____ (predecessor agent), who has resigned, died, or become incapacitated, is not qualified to serve or has declined to serve as agent, or is otherwise unable to act. There are no unsatisfied conditions remaining under the power of attorney that preclude my acting as successor agent.

7. I agree not to:

a. Exercise any powers granted by the power of attorney if I attain knowledge that the power of attorney has been revoked, suspended, or terminated; or

b. Exercise any specific powers that have been revoked, suspended, or terminated.

8. A true and correct copy of the power of attorney is attached to this document.

9. If used in connection with an extension of credit under Section 50(a)(6), Article XVI, Texas Constitution, the power of attorney was executed in the office of the lender, the office of a title company, or the law office of _____ . Date: _____, 20____.

_____ (signature of agent)

(c) A certification made in compliance with this section is conclusive proof of the factual matter that is the subject of the certification.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Sec. 751.204. Opinion of Counsel.

(a) Before accepting a durable power of attorney under Section 751.201, the person to whom the power of attorney

is presented may request from the agent presenting the power of attorney an opinion of counsel regarding any matter of law concerning the power of attorney so long as the person provides to the agent the reason for the request in a writing or other record.

(b) Except as otherwise provided in an agreement to extend the request period under Section 751.201(c), an opinion of counsel requested under this section must be provided by the principal or agent, at the principal's expense. If, without an extension, the requestor requests the opinion later than the 10th business day after the date the durable power of attorney is presented to the requestor, the principal or agent may, but is not required to, provide the opinion, at the requestor's expense.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Sec. 751.205. English Translation.

(a) Before accepting a durable power of attorney under Section 751.201 that contains, wholly or partly, language other than English, the person to whom the power of attorney is presented may request from the agent presenting the power of attorney an English translation of the power of attorney.

(b) Except as otherwise provided in an agreement to extend the request period under Section 751.201(c), an English translation requested under this section must be provided by the principal or agent, at the principal's expense. If, without an extension, the requestor requests the translation later than the fifth business day after the date the durable power of attorney is presented to the requestor, the principal or agent may, but is not required to, provide the translation, at the requestor's expense.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Sec. 751.206. Grounds for Refusing Acceptance.

A person is not required to accept a durable power of attorney under this subchapter if:

(1) the person would not otherwise be required to engage in a transaction with the principal under the same circumstances, including a circumstance in which the agent seeks to:

(A) establish a customer relationship with the person under the power of attorney when the principal is not already a customer of the person or expand an existing customer relationship with the person under the power of attorney; or

(B) acquire a product or service under the power of attorney that the person does not offer;

(2) the person's engaging in the transaction with the agent or with the principal under the same circumstances would be inconsistent with:

(A) another law of this state or a federal statute, rule, or regulation;

(B) a request from a law enforcement agency; or

(C) a policy adopted by the person in good faith that is necessary to comply with another law of this state or a federal statute, rule, regulation, regulatory directive, guidance, or executive order applicable to the person;

(3) the person would not engage in a similar transaction with the agent because the person or an affiliate of the person:

(A) has filed a suspicious activity report as described by 31 U.S.C. Section 5318(g) with respect to the principal or agent;

(B) believes in good faith that the principal or agent has a prior criminal history involving financial crimes; or

(C) has had a previous, unsatisfactory business relationship with the agent due to or resulting in:

(i) material loss to the person;

(ii) financial mismanagement by the agent;

(iii) litigation between the person and the agent alleging substantial damages; or

(iv) multiple nuisance lawsuits filed by the agent;

(4) the person has actual knowledge of the termination of the agent's authority or of the power of attorney before an agent's exercise of authority under the power of attorney;

(5) the agent refuses to comply with a request for a certification, opinion of counsel, or translation under Section 751.201 or, if the agent complies with one or more of those requests, the requestor in good faith is unable to determine the validity of the power of attorney or the agent's authority to act under the power of attorney because the certification, opinion, or translation is incorrect, incomplete, unclear, limited, qualified, or otherwise deficient in a manner that makes the certification, opinion, or translation ineffective for its intended purpose, as determined in good faith by the requestor;

(6) regardless of whether an agent's certification, opinion of counsel, or translation has been requested or received by the person under this subchapter, the person believes in good faith that:

(A) the power of attorney is not valid;

(B) the agent does not have the authority to act as attempted; or

(C) the performance of the requested act would violate the terms of:

(i) a business entity's governing documents; or

(ii) an agreement affecting a business entity, including how the entity's business is conducted;

(7) the person commenced, or has actual knowledge that another person commenced, a judicial proceeding to construe the power of attorney or review the agent's conduct and that proceeding is pending;

(8) the person commenced, or has actual knowledge that another person commenced, a judicial proceeding for which a final determination was made that found:

(A) the power of attorney invalid with respect to a purpose for which the power of attorney is being presented for acceptance; or

(B) the agent lacked the authority to act in the same manner in which the agent is attempting to act under the power of attorney;

(9) the person makes, has made, or has actual knowledge that another person has made a report to a law enforcement agency or other federal or state agency, including the Department of Family and Protective

Services, stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting with or on behalf of the agent;

(10) the person receives conflicting instructions or communications with regard to a matter from co-agents acting under the same power of attorney or from agents acting under different powers of attorney signed by the same principal or another adult acting for the principal as authorized by Section 751.0021, provided that the person may refuse to accept the power of attorney only with respect to that matter; or

(11) the person is not required to accept the durable power of attorney by the law of the jurisdiction that applies in determining the power of attorney's meaning and effect, or the powers conferred under the durable power of attorney that the agent is attempting to exercise are not included within the scope of activities to which the law of that jurisdiction applies.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Sec. 751.207. Written Statement of Refusal of Acceptance Required.

(a) Except as provided by Subsection (b), a person who refuses to accept a durable power of attorney under this subchapter shall provide to the agent presenting the power of attorney for acceptance a written statement advising the agent of the reason or reasons the person is refusing to accept the power of attorney.

(b) If the reason a person is refusing to accept a durable power of attorney is a reason described by Section 751.206(2) or (3):

(1) the person shall provide to the agent presenting the power of attorney for acceptance a written statement signed by the person under penalty of perjury stating that the reason for the refusal is a reason described by Section 751.206(2) or (3); and

(2) the person refusing to accept the power of attorney is not required to provide any additional explanation for refusing to accept the power of attorney.

(c) The person must provide to the agent the written statement required under Subsection (a) or (b) on or before the date the person would otherwise be required to accept the durable power of attorney under Section 751.201.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Sec. 751.208. Date of Acceptance.

A durable power of attorney is considered accepted by a person under Section 751.201 on the first day the person agrees to act at the agent's direction under the power of attorney.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Sec. 751.209. Good Faith Reliance on Durable Power of Attorney.

(a) A person who in good faith accepts a durable power of attorney without actual knowledge that the signature of the principal or of another adult directed by the principal

to sign the principal's name as authorized by Section 751.0021 is not genuine may rely on the presumption under Section 751.0022 that the signature is genuine and that the power of attorney was properly executed.

(b) A person who in good faith accepts a durable power of attorney without actual knowledge that the power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely on the power of attorney as if:

- (1) the power of attorney were genuine, valid, and still in effect;
- (2) the agent's authority were genuine, valid, and still in effect; and
- (3) the agent had not exceeded and had properly exercised the authority.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Sec. 751.210. Reliance on Certain Requested Information.

A person may rely on, without further investigation or liability to another person, an agent's certification, opinion of counsel, or English translation that is provided to the person under this subchapter.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Sec. 751.211. Actual Knowledge of Person When Transactions Conducted Through Employees.

(a) This section applies to a person who conducts a transaction or activity through an employee of the person.

(b) For purposes of this chapter, a person is not considered to have actual knowledge of a fact relating to a durable power of attorney, principal, or agent if the employee conducting the transaction or activity involving the power of attorney does not have actual knowledge of the fact.

(c) For purposes of this chapter, a person is considered to have actual knowledge of a fact relating to a durable power of attorney, principal, or agent if the employee conducting the transaction or activity involving the power of attorney has actual knowledge of the fact.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Sec. 751.212. Cause of Action for Refusal to Accept Durable Power of Attorney.

(a) The principal or an agent acting on the principal's behalf may bring an action against a person who refuses to accept a durable power of attorney in violation of this subchapter.

(b) An action under Subsection (a) may not be commenced against a person until after the date the person is required to accept the durable power of attorney under Section 751.201.

(c) If the court finds that the person refused to accept the durable power of attorney in violation of this subchapter, the court, as the exclusive remedy under this chapter:

- (1) shall order the person to accept the power of attorney; and

(2) may award the plaintiff court costs and reasonable and necessary attorney's fees.

(d) The court shall dismiss an action under this section that was commenced after the date a written statement described by Section 751.207(b) was provided to the agent.

(e) Notwithstanding Subsection (c), if the agent receives a written statement described by Section 751.207(b) after the date a timely action is commenced under this section, the court may not order the person to accept the durable power of attorney, but instead may award the plaintiff court costs and reasonable and necessary attorney's fees as the exclusive remedy under this chapter.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Sec. 751.213. Liability of Principal.

(a) Subsection (b) applies to an action brought under Section 751.212 if:

- (1) the court finds that the action was commenced after the date the written statement described by Section 751.207(b) was timely provided to the agent;
- (2) the court expressly finds that the refusal of the person against whom the action was brought to accept the durable power of attorney was permitted under this chapter; or
- (3) Section 751.212(e) does not apply and the court does not issue an order ordering the person to accept the power of attorney.

(b) Under any of the circumstances described by Subsection (a), the principal may be liable to the person who refused to accept the durable power of attorney for court costs and reasonable and necessary attorney's fees incurred in defending the action as the exclusive remedy under this chapter.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Subchapter F

Civil Remedies

Sec. 751.251. Judicial Relief.

(a) The following may bring an action requesting a court to construe, or determine the validity or enforceability of, a durable power of attorney, or to review an agent's conduct under a durable power of attorney and grant appropriate relief:

- (1) the principal or the agent;
- (2) a guardian, conservator, or other fiduciary acting for the principal;
- (3) a person named as a beneficiary to receive property, a benefit, or a contractual right on the principal's death;
- (4) a governmental agency with regulatory authority to protect the principal's welfare; and
- (5) a person who demonstrates to the court sufficient interest in the principal's welfare or estate.

(b) A person who is asked to accept a durable power of attorney may bring an action requesting a court to construe, or determine the validity or enforceability of, the power of attorney.

(c) On the principal's motion, the court shall dismiss an action under Subsection (a) unless the court finds that the principal lacks capacity to revoke the agent's authority or the durable power of attorney.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

CHAPTER 752

Statutory Durable Power of Attorney

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Subchapter A

General Provisions Regarding Statutory Durable Power of Attorney

Sec. 752.001. Use, Meaning, and Effect of Statutory Durable Power of Attorney.

(a) A person may use a statutory durable power of attorney to grant an attorney in fact or agent powers with respect to a person's property and financial matters.

(b) A power of attorney in substantially the form prescribed by Section 752.051 has the meaning and effect prescribed by this subtitle.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Sec. 752.002. Validity Not Affected.

A power of attorney is valid with respect to meeting the requirements for a statutory durable power of attorney regardless of the fact that:

- (1) one or more of the categories of optional powers listed in the form prescribed by Section 752.051 are not initialed; or
- (2) the form includes specific limitations on, or additions to, the powers of the attorney in fact or agent.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 700 (H.B. 2918), § 2, effective January 1, 2014.

Sec. 752.003. Prescribed Form Not Exclusive.

The form prescribed by Section 752.051 is not exclusive, and other forms of power of attorney may be used.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Sec. 752.004. Legal Sufficiency of Statutory Durable Power of Attorney.

A statutory durable power of attorney is legally sufficient under this subtitle if:

- (1) the wording of the form complies substantially with the wording of the form prescribed by Section 752.051;
- (2) the form is properly completed; and
- (3) the signature of the principal is acknowledged.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Secs. 752.005 to 752.050. [Reserved for expansion].

Subchapter B

Form of Statutory Durable Power of Attorney

Sec. 752.051. [3 Versions: As amended by Acts 2017, 85th Leg., ch. 400 (S.B. 1193)] Form.

The following form is known as a "statutory durable power of attorney":

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P, TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

You should select someone you trust to serve as your agent (attorney in fact). Unless you specify otherwise, generally the agent's (attorney in fact's) authority will continue until:

- (1) you die or revoke the power of attorney;

(2) your agent (attorney in fact) resigns or is unable to act for you; or

(3) a guardian is appointed for your estate.

I, _____ (insert your name and address), appoint _____ (insert the name and address of the person appointed) as my agent (attorney in fact) to act for me in any lawful way with respect to all of the following powers that I have initialed below.

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (O) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS LISTED IN (A) THROUGH (N) .

TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

- _____ (A) Real property transactions;
- _____ (B) Tangible personal property transactions;
- _____ (C) Stock and bond transactions;
- _____ (D) Commodity and option transactions;
- _____ (E) Banking and other financial institution transactions;
- _____ (F) Business operating transactions;
- _____ (G) Insurance and annuity transactions;
- _____ (H) Estate, trust, and other beneficiary transactions;
- _____ (I) Claims and litigation;
- _____ (J) Personal and family maintenance;
- _____ (K) Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;
- _____ (L) Retirement plan transactions;
- _____ (M) Tax matters;
- _____ (N) Digital assets and the content of an electronic communication;
- _____ (O) ALL OF THE POWERS LISTED IN (A) THROUGH (N). YOU DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU INITIAL LINE (O).

SPECIAL INSTRUCTIONS:

Special instructions applicable to gifts (initial in front of the following sentence to have it apply):

_____ I grant my agent (attorney in fact) the power to apply my property to make gifts outright to or for the benefit of a person, including by the exercise of a presently exercisable general power of appointment held by me, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

(A) This power of attorney is not affected by my subsequent disability or incapacity.

(B) This power of attorney becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

If any agent named by me dies, becomes legally disabled, resigns, or refuses to act, I name the following (each to act alone and successively, in the order named) as successor(s) to that agent: _____.

Signed this ____ day of _____, ____

(your signature)

State of _____

County of _____

This document was acknowledged before me on _____ (date) by

(name of principal)

(signature of notarial officer)
(Seal, if any, of notary)

(printed name)

_____ My commission expires:

IMPORTANT INFORMATION FOR AGENT (ATTORNEY IN FACT)

Agent's Duties

When you accept the authority granted under this power of attorney, you establish a "fiduciary" relationship with the principal. This is a special legal relationship that imposes on you legal duties that continue until you resign or the power of attorney is terminated or revoked by the principal or by operation of law. A fiduciary duty generally includes the duty to:

- (1) act in good faith;
- (2) do nothing beyond the authority granted in this power of attorney;
- (3) act loyally for the principal's benefit;
- (4) avoid conflicts that would impair your ability to act in the principal's best interest; and
- (5) disclose your identity as an agent or attorney in fact when you act for the principal by writing or printing the name of the principal and signing your own name as "agent" or "attorney in fact" in the following manner: (Principal's Name) by (Your Signature) as Agent (or as Attorney in Fact)

In addition, the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code) requires you to:

- (1) maintain records of each action taken or decision made on behalf of the principal;
- (2) maintain all records until delivered to the principal, released by the principal, or discharged by a court; and
- (3) if requested by the principal, provide an accounting to the principal that, unless otherwise directed by the principal or otherwise provided in the Special Instructions, must include:
 - (A) the property belonging to the principal that has come to your knowledge or into your possession;
 - (B) each action taken or decision made by you as agent or attorney in fact;
 - (C) a complete account of receipts, disbursements, and other actions of you as agent or attorney in fact that includes the source and nature of each receipt, disbursement, or action, with receipts of principal and income shown separately;
 - (D) a listing of all property over which you have exercised control that includes an adequate description of each asset and the asset's current value, if known to you;
 - (E) the cash balance on hand and the name and location of the depository at which the cash balance is kept;
 - (F) each known liability;
 - (G) any other information and facts known to you as necessary for a full and definite understanding of the exact condition of the property belonging to the principal; and
 - (H) all documentation regarding the principal's property.

Termination of Agent's Authority
You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. An event that terminates this power of attorney or your authority to act under this power of attorney includes:

- (1) the principal's death;
- (2) the principal's revocation of this power of attorney or your authority;
- (3) the occurrence of a termination event stated in this power of attorney;

(4) if you are married to the principal, the dissolution of your marriage by court decree of divorce or annulment;

(5) the appointment and qualification of a permanent guardian of the principal's estate; or

(6) if ordered by a court, the suspension of this power of attorney on the appointment and qualification of a temporary guardian until the date the term of the temporary guardian expires. **Liability of Agent**

The authority granted to you under this power of attorney is specified in the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code). If you violate the Durable Power of Attorney Act or act beyond the authority granted, you may be liable for any damages caused by the violation or subject to prosecution for misapplication of property by a fiduciary under Chapter 32 of the Texas Penal Code.

THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 700 (H.B. 2918), § 1, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 400 (S.B. 1193), § 2, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 400 (S.B. 1193), § 2, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 5, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 9, effective September 1, 2017.

Sec. 752.051. [3 Versions: As amended by Acts 2017, 85th Leg., ch. 834 (H.B. 1974)] Form.

The following form is known as a "statutory durable power of attorney":

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P, TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO. IF YOU WANT YOUR AGENT TO HAVE THE AUTHORITY TO SIGN HOME EQUITY LOAN DOCUMENTS ON YOUR BEHALF, THIS POWER OF ATTORNEY MUST BE SIGNED BY YOU AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW, OR A TITLE COMPANY.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until:

- (1) you die or revoke the power of attorney;
- (2) your agent resigns or is unable to act for you; or your agent resigns or is unable to act for you; or
- (3) a guardian is appointed for your estate.

I, _____ (insert your name and address), appoint _____ (insert the name and address of the person appointed) as my agent to act for me in any lawful way with respect to all of the following powers that I have initialed below. (YOU MAY APPOINT CO-AGENTS. UNLESS YOU

PROVIDE OTHERWISE, CO-AGENTS MAY ACT INDEPENDENTLY.)

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS LISTED IN (A) THROUGH (M).

TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

- _____ (A) Real property transactions;
- _____ (B) Tangible personal property transactions;
- _____ (C) Stock and bond transactions;
- _____ (D) Commodity and option transactions;
- _____ (E) Banking and other financial institution transactions;
- _____ (F) Business operating transactions;
- _____ (G) Insurance and annuity transactions;
- _____ (H) Estate, trust, and other beneficiary transactions;
- _____ (I) Claims and litigation;
- _____ (J) Personal and family maintenance;
- _____ (K) Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;
- _____ (L) Retirement plan transactions;
- _____ (M) Tax matters;
- _____ (N) ALL OF THE POWERS LISTED IN (A) THROUGH (M). YOU DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:

Special instructions applicable to agent compensation (initial in front of one of the following sentences to have it apply; if no selection is made, each agent will be entitled to compensation that is reasonable under the circumstances):

_____ My agent is entitled to reimbursement of reasonable expenses incurred on my behalf and to compensation that is reasonable under the circumstances.

_____ My agent is entitled to reimbursement of reasonable expenses incurred on my behalf but shall receive no compensation for serving as my agent.

Special instructions applicable to co-agents (if you have appointed co-agents to act, initial in front of one of the following sentences to have it apply; if no selection is made, each agent will be entitled to act independently):

_____ Each of my co-agents may act independently for me.

_____ My co-agents may act for me only if the co-agents act jointly.

_____ My co-agents may act for me only if a majority of the co-agents act jointly.

Special instructions applicable to gifts (initial in front of the following sentence to have it apply):

_____ I grant my agent the power to apply my property to make gifts outright to or for the benefit of a person, including by the exercise of a presently exercisable general power of appointment held by me, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

UNLESS YOU DIRECT OTHERWISE BELOW, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT TERMINATES.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

(A) This power of attorney is not affected by my subsequent disability or incapacity.

(B) This power of attorney becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

I agree that any third party who receives a copy of this document may act under it. Termination of this durable power of attorney is not effective as to a third party until the third party has actual knowledge of the termination. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney. The meaning and effect of this durable power of attorney is determined by Texas law.

If any agent named by me dies, becomes incapacitated, resigns, or refuses to act, or if my marriage to an agent

named by me is dissolved by a court decree of divorce or annulment or is declared void by a court (unless I provided in this document that the dissolution or declaration does not terminate the agent’s authority to act under this power of attorney), I name the following (each to act alone and successively, in the order named) as successor(s) to that agent:

Signed this ____ day of _____, _____.

State of _____ (your signature)

County of _____

This document was acknowledged before me on _____ (date) by

(name of principal)

(signature of notarial officer)
(Seal, if any, of notary)

(printed name)

My commission expires:

IMPORTANT INFORMATION FOR AGENT

Agent’s Duties

When you accept the authority granted under this power of attorney, you establish a “fiduciary” relationship with the principal. This is a special legal relationship that imposes on you legal duties that continue until you resign or the power of attorney is terminated or revoked by the principal or by operation of law. A fiduciary duty generally includes the duty to:

- (1) act in good faith;
- (2) do nothing beyond the authority granted in this power of attorney;
- (3) act loyally for the principal’s benefit;
- (4) avoid conflicts that would impair your ability to act in the principal’s best interest; and
- (5) disclose your identity as an agent when you act for the principal by writing or printing the name of the principal and signing your own name as “agent” in the following manner::

(Principal’s Name) by (Your Signature) as Agent

In addition, the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code) requires you to:

- (1) maintain records of each action taken or decision made on behalf of the principal;
- (2) maintain all records until delivered to the principal, released by the principal, or discharged by a court; and
- (3) if requested by the principal, provide an accounting to the principal that, unless otherwise directed by the principal or otherwise provided in the Special Instructions, must include:

(A) the property belonging to the principal that has come to your knowledge or into your possession;

(B) each action taken or decision made by you as agent;

(C) a complete account of receipts, disbursements, and other actions of you as agent that includes the source and nature of each receipt, disbursement, or action, with receipts of principal and income shown separately

(D) a listing of all property over which you have exercised control that includes an adequate description of each asset and the asset’s current value, if known to you;

(E) the cash balance on hand and the name and location of the depository at which the cash balance is kept;

(F) each known liability;

(G) any other information and facts known to you as necessary for a full and definite understanding of the exact condition of the property belonging to the principal; and

(H) all documentation regarding the principal’s property.

Termination of Agent’s Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. An event that terminates this power of attorney or your authority to act under this power of attorney includes:

- (1) the principal’s death;
- (2) the principal’s revocation of this power of attorney or your authority;
- (3) the occurrence of a termination event stated in this power of attorney;
- (4) if you are married to the principal, the dissolution of your marriage by a court decree of divorce or annulment or declaration that your marriage is void, unless otherwise provided in this power of attorney;
- (5) the appointment and qualification of a permanent guardian of the principal’s estate; or
- (6) if ordered by a court, the suspension of this power of attorney on the appointment and qualification of a temporary guardian until the date the term of the temporary guardian expires. Liability of Agent

The authority granted to you under this power of attorney is specified in the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code). If you violate the Durable Power of Attorney Act or act beyond the authority granted, you may be liable for any damages caused by the violation or subject to prosecution for misapplication of property by a fiduciary under Chapter 32 of the Texas Penal Code.

THE AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 700 (H.B. 2918), § 1, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 400 (S.B. 1193), § 2, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 5, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 9, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 9, effective September 1, 2017.

Sec. 752.051. [3 Versions: As amended by Acts 2017, 85th Leg., ch. 514 (S.B. 39)] Form.

The following form is known as a “statutory durable power of attorney”:

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EX-

PLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P, TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

You should select someone you trust to serve as your agent (attorney in fact). Unless you specify otherwise, generally the agent's (attorney in fact's) authority will continue until:

- (1) you die or revoke the power of attorney;
- (2) your agent (attorney in fact) resigns, is removed by court order, or is unable to act for you; or
- (3) a guardian is appointed for your estate.

I, _____ (insert your name and address), appoint _____ (insert the name and address of the person appointed) as my agent (attorney in fact) to act for me in any lawful way with respect to all of the following powers that I have initialed below.

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS LISTED IN (A) THROUGH (M).

TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

- _____ (A) Real property transactions;
- _____ (B) Tangible personal property transactions;
- _____ (C) Stock and bond transactions;
- _____ (D) Commodity and option transactions;
- _____ (E) Banking and other financial institution transactions;
- _____ (F) Business operating transactions;
- _____ (G) Insurance and annuity transactions;
- _____ (H) Estate, trust, and other beneficiary transactions;
- _____ (I) Claims and litigation;
- _____ (J) Personal and family maintenance;
- _____ (K) Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;
- _____ (L) Retirement plan transactions;
- _____ (M) Tax matters;
- _____ (N) ALL OF THE POWERS LISTED IN (A) THROUGH (M). YOU DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:

Special instructions applicable to gifts (initial in front of the following sentence to have it apply):

_____ I grant my agent (attorney in fact) the power to apply my property to make gifts outright to or for the benefit of a person, including by the exercise of a

presently exercisable general power of appointment held by me, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

(A) This power of attorney is not affected by my subsequent disability or incapacity.

(B) This power of attorney becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

If any agent named by me dies, becomes legally disabled, resigns, refuses to act, or is removed by court order, I name the following (each to act alone and successively, in the order named) as successor(s) _____ to that agent: .

_____ Signed this _____ day of , _____

(your signature)

_____ State of _____
_____ County of _____

This document was acknowledged before me on _____
(date) by

(name of principal)

(signature of notarial officer)
(Seal, if any, of
notary) _____
(printed name)

_____ My commission expires:

IMPORTANT INFORMATION FOR AGENT (ATTORNEY IN FACT)

Agent's Duties

When you accept the authority granted under this power of attorney, you establish a "fiduciary" relationship with the principal. This is a special legal relationship that imposes on you legal duties that continue until you resign or the power of attorney is terminated, suspended, or revoked by the principal or by operation of law. A fiduciary duty generally includes the duty to:

- (1) act in good faith;
- (2) do nothing beyond the authority granted in this power of attorney;
- (3) act loyally for the principal's benefit;
- (4) avoid conflicts that would impair your ability to act in the principal's best interest; and
- (5) disclose your identity as an agent or attorney in fact when you act for the principal by writing or printing the name of the principal and signing your own name as "agent" or "attorney in fact" in the following manner:

(Principal's Name) by (Your Signature) as Agent (or as Attorney in Fact)

In addition, the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code) requires you to:

- (1) maintain records of each action taken or decision made on behalf of the principal;
- (2) maintain all records until delivered to the principal, released by the principal, or discharged by a court; and
- (3) if requested by the principal, provide an accounting to the principal that, unless otherwise directed by the principal or otherwise provided in the Special Instructions, must include:
 - (A) the property belonging to the principal that has come to your knowledge or into your possession;
 - (B) each action taken or decision made by you as agent or attorney in fact;
 - (C) a complete account of receipts, disbursements, and other actions of you as agent or attorney in fact that includes the source and nature of each receipt, disbursement, or action, with receipts of principal and income shown separately;
 - (D) a listing of all property over which you have exercised control that includes an adequate description of each asset and the asset's current value, if known to you;
 - (E) the cash balance on hand and the name and location of the depository at which the cash balance is kept;

- (F) each known liability;
- (G) any other information and facts known to you as necessary for a full and definite understanding of the exact condition of the property belonging to the principal; and

(H) all documentation regarding the principal's property.

Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates or suspends this power of attorney or your authority under this power of attorney. An event that terminates this power of attorney or your authority to act under this power of attorney includes:

- (1) the principal's death;
- (2) the principal's revocation of this power of attorney or your authority;
- (3) the occurrence of a termination event stated in this power of attorney;
- (4) if you are married to the principal, the dissolution of your marriage by court decree of divorce or annulment;
- (5) the appointment and qualification of a permanent guardian of the principal's estate unless a court order provides otherwise; or
- (6) if ordered by a court, your removal as agent (attorney in fact) under this power of attorney. An event that suspends this power of attorney or your authority to act under this power of attorney is the appointment and qualification of a temporary guardian unless a court order provides otherwise.

Liability of Agent

The authority granted to you under this power of attorney is specified in the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code). If you violate the Durable Power of Attorney Act or act beyond the authority granted, you may be liable for any damages caused by the violation or subject to prosecution for misapplication of property by a fiduciary under Chapter 32 of the Texas Penal Code.

THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 700 (H.B. 2918), § 1, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 400 (S.B. 1193), § 2, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 5, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 5, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 9, effective September 1, 2017.

Sec. 752.052. Modifying Statutory Form to Grant Specific Authority.

The statutory durable power of attorney may be modified to allow the principal to grant the agent the specific authority described by Section 751.031(b) by including the following language: "GRANT OF SPECIFIC AUTHORITY (OPTIONAL)"

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below: (CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how

your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent. If you DO NOT want to grant your agent one or more of the following powers, you may also CROSS OUT a power you DO NOT want to grant.)

___ Create, amend, revoke, or terminate an inter vivos trust

___ Make a gift, subject to the limitations of Section 751.032 of the Durable Power of Attorney Act (Section 751.032, Estates Code) and any special instructions in this power of attorney

___ Create or change rights of survivorship

___ Create or change a beneficiary designation

___ Authorize another person to exercise the authority granted under this power of attorney”.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 10, effective September 1, 2017.

Secs. 752.053 to 752.100. [Reserved for expansion].

Subchapter C

Construction of Powers Related to Statutory Durable Power of Attorney

Sec. 752.101. Construction in General.

By executing a statutory durable power of attorney that confers authority with respect to any class of transactions, the principal empowers the attorney in fact or agent for that class of transactions to:

(1) demand, receive, and obtain by litigation, action, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled;

(2) conserve, invest, disburse, or use any money or other thing of value received on behalf of the principal for the purposes intended;

(3) contract in any manner with any person, on terms agreeable to the attorney in fact or agent, to accomplish a purpose of a transaction and perform, rescind, reform, release, or modify that contract or another contract made by or on behalf of the principal;

(4) execute, acknowledge, seal, and deliver a deed, revocation, mortgage, lease, notice, check, release, or other instrument the attorney in fact or agent considers desirable to accomplish a purpose of a transaction;

(5) with respect to a claim existing in favor of or against the principal:

(A) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise; or

(B) intervene in an action or litigation relating to the claim;

(6) seek on the principal's behalf the assistance of a court to carry out an act authorized by the power of attorney;

(7) engage, compensate, and discharge an attorney, accountant, expert witness, or other assistant;

(8) keep appropriate records of each transaction, including an accounting of receipts and disbursements;

(9) prepare, execute, and file a record, report, or other document the attorney in fact or agent considers neces-

sary or desirable to safeguard or promote the principal's interest under a statute or governmental regulation;

(10) reimburse the attorney in fact or agent for an expenditure made in exercising the powers granted by the durable power of attorney; and

(11) in general, perform any other lawful act that the principal may perform with respect to the transaction.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Sec. 752.102. Real Property Transactions.

(a) The language conferring authority with respect to real property transactions in a statutory durable power of attorney empowers the agent, without further reference to a specific description of the real property, to:

(1) accept as a gift or as security for a loan or reject, demand, buy, lease, receive, or otherwise acquire an interest in real property or a right incident to real property;

(2) sell, exchange, convey with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition or consent to partitioning, subdivide, apply for zoning, rezoning, or other governmental permits, plat or consent to platting, develop, grant options concerning, lease or sublet, or otherwise dispose of an estate or interest in real property or a right incident to real property;

(3) release, assign, satisfy, and enforce by litigation, action, or otherwise a mortgage, deed of trust, encumbrance, lien, or other claim to real property that exists or is claimed to exist;

(4) perform any act of management or of conservation with respect to an interest in real property, or a right incident to real property, owned or claimed to be owned by the principal, including the authority to:

(A) insure against a casualty, liability, or loss;

(B) obtain or regain possession or protect the interest or right by litigation, action, or otherwise;

(C) pay, compromise, or contest taxes or assessments or apply for and receive refunds in connection with the taxes or assessments;

(D) purchase supplies, hire assistance or labor, or make repairs or alterations to the real property; and

(E) manage and supervise an interest in real property, including the mineral estate

;

(5) use, develop, alter, replace, remove, erect, or install structures or other improvements on real property in which the principal has or claims to have an estate, interest, or right;

(6) participate in a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property, receive and hold shares of stock or obligations received in a plan or reorganization, and act with respect to the shares or obligations, including:

(A) selling or otherwise disposing of the shares or obligations;

(B) exercising or selling an option, conversion, or similar right with respect to the shares or obligations; and

(C) voting the shares or obligations in person or by proxy;

(7) change the form of title of an interest in or right incident to real property;

(8) dedicate easements or other real property in which the principal has or claims to have an interest to public use, with or without consideration;

(9) enter into mineral transactions, including:

(A) negotiating and making oil, gas, and other mineral leases covering any land, mineral, or royalty interest in which the principal has or claims to have an interest;

(B) pooling and unitizing all or part of the principal's land, mineral leasehold, mineral, royalty, or other interest with land, mineral leasehold, mineral, royalty, or other interest of one or more persons for the purpose of developing and producing oil, gas, or other minerals, and making leases or assignments granting the right to pool and unitize;

(C) entering into contracts and agreements concerning the installation and operation of plants or other facilities for the cycling, repressuring, processing, or other treating or handling of oil, gas, or other minerals;

(D) conducting or contracting for the conducting of seismic evaluation operations;

(E) drilling or contracting for the drilling of wells for oil, gas, or other minerals;

(F) contracting for and making "dry hole" and "bottom hole" contributions of cash, leasehold interests, or other interests toward the drilling of wells;

(G) using or contracting for the use of any method of secondary or tertiary recovery of any mineral, including the injection of water, gas, air, or other substances;

(H) purchasing oil, gas, or other mineral leases, leasehold interests, or other interests for any type of consideration, including farmout agreements requiring the drilling or reworking of wells or participation in the drilling or reworking of wells;

(I) entering into farmout agreements committing the principal to assign oil, gas, or other mineral leases or interests in consideration for the drilling of wells or other oil, gas, or mineral operations;

(J) negotiating the transfer of and transferring oil, gas, or other mineral leases or interests for any consideration, such as retained overriding royalty interests of any nature, drilling or reworking commitments, or production interests;

(K) executing and entering into contracts, conveyances, and other agreements or transfers considered necessary or desirable to carry out the powers granted in this section, including entering into and executing division orders, oil, gas, or other mineral sales contracts, exploration agreements, processing agreements, and other contracts relating to the processing, handling, treating, transporting, and marketing of oil, gas, or other mineral production from or accruing to the principal and receiving and receipting for the proceeds of those contracts, conveyances, and other agreements and transfers on behalf of the principal; and

(L) taking an action described by Paragraph (K) regardless of whether the action is, at the time the action is taken or subsequently, recognized or considered as a common or proper practice by those engaged in the business of prospecting for, developing, producing, processing, transporting, or marketing minerals; and

(10) designate the property that constitutes the principal's homestead.

(b) The power to mortgage and encumber real property provided by this section includes the power to execute documents necessary to create a lien against the principal's homestead as provided by Section 50, Article XVI, Texas Constitution, and to consent to the creation of a lien against property owned by the principal's spouse in which the principal has a homestead interest.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 11, effective September 1, 2017.

Sec. 752.103. Tangible Personal Property Transactions.

The language conferring general authority with respect to tangible personal property transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) accept tangible personal property or an interest in tangible personal property as a gift or as security for a loan or reject, demand, buy, receive, or otherwise acquire ownership or possession of tangible personal property or an interest in tangible personal property;

(2) sell, exchange, convey with or without covenants, release, surrender, mortgage, encumber, pledge, create a security interest in, pawn, grant options concerning, lease or sublet to others, or otherwise dispose of tangible personal property or an interest in tangible personal property;

(3) release, assign, satisfy, or enforce by litigation, action, or otherwise a mortgage, security interest, encumbrance, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property; and

(4) perform an act of management or conservation with respect to tangible personal property or an interest in tangible personal property on behalf of the principal, including:

(A) insuring the property or interest against casualty, liability, or loss;

(B) obtaining or regaining possession or protecting the property or interest by litigation, action, or otherwise;

(C) paying, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

(D) moving the property;

(E) storing the property for hire or on a gratuitous bailment; and

(F) using, altering, and making repairs or alterations to the property.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Sec. 752.104. Stock and Bond Transactions.

The language conferring authority with respect to stock and bond transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

- (1) buy, sell, and exchange:
 - (A) stocks;
 - (B) bonds;
 - (C) mutual funds; and
 - (D) all other types of securities and financial instruments other than commodity futures contracts and call and put options on stocks and stock indexes;
- (2) receive certificates and other evidences of ownership with respect to securities;
- (3) exercise voting rights with respect to securities in person or by proxy;
- (4) enter into voting trusts; and
- (5) consent to limitations on the right to vote.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Sec. 752.105. Commodity and Option Transactions.

The language conferring authority with respect to commodity and option transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

- (1) buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call and put options on stocks and stock indexes traded on a regulated options exchange; and
- (2) establish, continue, modify, or terminate option accounts with a broker.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Sec. 752.106. Banking and Other Financial Institution Transactions.

The language conferring authority with respect to banking and other financial institution transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

- (1) continue, modify, or terminate an account or other banking arrangement made by or on behalf of the principal;
- (2) establish, modify, or terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the attorney in fact or agent;
- (3) rent a safe deposit box or space in a vault;
- (4) contract to procure other services available from a financial institution as the attorney in fact or agent considers desirable;
- (5) withdraw by check, order, or otherwise money or property of the principal deposited with or left in the custody of a financial institution;
- (6) receive bank statements, vouchers, notices, or similar documents from a financial institution and act with respect to those documents;
- (7) enter a safe deposit box or vault and withdraw from or add to its contents;
- (8) borrow money at an interest rate agreeable to the attorney in fact or agent and pledge as security the

principal's property as necessary to borrow, pay, renew, or extend the time of payment of a debt of the principal;

(9) make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, bills of exchange, checks, drafts, or other negotiable or nonnegotiable paper of the principal, or payable to the principal or the principal's order to receive the cash or other proceeds of those transactions, to accept a draft drawn by a person on the principal, and to pay the principal when due;

(10) receive for the principal and act on a sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument;

(11) apply for and receive letters of credit, credit cards, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

(12) consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Sec. 752.107. Business Operation Transactions.

The language conferring authority with respect to business operating transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

- (1) operate, buy, sell, enlarge, reduce, or terminate a business interest;
- (2) do the following, to the extent that an attorney in fact or agent is permitted by law to act for a principal and subject to the terms of a partnership agreement:

(A) perform a duty, discharge a liability, or exercise a right, power, privilege, or option that the principal has, may have, or claims to have under the partnership agreement, whether or not the principal is a general or limited partner;

(B) enforce the terms of the partnership agreement by litigation, action, or otherwise; and

(C) defend, submit to arbitration, settle, or compromise litigation or an action to which the principal is a party because of membership in the partnership;

(3) exercise in person or by proxy, or enforce by litigation, action, or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of a bond, share, or other similar instrument and defend, submit to arbitration, settle, or compromise a legal proceeding to which the principal is a party because of a bond, share, or similar instrument;

(4) with respect to a business owned solely by the principal:

(A) continue, modify, renegotiate, extend, and terminate a contract made before execution of the power of attorney with an individual, legal entity, firm, association, or corporation by or on behalf of the principal with respect to the business;

(B) determine:

(i) the location of the business's operation;

(ii) the nature and extent of the business;

(iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in the business's operation;

- (iv) the amount and types of insurance carried; and
- (v) the method of engaging, compensating, and dealing with the business's accountants, attorneys, and other agents and employees;
- (C) change the name or form of organization under which the business is operated and enter into a partnership agreement with other persons or organize a corporation to take over all or part of the operation of the business; and
- (D) demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the business and control and disburse the money in the operation of the business;
- (5) put additional capital into a business in which the principal has an interest;
- (6) join in a plan of reorganization, consolidation, or merger of the business;
- (7) sell or liquidate a business or part of the business at the time and on the terms that the attorney in fact or agent considers desirable;
- (8) establish the value of a business under a buy-out agreement to which the principal is a party;
- (9) do the following:
 - (A) prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business:
 - (i) that are required by a governmental agency, department, or instrumentality; or
 - (ii) that the attorney in fact or agent considers desirable; and
 - (B) make related payments; and
- (10) pay, compromise, or contest taxes or assessments and perform any other act that the attorney in fact or agent considers desirable to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments with respect to a business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Sec. 752.108. Insurance and Annuity Transactions.

(a) The language conferring authority with respect to insurance and annuity transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

- (1) continue, pay the premium or assessment on, modify, rescind, release, or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;
- (2) procure new, different, or additional insurance contracts and annuities for the principal or the principal's spouse, children, and other dependents and select the amount, type of insurance or annuity, and method of payment;
- (3) pay the premium or assessment on, or modify, rescind, release, or terminate, an insurance contract or annuity procured by the attorney in fact or agent;

- (4) designate the beneficiary of the insurance contract, except as provided by Subsection (b);
- (5) apply for and receive a loan on the security of the insurance contract or annuity;
- (6) surrender and receive the cash surrender value;
- (7) exercise an election;
- (8) change the manner of paying premiums;
- (9) change or convert the type of insurance contract or annuity with respect to which the principal has or claims to have a power described by this section;
- (10) change the beneficiary of an insurance contract or annuity, except that the attorney in fact or agent may be designated a beneficiary only to the extent authorized by Subsection (b);
- (11) apply for and procure government aid to guarantee or pay premiums of an insurance contract on the life of the principal;
- (12) collect, sell, assign, borrow on, or pledge the principal's interest in an insurance contract or annuity; and
- (13) pay from proceeds or otherwise, compromise or contest, or apply for refunds in connection with a tax or assessment imposed by a taxing authority with respect to an insurance contract or annuity or the proceeds of the contract or annuity or liability accruing because of the tax or assessment.

(b) Unless the principal has granted the authority to create or change a beneficiary designation expressly as required by Section 751.031(b)(4), an agent may be named a beneficiary of an insurance contract or an extension, renewal, or substitute for the contract only to the extent the agent was named as a beneficiary by the principal.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 12, effective September 1, 2017.

Sec. 752.109. Estate, Trust, and Other Beneficiary Transactions.

The language conferring authority with respect to estate, trust, and other beneficiary transactions in a statutory durable power of attorney empowers the agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, life estate, escrow, custodianship, or other fund from which the principal is, may become, or claims to be entitled, as a beneficiary, to a share or payment, including to:

- (1) accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from the fund;
- (2) demand or obtain by litigation, action, or otherwise money or any other thing of value to which the principal is, may become, or claims to be entitled because of the fund;
- (3) initiate, participate in, or oppose a legal or judicial proceeding to:
 - (A) ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal; or
 - (B) remove, substitute, or surcharge a fiduciary;
- (4) conserve, invest, disburse, or use anything received for an authorized purpose; and

(5) transfer all or part of the principal's interest in real property, stocks, bonds, accounts with financial institutions, insurance, and other property to the trustee of a revocable trust created by the principal as settlor.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 13, effective September 1, 2017.

Sec. 752.110. Claims and Litigation.

The language conferring general authority with respect to claims and litigation in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) assert and prosecute before a court or administrative agency a claim, a claim for relief, a counterclaim, or an offset, or defend against an individual, a legal entity, or a government, including an action to:

- (A) recover property or other thing of value;
- (B) recover damages sustained by the principal;
- (C) eliminate or modify tax liability; or

(D) seek an injunction, specific performance, or other relief;

(2) bring an action to determine an adverse claim, intervene in an action or litigation, and act as an amicus curiae;

(3) in connection with an action or litigation:

(A) procure an attachment, garnishment, libel, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree; and

(B) perform any lawful act the principal could perform, including:

- (i) acceptance of tender;
- (ii) offer of judgment;
- (iii) admission of facts;
- (iv) submission of a controversy on an agreed statement of facts;
- (v) consent to examination before trial; and
- (vi) binding of the principal in litigation;

(4) submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation;

(5) waive the issuance and service of process on the principal, accept service of process, appear for the principal, designate persons on whom process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, or receive and execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

(6) act for the principal regarding voluntary or involuntary bankruptcy or insolvency proceedings concerning:

- (A) the principal; or
- (B) another person, with respect to a reorganization proceeding or a receivership or application for the appointment of a receiver or trustee that affects the

principal's interest in property or other thing of value; and

(7) pay a judgment against the principal or a settlement made in connection with a claim or litigation and receive and conserve money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Sec. 752.111. Personal and Family Maintenance.

The language conferring authority with respect to personal and family maintenance in a statutory durable power of attorney empowers the agent to:

(1) perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse and children, and other individuals customarily or legally entitled to be supported by the principal, including:

(A) providing living quarters by purchase, lease, or other contract; or

(B) paying the operating costs, including interest, amortization payments, repairs, and taxes on premises owned by the principal and occupied by those individuals;

(2) provide for the individuals described by Subdivision (1):

(A) normal domestic help;

(B) usual vacations and travel expenses; and

(C) money for shelter, clothing, food, appropriate education, and other living costs;

(3) pay necessary medical, dental, and surgical care, hospitalization, and custodial care for the individuals described by Subdivision (1);

(4) continue any provision made by the principal for the individuals described by Subdivision (1) for automobiles or other means of transportation, including registering, licensing, insuring, and replacing the automobiles or other means of transportation;

(5) maintain or open charge accounts for the convenience of the individuals described by Subdivision (1) and open new accounts the agent considers desirable to accomplish a lawful purpose;

(6) continue:

(A) payments incidental to the membership or affiliation of the principal in a church, club, society, order, or other organization; or

(B) contributions to those organizations;

(7) perform all acts necessary in relation to the principal's mail, including:

(A) receiving, signing for, opening, reading, and responding to any mail addressed to the principal, whether through the United States Postal Service or a private mail service;

(B) forwarding the principal's mail to any address; and

(C) representing the principal before the United States Postal Service in all matters relating to mail service; and

(8) subject to the needs of the individuals described by Subdivision (1), provide for the reasonable care of the principal's pets.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 13, effective September 1, 2017.

Sec. 752.112. Benefits from Certain Governmental Programs or Civil or Military Service.

The language conferring authority with respect to benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service in a statutory durable power of attorney empowers the attorney in fact or agent to:

- (1) execute a voucher in the principal's name for an allowance or reimbursement payable by the United States, a foreign government, or a state or subdivision of a state to the principal, including an allowance or reimbursement for:
 - (A) transportation of the individuals described by Section 752.111(1); and
 - (B) shipment of the household effects of those individuals;
- (2) take possession and order the removal and shipment of the principal's property from a post, warehouse, depot, dock, or other governmental or private place of storage or safekeeping and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;
- (3) prepare, file, and prosecute a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal claims to be entitled under a statute or governmental regulation;
- (4) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any benefits the principal may be entitled to receive; and
- (5) receive the financial proceeds of a claim of the type described by this section and conserve, invest, disburse, or use anything received for a lawful purpose.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Sec. 752.113. Retirement Plan Transactions.

- (a) In this section, "retirement plan" means:
 - (1) an employee pension benefit plan as defined by Section 3, Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002), without regard to the provisions of Section (2)(B) of that section;
 - (2) a plan that does not meet the definition of an employee benefit plan under the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.) because the plan does not cover common law employees;
 - (3) a plan that is similar to an employee benefit plan under the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), regardless of whether the plan is covered by Title 1 of that Act, including a plan that provides death benefits to the beneficiary of employees; and
 - (4) an individual retirement account or annuity, a self-employed pension plan, or a similar plan or account.
- (b) The language conferring authority with respect to retirement plan transactions in a statutory durable power of attorney empowers the agent to perform any lawful act the principal may perform with respect to a transaction relating to a retirement plan, including to:

- (1) apply for service or disability retirement benefits;
- (2) select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals;
- (3) designate or change the designation of a beneficiary or benefits payable by a retirement plan, except as provided by Subsection (c);
- (4) make voluntary contributions to retirement plans if authorized by the plan;
- (5) exercise the investment powers available under any self-directed retirement plan;
- (6) make rollovers of plan benefits into other retirement plans;
- (7) borrow from, sell assets to, and purchase assets from retirement plans if authorized by the plan;
- (8) waive the principal's right to be a beneficiary of a joint or survivor annuity if the principal is not the participant in the retirement plan;
- (9) receive, endorse, and cash payments from a retirement plan;
- (10) waive the principal's right to receive all or a portion of benefits payable by a retirement plan; and
- (11) request and receive information relating to the principal from retirement plan records.

(c) Unless the principal has granted the authority to create or change a beneficiary designation expressly as required by Section 751.031(b)(4), an agent may be named a beneficiary under a retirement plan only to the extent the agent was named a beneficiary by the principal under the retirement plan, or in the case of a rollover or trustee-to-trustee transfer, the predecessor retirement plan.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 6.001, effective September 1, 2019.

Sec. 752.114. Tax Matters.

The language conferring authority with respect to tax matters in a statutory durable power of attorney empowers the attorney in fact or agent to:

- (1) prepare, sign, and file:
 - (A) federal, state, local, and foreign income, gift, payroll, Federal Insurance Contributions Act (26 U.S.C. Chapter 21), and other tax returns;
 - (B) claims for refunds;
 - (C) requests for extensions of time;
 - (D) petitions regarding tax matters; and
 - (E) any other tax-related documents, including:
 - (i) receipts;
 - (ii) offers;
 - (iii) waivers;
 - (iv) consents, including consents and agreements under Section 2032A, Internal Revenue Code of 1986 (26 U.S.C. Section 2032A);
 - (v) closing agreements; and
 - (vi) any power of attorney form required by the Internal Revenue Service or other taxing authority with respect to a tax year on which the statute of limitations has not run and 25 tax years following that tax year;
- (2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies deter-

mined by the Internal Revenue Service or other taxing authority;

(3) exercise any election available to the principal under federal, state, local, or foreign tax law; and

(4) act for the principal in all tax matters, for all periods, before the Internal Revenue Service and any other taxing authority.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Sec. 752.115. Existing Interests; Foreign Interests.

The powers described by Sections 752.102-752.1145 may be exercised equally with respect to an interest the principal has at the time the durable power of attorney is executed or acquires later, whether or not:

- (1) the property is located in this state; or
- (2) the powers are exercised or the durable power of attorney is executed in this state.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 400 (S.B. 1193), § 4, effective September 1, 2017.

CHAPTER 753

Removal of Attorney in Fact or Agent

Section	
753.001.	Procedure for Removal.
753.002.	Notice to Third Parties.

Sec. 753.001. Procedure for Removal.

(a) In this section, “person interested,” notwithstanding Section 22.018, has the meaning assigned by Section 1002.018.

(b) The following persons may file a petition under this section:

(1) any person named as a successor attorney in fact or agent in a durable power of attorney; or

(2) if the person with respect to whom a guardianship proceeding has been commenced is a principal who has executed a durable power of attorney, any person interested in the guardianship proceeding, including an attorney ad litem or guardian ad litem.

(c) On the petition of a person described by Subsection (b), a probate court, after a hearing, may enter an order:

(1) removing a person named and serving as an attorney in fact or agent under a durable power of attorney;

(2) authorizing the appointment of a successor attorney in fact or agent who is named in the durable power of attorney if the court finds that the successor attorney in fact or agent is willing to accept the authority granted under the power of attorney; and

(3) if compensation is allowed by the terms of the durable power of attorney, denying all or part of the removed attorney in fact’s or agent’s compensation.

(d) A court may enter an order under Subsection (c) if the court finds:

(1) that the attorney in fact or agent has breached the attorney in fact’s or agent’s fiduciary duties to the principal;

(2) that the attorney in fact or agent has materially violated or attempted to violate the terms of the durable power of attorney and the violation or attempted violation results in a material financial loss to the principal;

(3) that the attorney in fact or agent is incapacitated or is otherwise incapable of properly performing the attorney in fact’s or agent’s duties; or

(4) that the attorney in fact or agent has failed to make an accounting:

(A) that is required by Section 751.104 within the period prescribed by Section 751.105, by other law, or by the terms of the durable power of attorney; or

(B) as ordered by the court.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 6, effective September 1, 2017.

Sec. 753.002. Notice to Third Parties.

Not later than the 21st day after the date the court enters an order removing an attorney in fact or agent and authorizing the appointment of a successor under Section 753.001, the successor attorney in fact or agent shall provide actual notice of the order to each third party that the attorney in fact or agent has reason to believe relied on or may rely on the durable power of attorney.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 6, effective September 1, 2017.

TITLE 3

GUARDIANSHIP AND RELATED PROCEDURES

SUBTITLE A

GENERAL PROVISIONS

CHAPTER 1002

Definitions

Section	
1002.018.	Interested Person; Person Interested.

Sec. 1002.018. Interested Person; Person Interested.

“Interested person” or “person interested” means:

(1) an heir, devisee, spouse, creditor, or any other person having a property right in or claim against an estate being administered; or

(2) a person interested in the welfare of an incapacitated person.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014.

SUBTITLE B

SCOPE, JURISDICTION, AND VENUE

Chapter	
1021.	General Provisions
1022.	Jurisdiction
1023.	Venue

CHAPTER 1021

General Provisions

Section 1021.001.	Matters Related to Guardianship Proceeding.
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Sec. 1021.001. Matters Related to Guardianship Proceeding.

(a) For purposes of this code, in a county in which there is no statutory probate court, a matter related to a guardianship proceeding includes:

- (1) the granting of letters of guardianship;
- (2) the settling of an account of a guardian and all other matters relating to the settlement, partition, or distribution of a ward's estate;
- (3) a claim brought by or against a guardianship estate;

(4) an action for trial of title to real property that is guardianship estate property, including the enforcement of a lien against the property;

(5) an action for trial of the right of property that is guardianship estate property;

(6) after a guardianship of the estate of a ward is required to be settled as provided by Section 1204.001:

(A) an action brought by or on behalf of the former ward against a former guardian of the ward for alleged misconduct arising from the performance of the person's duties as guardian;

(B) an action calling on the surety of a guardian or former guardian to perform in place of the guardian or former guardian, which may include the award of a judgment against the guardian or former guardian in favor of the surety;

(C) an action against a former guardian of the former ward that is brought by a surety that is called on to perform in place of the former guardian;

(D) a claim for the payment of compensation, expenses, and court costs, and any other matter authorized under Chapter 1155; and

(E) a matter related to an authorization made or duty performed by a guardian under Chapter 1204; and

(7) the appointment of a trustee for a trust created under Section 1301.053 or 1301.054, the settling of an account of the trustee, and all other matters relating to the trust.

(b) For purposes of this code, in a county in which there is a statutory probate court, a matter related to a guardianship proceeding includes:

- (1) all matters and actions described in Subsection (a);
- (2) a suit, action, or application filed against or on behalf of a guardianship or a trustee of a trust created under Section 1301.053 or 1301.054; and
- (3) a cause of action in which a guardian in a guardianship pending in the statutory probate court is a party.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.015(a), effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 20.007, effective September 1, 2015.

CHAPTER 1022

Jurisdiction

Section 1022.001.	General Probate Court Jurisdiction in Guardianship Proceedings; Appeals.
1022.002.	Original Jurisdiction for Guardianship Proceedings.
1022.003.	Jurisdiction of Contested Guardianship Proceeding in County with No Statutory Probate Court or County Court at Law.
1022.004.	Jurisdiction of Contested Guardianship Proceeding in County with No Statutory Probate Court.
1022.005.	Exclusive Jurisdiction of Guardianship Proceeding in County with Statutory Probate Court.
1022.007.	Transfer of Proceeding by Statutory Probate Court.

Sec. 1022.001. General Probate Court Jurisdiction in Guardianship Proceedings; Appeals.

(a) All guardianship proceedings must be filed and heard in a court exercising original probate jurisdiction. The court exercising original probate jurisdiction also has jurisdiction of all matters related to the guardianship proceeding as specified in Section 1021.001 for that type of court.

(b) A probate court may exercise pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy.

(c) A final order issued by a probate court is appealable to the court of appeals.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.015(a), effective January 1, 2014.

Sec. 1022.002. Original Jurisdiction for Guardianship Proceedings.

(a) In a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, the county court has original jurisdiction of guardianship proceedings.

(b) In a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, the county court at law exercising original probate jurisdiction and the county court have concurrent original jurisdiction of guardianship proceedings, unless otherwise provided by law. The judge of a county court may hear guardianship proceedings while sitting for the judge of any other county court.

(c) In a county in which there is a statutory probate court, the statutory probate court has original jurisdiction of guardianship proceedings.

(d) From the filing of the application for the appointment of a guardian of the estate or person, or both, until the guardianship is settled and closed under this chapter, the administration of the estate of a minor or other incapacitated person is one proceeding for purposes of jurisdiction and is a proceeding in rem.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.015(a), effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 982 (H.B. 2080), § 2(a), effective January 1, 2014 ((d) renumbered from Tex. Probate Code Sec. 604).

Sec. 1022.003. Jurisdiction of Contested Guardianship Proceeding in County with No Statutory Probate Court or County Court at Law.

(a) In a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, when a matter in a guardianship proceeding is contested, the judge of the county court may, on the judge's own motion, or shall, on the motion of any party to the proceeding, according to the motion:

(1) request the assignment of a statutory probate court judge to hear the contested matter, as provided by Section 25.0022, Government Code; or

(2) transfer the contested matter to the district court, which may then hear the contested matter as if originally filed in the district court.

(b) If a party to a guardianship proceeding files a motion for the assignment of a statutory probate court judge to hear a contested matter in the proceeding before the judge of the county court transfers the contested matter to a district court under this section, the county judge shall grant the motion for the assignment of a statutory probate court judge and may not transfer the matter to the district court unless the party withdraws the motion.

(c) If a judge of a county court requests the assignment of a statutory probate court judge to hear a contested matter in a guardianship proceeding on the judge's own motion or on the motion of a party to the proceeding as provided by this section, the judge may request that the statutory probate court judge be assigned to the entire proceeding on the judge's own motion or on the motion of a party.

(d) A party to a guardianship proceeding may file a motion for the assignment of a statutory probate court judge under this section before a matter in the proceeding becomes contested, and the motion is given effect as a motion for assignment of a statutory probate court judge under Subsection (a) if the matter later becomes contested.

(e) Notwithstanding any other law, a transfer of a contested matter in a guardianship proceeding to a district court under any authority other than the authority provided by this section:

(1) is disregarded for purposes of this section; and

(2) does not defeat the right of a party to the proceeding to have the matter assigned to a statutory probate court judge in accordance with this section.

(f) A statutory probate court judge assigned to a contested matter in a guardianship proceeding or to the entire proceeding under this section has the jurisdiction and authority granted to a statutory probate court by this code. A statutory probate court judge assigned to hear only the contested matter in a guardianship proceeding shall, on resolution of the matter, including any appeal of the matter, return the matter to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable. A statutory probate court judge assigned to the entire guardianship proceeding as provided by Subsection (c) shall, on resolution of the contested matter in the proceeding, including any appeal of the matter, return the entire proceeding to the county court for further proceedings not

inconsistent with the orders of the statutory probate court or court of appeals, as applicable.

(g) A district court to which a contested matter in a guardianship proceeding is transferred under this section has the jurisdiction and authority granted to a statutory probate court by this code. On resolution of a contested matter transferred to the district court under this section, including any appeal of the matter, the district court shall return the matter to the county court for further proceedings not inconsistent with the orders of the district court or court of appeals, as applicable.

(h) If only the contested matter in a guardianship proceeding is assigned to a statutory probate court judge under this section, or if the contested matter in a guardianship proceeding is transferred to a district court under this section, the county court shall continue to exercise jurisdiction over the management of the guardianship, other than a contested matter, until final disposition of the contested matter is made in accordance with this section. Any matter related to a guardianship proceeding in which a contested matter is transferred to a district court may be brought in the district court. The district court in which a matter related to the proceeding is filed may, on the court's own motion or on the motion of any party, find that the matter is not a contested matter and transfer the matter to the county court with jurisdiction of the management of the guardianship.

(i) If a contested matter in a guardianship proceeding is transferred to a district court under this section, the district court has jurisdiction of any contested matter in the proceeding that is subsequently filed, and the county court shall transfer those contested matters to the district court. If a statutory probate court judge is assigned under this section to hear a contested matter in a guardianship proceeding, the statutory probate court judge shall be assigned to hear any contested matter in the proceeding that is subsequently filed.

(j) The clerk of a district court to which a contested matter in a guardianship proceeding is transferred under this section may perform in relation to the transferred matter any function a county clerk may perform with respect to that type of matter.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.015(a), effective January 1, 2014.

Sec. 1022.004. Jurisdiction of Contested Guardianship Proceeding in County with No Statutory Probate Court.

(a) In a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, when a matter in a guardianship proceeding is contested, the judge of the county court may, on the judge's own motion, or shall, on the motion of any party to the proceeding, transfer the contested matter to the county court at law. In addition, the judge of the county court, on the judge's own motion or on the motion of a party to the proceeding, may transfer the entire proceeding to the county court at law.

(b) A county court at law to which a proceeding is transferred under this section may hear the proceeding as if originally filed in that court. If only a contested matter in the proceeding is transferred, on the resolution of the

matter, the matter shall be returned to the county court for further proceedings not inconsistent with the orders of the county court at law.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.015(a), effective January 1, 2014.

Sec. 1022.005. Exclusive Jurisdiction of Guardianship Proceeding in County with Statutory Probate Court.

(a) In a county in which there is a statutory probate court, the statutory probate court has exclusive jurisdiction of all guardianship proceedings, regardless of whether contested or uncontested.

(b) A cause of action related to a guardianship proceeding of which the statutory probate court has exclusive jurisdiction as provided by Subsection (a) must be brought in the statutory probate court unless the jurisdiction of the statutory probate court is concurrent with the jurisdiction of a district court as provided by Section 1022.006 or with the jurisdiction of any other court.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.015(a), effective January 1, 2014.

Sec. 1022.007. Transfer of Proceeding by Statutory Probate Court.

(a) A judge of a statutory probate court, on the motion of a party to the action or of a person interested in the guardianship, may:

(1) transfer to the judge's court from a district, county, or statutory court a cause of action that is a matter related to a guardianship proceeding pending in the statutory probate court, including a cause of action that is a matter related to a guardianship proceeding pending in the statutory probate court and in which the guardian, ward, or proposed ward in the pending guardianship proceeding is a party; and

(2) consolidate the transferred cause of action with the guardianship proceeding to which it relates and any other proceedings in the statutory probate court that are related to the guardianship proceeding.

(b) Notwithstanding any other provision of this title, the proper venue for an action by or against a guardian, ward, or proposed ward for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.015(a), effective January 1, 2014.

CHAPTER 1023

Venue

Section 1023.001.	Venue for Appointment of Guardian.
1023.002.	Concurrent Venue and Transfer for Want of Venue.
1023.003.	Transfer of Guardianship to Another County.

Sec. 1023.001. Venue for Appointment of Guardian.

(a) Except as otherwise authorized by this section, a proceeding for the appointment of a guardian for the

person or estate, or both, of an incapacitated person shall be brought in the county in which the proposed ward resides or is located on the date the application is filed or in the county in which the principal estate of the proposed ward is located.

(b) A proceeding for the appointment of a guardian for the person or estate, or both, of a minor may be brought:

(1) in the county in which both the minor's parents reside;

(2) if the parents do not reside in the same county, in the county in which the parent who is the sole managing conservator of the minor resides, or in the county in which the parent who is the joint managing conservator with the greater period of physical possession of and access to the minor resides;

(3) if only one parent is living and the parent has custody of the minor, in the county in which that parent resides;

(4) if both parents are dead but the minor was in the custody of a deceased parent, in the county in which the last surviving parent having custody resided; or

(5) if both parents of a minor child have died in a common disaster and there is no evidence that the parents died other than simultaneously, in the county in which both deceased parents resided at the time of their simultaneous deaths if they resided in the same county.

(c) A proceeding for the appointment of a guardian who was appointed by will may be brought in the county in which the will was admitted to probate or in the county of the appointee's residence if the appointee resides in this state.

(d) [Repealed by Acts 1999, 76th Leg., ch. 379 (H.B. 3337), § 10, effective September 1, 1999.]

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 957 (H.B. 2685), § 1, effective September 1, 1993; am. Acts 1999, 76th Leg., ch. 379 (H.B. 3337), § 10, effective September 1, 1999; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.015(c), effective January 1, 2014 (renumbered from Tex. Probate Code Sec. 610).

Sec. 1023.002. Concurrent Venue and Transfer for Want of Venue.

(a) If two or more courts have concurrent venue of a guardianship proceeding, the court in which an application for a guardianship proceeding is initially filed has and retains jurisdiction of the proceeding. A proceeding is considered commenced by the filing of an application alleging facts sufficient to confer venue, and the proceeding initially legally commenced extends to all of the property of the guardianship estate.

(b) If a guardianship proceeding is commenced in more than one county, it shall be stayed except in the county in which it was initially commenced until final determination of proper venue is made by the court in the county in which it was initially commenced.

(c) If it appears to the court at any time before the guardianship is closed that the proceeding was commenced in a court that did not have venue over the proceeding, the court shall, on the application of any interested person, transfer the proceeding to the proper county.

(d) When a proceeding is transferred to another county under a provision of this chapter, all orders entered in

connection with the proceeding shall be valid and shall be recognized in the court to which the guardianship was ordered transferred, if the orders were made and entered in conformance with the procedures prescribed by this code.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.015(a), effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.015(d), effective January 1, 2014, ((b), (c), and (d) renumbered from Tex. Probate Code Sec. 611(b), (c) and (d)).

Sec. 1023.003. Transfer of Guardianship to Another County.

(a) When a guardian or any other person desires to transfer the transaction of the business of the guardianship from one county to another, the person shall file a written application in the court in which the guardianship is pending stating the reason for the transfer.

(b) With notice as provided by Section 1023.004, the court in which a guardianship is pending, on the court’s own motion, may transfer the transaction of the business of the guardianship to another county if the ward resides in the county to which the guardianship is to be transferred.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.015(a), effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 1(c), effective September 1, 2017.

SUBTITLE C

PROCEDURAL MATTERS

Chapter 1051.	Notices and Process in Guardianship Proceedings in General
1055.	Trial and Hearing Matters

CHAPTER 1051

Notices and Process in Guardianship Proceedings in General

Subchapter C.	Notice and Citation Required for Application for Guardianship
F.	Additional Notice Provisions

Subchapter C

Notice and Citation Required for Application for Guardianship

Section 1051.102.	Issuance of Citation for Application for Guardianship.
1051.103.	Service of Citation for Application for Guardianship.
1051.104.	Notice by Applicant for Guardianship.
1051.106.	Action by Court on Application for Guardianship.

Sec. 1051.102. Issuance of Citation for Application for Guardianship.

(a) On the filing of an application for guardianship, the court clerk shall issue a citation stating:

- (1) that the application was filed;
- (2) the name of the proposed ward;
- (3) the name of the applicant; and

(4) the name of the person to be appointed guardian as provided in the application, if that person is not the applicant.

(b) The citation must cite all persons interested in the welfare of the proposed ward to appear at the time and place stated in the notice if the persons wish to contest the application.

(c) The citation shall be posted.

(d) The citation must contain a clear and conspicuous statement informing those interested persons of the right provided under Section 1051.252 to be notified of any or all motions, applications, or pleadings relating to the application for the guardianship or any subsequent guardianship proceeding involving the ward after the guardianship is created, if any.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.017, effective January 1, 2014.

Sec. 1051.103. Service of Citation for Application for Guardianship.

(a) The sheriff or other officer shall personally serve citation to appear and answer an application for guardianship on:

- (1) a proposed ward who is 12 years of age or older;
- (2) the proposed ward’s parents, if the whereabouts of the parents are known or can be reasonably ascertained;
- (3) any court-appointed conservator or person having control of the care and welfare of the proposed ward;
- (4) the proposed ward’s spouse, if the whereabouts of the spouse are known or can be reasonably ascertained; and
- (5) the person named in the application to be appointed guardian, if that person is not the applicant.

(b) A citation served as provided by Subsection (a) must contain the statement regarding the right under Section 1051.252 that is required in the citation issued under Section 1051.102.

(c) A citation served as provided by Subsection (a) to a relative of the proposed ward described by Subsection (a)(2) or (4) must contain a statement notifying the relative that, if a guardianship is created for the proposed ward, the relative must elect in writing in order to receive notice about the ward under Section 1151.056.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.018, effective January 1, 2014; am. Acts 2017, 85th Leg., ch. 1125 (S.B. 1709), § 1, effective June 15, 2017.

Sec. 1051.104. Notice by Applicant for Guardianship.

(a) The person filing an application for guardianship shall mail a copy of the application and a notice containing the information required in the citation issued under Section 1051.102 by registered or certified mail, return receipt requested, or by any other form of mail that provides proof of delivery, to the following persons, if their whereabouts are known or can be reasonably ascertained:

- (1) each adult child of the proposed ward;
- (2) each adult sibling of the proposed ward;
- (3) the administrator of a nursing home facility or similar facility in which the proposed ward resides;

(4) the operator of a residential facility in which the proposed ward resides;

(5) a person whom the applicant knows to hold a power of attorney signed by the proposed ward;

(6) a person designated to serve as guardian of the proposed ward by a written declaration under Subchapter E, Chapter 1104, if the applicant knows of the existence of the declaration;

(7) a person designated to serve as guardian of the proposed ward in the probated will of the last surviving parent of the proposed ward;

(8) a person designated to serve as guardian of the proposed ward by a written declaration of the proposed ward's last surviving parent, if the declarant is deceased and the applicant knows of the existence of the declaration; and

(9) each adult named in the application as an "other living relative" of the proposed ward within the third degree by consanguinity, as required by Section 1101.001(b)(11) or (13), if the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased or there is no spouse, parent, adult sibling, or adult child.

(b) The applicant shall file with the court:

(1) a copy of any notice required by Subsection (a) and the proofs of delivery of the notice; and

(2) an affidavit sworn to by the applicant or the applicant's attorney stating:

(A) that the notice was mailed as required by Subsection (a); and

(B) the name of each person to whom the notice was mailed, if the person's name is not shown on the proof of delivery.

(c) Failure of the applicant to comply with Subsections (a)(2)—(9) does not affect the validity of a guardianship created under this title.

(d) Notice required by Subsection (a) to a relative of the proposed ward described by Subsection (a)(1) or (2) must contain a statement notifying the relative that, if a guardianship is created for the proposed ward, the relative must elect in writing in order to receive notice about the ward under Section 1151.056.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.019, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 1031 (H.B. 1438), § 3, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 1125 (S.B. 1709), § 2, effective June 15, 2017.

Sec. 1051.106. Action by Court on Application for Guardianship.

The court may not act on an application for the creation of a guardianship until the applicant has complied with Section 1051.104(b) and not earlier than the Monday following the expiration of the 10-day period beginning on the date service of notice and citation has been made as provided by Sections 1051.102, 1051.103, and 1051.104(a)(1).

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014.

Subchapter F

Additional Notice Provisions

Section 1051.252. Request for Notice of Filing of Pleading.

Sec. 1051.252. Request for Notice of Filing of Pleading.

(a) At any time after an application is filed to commence a guardianship proceeding, a person interested in the estate or welfare of a ward or incapacitated person may file with the county clerk a written request to be notified of all, or any specified, motions, applications, or pleadings filed with respect to the proceeding by any person or by a person specifically designated in the request. A person filing a request under this section is responsible for payment of the fees and other costs of providing the requested documents, and the clerk may require a deposit to cover the estimated costs of providing the notice. The clerk shall send to the requestor by regular mail a copy of any requested document.

(b) A county clerk's failure to comply with a request under this section does not invalidate a proceeding.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014.

CHAPTER 1055

Trial and Hearing Matters

Subchapter
A. Standing and Pleadings
B. Trial and Hearing
C. Evidence

Subchapter A

Standing and Pleadings

Section 1055.001. Standing to Commence or Contest Proceeding.
1055.003. Intervention by Interested Person.

Sec. 1055.001. Standing to Commence or Contest Proceeding.

(a) Except as provided by Subsection (b), any person has the right to:

(1) commence a guardianship proceeding, including a proceeding for complete restoration of a ward's capacity or modification of a ward's guardianship; or

(2) appear and contest a guardianship proceeding or the appointment of a particular person as guardian.

(b) A person who has an interest that is adverse to a proposed ward or incapacitated person may not:

(1) file an application to create a guardianship for the proposed ward or incapacitated person;

(2) contest the creation of a guardianship for the proposed ward or incapacitated person;

(3) contest the appointment of a person as a guardian of the proposed ward or incapacitated person; or

(4) contest an application for complete restoration of a ward's capacity or modification of a ward's guardianship.

(c) The court shall determine by motion in limine the standing of a person who has an interest that is adverse to a proposed ward or incapacitated person.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014.

Sec. 1055.003. Intervention by Interested Person.

(a) Notwithstanding the Texas Rules of Civil Procedure and except as provided by Subsection (d), an interested person may intervene in a guardianship proceeding only by filing a timely motion to intervene that is served on the parties.

(b) The motion must state the grounds for intervention in the proceeding and be accompanied by a pleading that sets out the purpose for which intervention is sought.

(c) The court has the discretion to grant or deny the motion and, in exercising that discretion, must consider whether:

(1) the intervention will unduly delay or prejudice the adjudication of the original parties' rights; or

(2) the proposed intervenor has such an adverse relationship with the ward or proposed ward that the intervention would unduly prejudice the adjudication of the original parties' rights.

(d) A person who is entitled to receive notice under Section 1051.104 is not required to file a motion under this section to intervene in a guardianship proceeding.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1031 (H.B. 1438), § 7, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 7, effective September 1, 2017.

Subchapter B

Trial and Hearing

Section 1055.052. Trial by Jury.

Sec. 1055.052. Trial by Jury.

A party in a contested guardianship proceeding is entitled to a jury trial on request.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014.

Subchapter C

Evidence

Section 1055.101. Applicability of Certain Rules Relating to Witnesses and Evidence.

Sec. 1055.101. Applicability of Certain Rules Relating to Witnesses and Evidence.

The rules relating to witnesses and evidence that apply in the district court apply in a guardianship proceeding to the extent practicable.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014.

SUBTITLE D

CREATION OF GUARDIANSHIP

Chapter 1101. General Procedure to Appoint Guardian

Chapter 1104. Selection of and Eligibility to Serve As Guardian
 1105. Qualification of Guardians
 1106. Letters of Guardianship

CHAPTER 1101

General Procedure to Appoint Guardian

Subchapter A. Initiation of Proceeding for Appointment of Guardian

Section 1101.001. Application for Appointment of Guardian; Contents.

Subchapter B. Hearing; Jury Trial

1101.051. Hearing.

Subchapter C. Determination of Necessity of Guardianship; Findings and Proof

1101.101. Findings and Proof Required.
 1101.102. Determination of Incapacity of Certain Adults: Recurring Acts or Occurrences.
 1101.103. Determination of Incapacity of Certain Adults: Physician Examination.
 1101.104. Examinations and Documentation Regarding Intellectual Disability.

Subchapter D. Court Action

1101.151. Order Appointing Guardian with Full Authority.
 1101.152. Order Appointing Guardian with Limited Authority.
 1101.153. General Contents of Order Appointing Guardian.

Subchapter A

Initiation of Proceeding for Appointment of Guardian

Sec. 1101.001. Application for Appointment of Guardian; Contents.

(a) Any person may commence a proceeding for the appointment of a guardian by filing a written application in a court having jurisdiction and venue.

(b) The application must be sworn to by the applicant and state:

(1) the proposed ward's name, sex, date of birth, and address;

(2) the name, relationship, and address of the person the applicant seeks to have appointed as guardian;

(3) whether guardianship of the person or estate, or both, is sought;

(3-a) whether alternatives to guardianship and available supports and services to avoid guardianship were considered;

(3-b) whether any alternatives to guardianship and supports and services available to the proposed ward considered are feasible and would avoid the need for a guardianship;

(4) the nature and degree of the alleged incapacity, the specific areas of protection and assistance requested, and the limitation or termination of rights requested to be included in the court's order of appointment, including a termination of:

(A) the right of a proposed ward who is 18 years of age or older to vote in a public election;

(B) the proposed ward's eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code; and

(C) the right of a proposed ward to make personal decisions regarding residence;

(5) the facts requiring the appointment of a guardian;

(6) the interest of the applicant in the appointment of a guardian;

(7) the nature and description of any kind of guardianship existing for the proposed ward in any other state;

(8) the name and address of any person or institution having the care and custody of the proposed ward;

(9) the approximate value and description of the proposed ward's property, including any compensation, pension, insurance, or allowance to which the proposed ward may be entitled;

(10) the name and address of any person whom the applicant knows to hold a power of attorney signed by the proposed ward and a description of the type of power of attorney;

(11) for a proposed ward who is a minor, the following information if known by the applicant:

(A) the name of each of the proposed ward's parents and either the parent's address or that the parent is deceased;

(B) the name and age of each of the proposed ward's siblings, if any, and either the sibling's address or that the sibling is deceased; and

(C) if each of the proposed ward's parents and adult siblings are deceased, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and who are adults;

(12) for a proposed ward who is a minor, whether the minor was the subject of a legal or conservatorship proceeding in the preceding two years and, if so:

(A) the court involved;

(B) the nature of the proceeding; and

(C) any final disposition of the proceeding;

(13) for a proposed ward who is an adult, the following information if known by the applicant:

(A) the name of the proposed ward's spouse, if any, and either the spouse's address or that the spouse is deceased;

(B) the name of each of the proposed ward's parents and either the parent's address or that the parent is deceased;

(C) the name and age of each of the proposed ward's siblings, if any, and either the sibling's address or that the sibling is deceased;

(D) the name and age of each of the proposed ward's children, if any, and either the child's address or that the child is deceased; and

(E) if there is no living spouse, parent, adult sibling, or adult child of the proposed ward, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and who are adults;

(14) facts showing that the court has venue of the proceeding; and

(15) if applicable, that the person whom the applicant seeks to have appointed as a guardian is a private professional guardian who is certified under Subchapter C, Chapter 155, Government Code, and has complied with the requirements of Subchapter G, Chapter 1104.

(c) For purposes of this section, a proposed ward's relatives within the third degree by consanguinity include the proposed ward's:

(1) grandparent or grandchild; and

(2) great-grandparent, great-grandchild, aunt who is a sister of a parent of the proposed ward, uncle who is a brother of a parent of the proposed ward, nephew who is a child of a brother or sister of the proposed ward, or niece who is a child of a brother or sister of the proposed ward.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 42 (S.B. 966), § 2.07, effective September 1, 2014; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.035, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 7, effective September 1, 2015; am. Acts 2015, 84th Leg., ch. 1031 (H.B. 1438), § 8, effective September 1, 2015.

Subchapter B

Hearing; Jury Trial

Sec. 1101.051. Hearing.

(a) At a hearing for the appointment of a guardian, the court shall:

(1) inquire into the ability of any allegedly incapacitated adult to:

(A) feed, clothe, and shelter himself or herself;

(B) care for his or her own physical health; and

(C) manage his or her property or financial affairs;

(2) ascertain the age of any proposed ward who is a minor;

(3) inquire into the governmental reports for any person who must have a guardian appointed to receive funds due the person from any governmental source; and

(4) inquire into the qualifications, abilities, and capabilities of the person seeking to be appointed guardian.

(b) A proposed ward must be present at the hearing unless the court, on the record or in the order, determines that a personal appearance is not necessary.

(c) The court may close the hearing at the request of the proposed ward or the proposed ward's counsel.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014.

Subchapter C

Determination of Necessity of Guardianship; Findings and Proof

Sec. 1101.101. Findings and Proof Required.

(a) Before appointing a guardian for a proposed ward, the court must:

(1) find by clear and convincing evidence that:

(A) the proposed ward is an incapacitated person;

(B) it is in the proposed ward's best interest to have the court appoint a person as the proposed ward's guardian;

(C) the proposed ward's rights or property will be protected by the appointment of a guardian;

(D) alternatives to guardianship that would avoid the need for the appointment of a guardian have been considered and determined not to be feasible; and

(E) supports and services available to the proposed ward that would avoid the need for the appointment of a guardian have been considered and determined not to be feasible; and

(2) find by a preponderance of the evidence that:

(A) the court has venue of the case;

(B) the person to be appointed guardian is eligible to act as guardian and is entitled to appointment, or, if no eligible person entitled to appointment applies, the person appointed is a proper person to act as guardian;

(C) if a guardian is appointed for a minor, the guardianship is not created for the primary purpose of enabling the minor to establish residency for enrollment in a school or school district for which the minor is not otherwise eligible for enrollment; and

(D) the proposed ward:

(i) is totally without capacity as provided by this title to care for himself or herself and to manage his or her property; or

(ii) lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property.

(b) The court may not grant an application to create a guardianship unless the applicant proves each element required by this title.

(c) A finding under Subsection (a)(2)(D)(ii) must specifically state whether the proposed ward lacks the capacity, or lacks sufficient capacity with supports and services, to make personal decisions regarding residence, voting, operating a motor vehicle, and marriage.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 8, effective September 1, 2015.

Sec. 1101.102. Determination of Incapacity of Certain Adults: Recurring Acts or Occurrences.

A determination of incapacity of an adult proposed ward, other than a person who must have a guardian appointed to receive funds due the person from any governmental source, must be evidenced by recurring acts or occurrences in the preceding six months and not by isolated instances of negligence or bad judgment.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014.

Sec. 1101.103. Determination of Incapacity of Certain Adults: Physician Examination.

(a) Except as provided by Section 1101.104, the court may not grant an application to create a guardianship for an incapacitated person, other than a minor or person for whom it is necessary to have a guardian appointed only to receive funds from a governmental source, unless the applicant presents to the court a written letter or certificate from a physician licensed in this state that is:

(1) dated not earlier than the 120th day before the date the application is filed; and

(2) based on an examination the physician performed not earlier than the 120th day before the date the application is filed.

(b) The letter or certificate must:

(1) describe the nature, degree, and severity of the proposed ward's incapacity, including any functional deficits regarding the proposed ward's ability to:

(A) handle business and managerial matters;

(B) manage financial matters;

(C) operate a motor vehicle;

(D) make personal decisions regarding residence, voting, and marriage; and

(E) consent to medical, dental, psychological, or psychiatric treatment;

(2) in providing a description under Subdivision (1) regarding the proposed ward's ability to operate a motor vehicle and make personal decisions regarding voting, state whether in the physician's opinion the proposed ward:

(A) has the mental capacity to vote in a public election; and

(B) has the ability to safely operate a motor vehicle;

(3) provide an evaluation of the proposed ward's physical condition and mental functioning and summarize the proposed ward's medical history if reasonably available;

(3-a) in providing an evaluation under Subdivision (3), state whether improvement in the proposed ward's physical condition and mental functioning is possible and, if so, state the period after which the proposed ward should be reevaluated to determine whether a guardianship continues to be necessary;

(4) state how or in what manner the proposed ward's ability to make or communicate responsible decisions concerning himself or herself is affected by the proposed ward's physical or mental health, including the proposed ward's ability to:

(A) understand or communicate;

(B) recognize familiar objects and individuals;

(C) solve problems;

(D) reason logically; and

(E) administer to daily life activities with and without supports and services;

(5) state whether any current medication affects the proposed ward's demeanor or the proposed ward's ability to participate fully in a court proceeding;

(6) describe the precise physical and mental conditions underlying a diagnosis of a mental disability, and state whether the proposed ward would benefit from supports and services that would allow the individual to live in the least restrictive setting;

(6-a) state whether a guardianship is necessary for the proposed ward and, if so, whether specific powers or duties of the guardian should be limited if the proposed ward receives supports and services; and

(7) include any other information required by the court.

(c) If the court determines it is necessary, the court may appoint the necessary physicians to examine the proposed ward. The court must make its determination with respect to the necessity for a physician's examination of the proposed ward at a hearing held for that purpose. Not

later than the fourth day before the date of the hearing, the applicant shall give to the proposed ward and the proposed ward's attorney ad litem written notice specifying the purpose and the date and time of the hearing.

(d) A physician who examines the proposed ward, other than a physician or psychologist who examines the proposed ward under Section 1101.104(2), shall make available for inspection by the attorney ad litem appointed to represent the proposed ward a written letter or certificate from the physician that complies with the requirements of Subsections (a) and (b).

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 9, effective September 1, 2015.

Sec. 1101.104. Examinations and Documentation Regarding Intellectual Disability.

If an intellectual disability is the basis of the proposed ward's alleged incapacity, the court may not grant an application to create a guardianship for the proposed ward unless the applicant presents to the court a written letter or certificate that:

- (1) complies with Sections 1101.103(a) and (b); or
- (2) shows that not earlier than 24 months before the hearing date:

(A) the proposed ward has been examined by a physician or psychologist licensed in this state or certified by the Department of Aging and Disability Services to perform the examination, in accordance with rules of the executive commissioner of the Health and Human Services Commission governing examinations of that kind, and the physician's or psychologist's written findings and recommendations include a determination of an intellectual disability; or

(B) a physician or psychologist licensed in this state or certified by the Department of Aging and Disability Services to perform examinations described by Paragraph (A) updated or endorsed in writing a prior determination of an intellectual disability for the proposed ward made by a physician or psychologist licensed in this state or certified by the department.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 780 (S.B. 1235), § 2, effective January 1, 2014.

Subchapter D

Court Action

Sec. 1101.151. Order Appointing Guardian with Full Authority.

(a) If it is found that the proposed ward is totally without capacity to care for himself or herself, manage his or her property, operate a motor vehicle, make personal decisions regarding residence, and vote in a public election, the court may appoint a guardian of the proposed ward's person or estate, or both, with full authority over the incapacitated person except as provided by law.

(b) An order appointing a guardian under this section must contain findings of fact and specify:

- (1) the information required by Section 1101.153(a);
- (2) that the guardian has full authority over the incapacitated person;
- (3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156;
- (4) whether the person is totally incapacitated because of a mental condition;
- (5) that the person does not have the capacity to operate a motor vehicle, make personal decisions regarding residence, and vote in a public election; and
- (6) if it is a guardianship of the person of the ward or of both the person and the estate of the ward, the rights of the guardian with respect to the person as specified in Section 1151.051(c)(1).

(c) An order appointing a guardian under this section that includes the rights of the guardian with respect to the person as specified in Section 1151.051(c)(1) must also contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

“NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A GUARDIAN OF THE PERSON OF A WARD TO HAVE PHYSICAL POSSESSION OF THE WARD OR TO ESTABLISH THE WARD'S LEGAL DOMICILE AS SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS OF THE COURT-APPOINTED GUARDIAN OF THE PERSON OF THE WARD. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS \$10,000.”

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 982 (H.B. 2080), § 9, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 10, effective September 1, 2015.

Sec. 1101.152. Order Appointing Guardian with Limited Authority.

(a) If it is found that the proposed ward lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property with or without supports and services, the court may appoint a guardian with limited powers and permit the proposed ward to care for himself or herself, including making personal decisions regarding residence, or to manage his or her property commensurate with the proposed ward's ability.

(b) An order appointing a guardian under this section must contain findings of fact and specify:

- (1) the information required by Section 1101.153(a);
- (2) the specific powers, limitations, or duties of the guardian with respect to the person's care or the management of the person's property by the guardian;

(2-a) the specific rights and powers retained by the person:

(A) with the necessity for supports and services; and

(B) without the necessity for supports and services;

(3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156; and

(4) whether the person is incapacitated because of a mental condition and, if so, whether the person:

(A) retains the right to make personal decisions regarding residence or vote in a public election; or

(B) maintains eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code.

(c) An order appointing a guardian under this section that includes the right of the guardian to have physical possession of the ward or to establish the ward's legal domicile as specified in Section 1151.051(c)(1) must also contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

"NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A GUARDIAN OF THE PERSON OF A WARD TO HAVE PHYSICAL POSSESSION OF THE WARD OR TO ESTABLISH THE WARD'S LEGAL DOMICILE AS SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS OF THE COURT-APPOINTED GUARDIAN OF THE PERSON OF THE WARD. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS \$10,000."

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 982 (H.B. 2080), § 10, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 11, effective September 1, 2015.

Sec. 1101.153. General Contents of Order Appointing Guardian.

(a) A court order appointing a guardian must specify:

(1) the name of the person appointed;

(2) the name of the ward;

(3) whether the guardian is of the person or estate of the ward, or both;

(4) the amount of any bond required;

(5) if it is a guardianship of the estate of the ward and the court considers an appraisal to be necessary, one, two, or three disinterested persons to appraise the estate and to return the appraisal to the court; and

(6) that the clerk will issue letters of guardianship to the person appointed when the person has qualified according to law.

(a-1) If the letter or certificate under Section 1101.103(b)(3-a) stated that improvement in the ward's physical condition or mental functioning is possible and specified a period of less than a year after which the ward should be reevaluated to determine continued necessity for the guardianship, an order appointing a guardian must include the date by which the guardian must submit to the court an updated letter or certificate containing the requirements of Section 1101.103(b).

(b) An order appointing a guardian may not duplicate or conflict with the powers and duties of any other guardian.

(c) An order appointing a guardian or a successor guardian may specify as authorized by Section 1202.001(c) a period during which a petition for adjudication that the ward no longer requires the guardianship may not be filed without special leave.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 12, effective September 1, 2015.

CHAPTER 1104

Selection of and Eligibility to Serve As Guardian

Subchapter F

Certification Requirements for Certain Guardians

Section 1104.251. Certification Required for Certain Guardians.

Sec. 1104.251. Certification Required for Certain Guardians.

(a) An individual must be certified under Subchapter C, Chapter 155, Government Code, if the individual:

(1) is a private professional guardian;

(2) will represent the interests of a ward as a guardian on behalf of a private professional guardian;

(3) is providing guardianship services to a ward of a guardianship program on the program's behalf, except as provided by Section 1104.254; or

(4) is an employee of the Department of Aging and Disability Services providing guardianship services to a ward of the department.

(b) An individual employed by or contracting with a guardianship program must be certified as provided by Subsection (a) to provide guardianship services to a ward of the program.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 42 (S.B. 966), § 2.08, effective September 1, 2014.

CHAPTER 1105

Qualification of Guardians

Subchapter A

General Provisions

Section 1105.003. Period for Taking Oath and Giving Bond.

Sec. 1105.003. Period for Taking Oath and Giving Bond.

(a) Except as provided by Section 1103.003, an oath may be taken and subscribed and a bond may be given and approved at any time before:

- (1) the 21st day after the date of the order granting letters of guardianship; or
- (2) the letters of guardianship are revoked for a failure to qualify within the period allowed.

(b) A guardian of an estate must give a bond before being issued letters of guardianship unless a bond is not required under this title.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014.

CHAPTER 1106

Letters of Guardianship

Sec. 1106.001. Issuance of Certificate As Letters of Guardianship.

(a) When a person who is appointed guardian has qualified under Section 1105.002, the clerk shall issue to the guardian a certificate under seal stating:

- (1) the fact of the appointment and of the qualification;
- (2) the date of the appointment and of the qualification; and
- (3) the date the letters of guardianship expire.

(b) The certificate issued by the clerk under Subsection (a) constitutes letters of guardianship.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014.

SUBTITLE E

ADMINISTRATION OF GUARDIANSHIP

CHAPTER 1151

Rights, Powers, and Duties Under Guardianship

Subchapter B

Powers and Duties of Guardians Relating to Care of Ward

Section	
1151.051.	General Powers and Duties of Guardians of the Person.
1151.052.	Care of Adult Ward.
1151.053.	Commitment of Ward.
1151.054.	Administration of Medication.

Sec. 1151.051. General Powers and Duties of Guardians of the Person.

(a) The guardian of the person of a ward is entitled to take charge of the person of the ward.

(b) The duties of the guardian of the person correspond with the rights of the guardian.

(c) A guardian of the person has:

(1) the right to have physical possession of the ward and to establish the ward's legal domicile;

(2) the duty to provide care, supervision, and protection for the ward;

(3) the duty to provide the ward with clothing, food, medical care, and shelter;

(4) the power to consent to medical, psychiatric, and surgical treatment other than the inpatient psychiatric commitment of the ward;

(5) on application to and order of the court, the power to establish a trust in accordance with 42 U.S.C. Section 1396p(d)(4)(B) and direct that the income of the ward as defined by that section be paid directly to the trust, solely for the purpose of the ward's eligibility for medical assistance under Chapter 32, Human Resources Code; and

(6) the power to sign documents necessary or appropriate to facilitate employment of the ward if:

(A) the guardian was appointed with full authority over the person of the ward under Section 1101.151; or

(B) the power is specified in the court order appointing the guardian with limited powers over the person of the ward under Section 1101.152.

(d) Notwithstanding Subsection (c)(4), a guardian of the person of a ward has the power to personally transport the ward or to direct the ward's transport by emergency medical services or other means to an inpatient mental health facility for a preliminary examination in accordance with Subchapters A and C, Chapter 573, Health and Safety Code. The guardian shall immediately provide written notice to the court that granted the guardianship as required by Section 573.004, Health and Safety Code, of the filing of an application under that section.

(e) Notwithstanding Subsection (c)(1) and except in cases of emergency, a guardian of the person of a ward may only place the ward in a more restrictive care facility if the guardian provides notice of the proposed placement to the court, the ward, and any person who has requested notice and after:

(1) the court orders the placement at a hearing on the matter, if the ward or another person objects to the proposed placement before the eighth business day after the person's receipt of the notice; or

(2) the seventh business day after the court's receipt of the notice, if the court does not schedule a hearing, on its own motion, on the proposed placement before that day.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 982 (H.B. 2080), § 16, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 14, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 9, effective September 1, 2017.

Sec. 1151.052. Care of Adult Ward.

(a) The guardian of an adult ward may spend funds of the guardianship as provided by court order to care for and maintain the ward.

(b) The guardian of an adult ward who has decision-making ability may apply on the ward's behalf for residential care and services provided by a public or private facility if the ward agrees to be placed in the facility. The

guardian shall report the condition of the ward to the court at regular intervals at least annually, unless the court orders more frequent reports. The guardian shall include in a report of an adult ward who is receiving residential care in a public or private residential care facility a statement as to the necessity for continued care in the facility.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014.

Sec. 1151.053. Commitment of Ward.

(a) Except as provided by Subsection (b) or (c), a guardian may not voluntarily admit a ward to a public or private inpatient psychiatric facility operated by the Department of State Health Services for care and treatment or to a residential facility operated by the Department of Aging and Disability Services for care and treatment. If care and treatment in a psychiatric or residential facility is necessary, the ward or the ward’s guardian may:

- (1) apply for services under Section 593.027 or 593.028, Health and Safety Code;
- (2) apply to a court to commit the person under Subtitle C or D, Title 7, Health and Safety Code, or Chapter 462, Health and Safety Code; or
- (3) transport the ward to an inpatient mental health facility for a preliminary examination in accordance with Subchapters A and C, Chapter 573, Health and Safety Code.

(b) A guardian of a person younger than 18 years of age may voluntarily admit the ward to a public or private inpatient psychiatric facility for care and treatment.

(c) A guardian of a person may voluntarily admit an incapacitated person to a residential care facility for emergency care or respite care under Section 593.027 or 593.028, Health and Safety Code.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.040, effective January 1, 2014.

Sec. 1151.054. Administration of Medication.

(a) In this section, “psychoactive medication” has the meaning assigned by Section 574.101, Health and Safety Code.

(b) The guardian of the person of a ward who is not a minor and who is under a protective custody order as provided by Subchapter B, Chapter 574, Health and Safety Code, may consent to the administration of psychoactive medication as prescribed by the ward’s treating physician regardless of the ward’s expressed preferences regarding treatment with psychoactive medication.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014.

SUBTITLE F

EVALUATION, MODIFICATION, OR TERMINATION OF GUARDIANSHIP

CHAPTER 1202

Modification or Termination of Guardianship

Subchapter B. Application for Complete Restoration of Ward’s Capacity or Modification of Guardianship

Section 1202.051.	Application Authorized.
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Subchapter D. Hearing, Evidence, and Orders in Proceeding for Complete Restoration of Ward’s Capacity or Modification of Guardianship

Section 1202.151.	Evidence and Burden of Proof at Hearing.
1202.152.	Physician’s Letter or Certificate Required.
1202.153.	Findings Required.

Subchapter B

Application for Complete Restoration of Ward’s Capacity or Modification of Guardianship

Sec. 1202.051. Application Authorized.

(a) Notwithstanding Section 1055.003, a ward or any person interested in the ward’s welfare may file a written application with the court for an order:

- (1) finding that the ward is no longer an incapacitated person and ordering the settlement and closing of the guardianship;
- (2) finding that the ward lacks the capacity, or lacks sufficient capacity with supports and services, to do some or all of the tasks necessary to provide food, clothing, or shelter for himself or herself, to care for the ward’s own physical health, or to manage the ward’s own financial affairs and granting additional powers or duties to the guardian; or
- (3) finding that the ward has the capacity, or sufficient capacity with supports and services, to do some, but not all, of the tasks necessary to provide food, clothing, or shelter for himself or herself, to care for the ward’s own physical health, or to manage the ward’s own financial affairs and:

- (A) limiting the guardian’s powers or duties; and
- (B) permitting the ward to care for himself or herself, make personal decisions regarding residence, or manage the ward’s own financial affairs commensurate with the ward’s ability, with or without supports and services.

(b) If the guardian of a ward who is the subject of an application filed under Subsection (a) has resigned, was removed, or has died, the court may not require the appointment of a successor guardian before considering the application.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 16, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 935 (S.B. 1710), § 1, effective September 1, 2017.

Subchapter D

Hearing, Evidence, and Orders in Proceeding for Complete Restoration of Ward’s Capacity or Modification of Guardianship

Sec. 1202.151. Evidence and Burden of Proof at Hearing.

(a) Except as provided by Section 1202.201, at a hearing on an application filed under Section 1202.051, the court shall consider only evidence regarding the ward’s mental or physical capacity at the time of the hearing that is relevant to the complete restoration of the ward’s

capacity or modification of the ward's guardianship, including whether:

- (1) the guardianship is necessary; and
- (2) specific powers or duties of the guardian should be limited if the ward receives supports and services.

(b) The party who filed the application has the burden of proof at the hearing.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 684 (H.B. 2407), § 2, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 17, effective September 1, 2015.

Sec. 1202.152. Physician's Letter or Certificate Required.

(a) The court may not grant an order completely restoring a ward's capacity or modifying a ward's guardianship under an application filed under Section 1202.051 unless the applicant presents to the court a written letter or certificate from a physician licensed in this state that is dated:

- (1) not earlier than the 120th day before the date the application was filed; or
- (2) after the date the application was filed but before the date of the hearing.

(b) A letter or certificate presented under Subsection (a) must:

- (1) describe the nature and degree of incapacity, including the medical history if reasonably available, or state that, in the physician's opinion, the ward has the capacity, or sufficient capacity with supports and services, to:

(A) provide food, clothing, and shelter for himself or herself;

(B) care for the ward's own physical health; and

(C) manage the ward's financial affairs;

- (2) provide a medical prognosis specifying the estimated severity of any incapacity;

(3) state how or in what manner the ward's ability to make or communicate responsible decisions concerning himself or herself is affected by the ward's physical or mental health;

(4) state whether any current medication affects the ward's demeanor or the ward's ability to participate fully in a court proceeding;

(5) describe the precise physical and mental conditions underlying a diagnosis of senility, if applicable; and

(6) include any other information required by the court.

(c) If the court determines it is necessary, the court may appoint the necessary physicians to examine the ward in the same manner and to the same extent as a ward is examined by a physician under Section 1101.103 or 1101.104.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 18, effective September 1, 2015.

Sec. 1202.153. Findings Required.

(a) Before ordering the settlement and closing of a guardianship under an application filed under Section 1202.051, the court must find by a preponderance of the

evidence that the ward is no longer partially or fully incapacitated.

(b) Before granting additional powers to the guardian or requiring the guardian to perform additional duties under an application filed under Section 1202.051, the court must find by a preponderance of the evidence that the current nature and degree of the ward's incapacity warrants a modification of the guardianship and that some or all of the ward's rights need to be further restricted.

(c) Before limiting the powers granted to or duties required to be performed by the guardian under an application filed under Section 1202.051, the court must find by a preponderance of the evidence that the current nature and degree of the ward's incapacity, with or without supports and services, warrants a modification of the guardianship and that some of the ward's rights need to be restored, with or without supports and services.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 19, effective September 1, 2015.

SUBTITLE I

OTHER SPECIAL PROCEEDINGS AND SUBSTITUTES FOR GUARDIANSHIP

CHAPTER 1357

Supported Decision-Making Agreement Act

Subchapter A. General Provisions

Section	Short Title.
1357.001.	Definitions.
1357.002.	Purpose [2 Versions: As added by Acts 2015, 84th Leg., ch. 214]
1357.003.	Purpose [2 Versions: As added by Acts 2015, 84th Leg., ch. 1224].

Subchapter B. Scope of Agreement and Agreement Requirements

1357.051.	Scope of Supported Decision-Making Agreement.
1357.052.	Authority of Supporter; Nature of Relationship.
1357.0525.	Designation of Alternate Supporter in Certain Circumstances.
1357.053.	Term of Agreement.
1357.054.	Access to Personal Information.
1357.055.	Authorizing and Witnessing of Supported Decision-Making Agreement.
1357.056.	Form of Supported Decision-Making Agreement.

Subchapter C. Duty of Certain Persons with Respect to Agreement

1357.101.	Reliance on Agreement; Limitation of Liability.
1357.102.	Reporting of Suspected Abuse, Neglect, or Exploitation.

Subchapter A

General Provisions

Sec. 1357.001. Short Title.

This chapter may be cited as the Supported Decision-Making Agreement Act.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 23, effective September 1, 2015; Enacted by Acts 2015, 84th Leg., ch. 1224 (S.B. 1881), § 1, effective June 19, 2015.

Sec. 1357.002. Definitions.

In this chapter:

(1) “Adult” means an individual 18 years of age or older or an individual under 18 years of age who has had the disabilities of minority removed.

(2) “Disability” means, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities.

(3) “Supported decision-making” means a process of supporting and accommodating an adult with a disability to enable the adult to make life decisions, including decisions related to where the adult wants to live, the services, supports, and medical care the adult wants to receive, whom the adult wants to live with, and where the adult wants to work, without impeding the self-determination of the adult.

(4) “Supported decision-making agreement” is an agreement between an adult with a disability and a supporter entered into under this chapter.

(5) “Supporter” means an adult who has entered into a supported decision-making agreement with an adult with a disability.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 23, effective September 1, 2015; Enacted by Acts 2015, 84th Leg., ch. 1224 (S.B. 1881), § 1, effective June 19, 2015.

Sec. 1357.003. Purpose [2 Versions: As added by Acts 2015, 84th Leg., ch. 214]

The purpose of this chapter is to recognize a less restrictive substitute for guardianship for adults with disabilities who need assistance with decisions regarding daily living but who are not considered incapacitated persons for purposes of establishing a guardianship under this title.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 23, effective September 1, 2015.

Sec. 1357.003. Purpose [2 Versions: As added by Acts 2015, 84th Leg., ch. 1224].

The purpose of this chapter is to recognize a less restrictive alternative to guardianship for adults with disabilities who need assistance with decisions regarding daily living but who are not considered incapacitated persons for purposes of establishing a guardianship under this title.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1224 (S.B. 1881), § 1, effective June 19, 2015.

Subchapter B

Scope of Agreement and Agreement Requirements

Sec. 1357.051. Scope of Supported Decision-Making Agreement.

An adult with a disability may voluntarily, without undue influence or coercion, enter into a supported decision-making agreement with a supporter under which the

adult with a disability authorizes the supporter to do any or all of the following:

(1) provide supported decision-making, including assistance in understanding the options, responsibilities, and consequences of the adult’s life decisions, without making those decisions on behalf of the adult with a disability;

(2) subject to Section 1357.054, assist the adult in accessing, collecting, and obtaining information that is relevant to a given life decision, including medical, psychological, financial, educational, or treatment records, from any person;

(3) assist the adult with a disability in understanding the information described by Subdivision (2); and

(4) assist the adult in communicating the adult’s decisions to appropriate persons.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 23, effective September 1, 2015; Enacted by Acts 2015, 84th Leg., ch. 1224 (S.B. 1881), § 1, effective June 19, 2015.

Sec. 1357.052. Authority of Supporter; Nature of Relationship.

(a) A supporter may exercise the authority granted to the supporter in the supported decision-making agreement.

(b) The supporter owes to the adult with a disability fiduciary duties as listed in the form provided by Section 1357.056(a), regardless of whether that form is used for the supported decision-making agreement.

(c) The relationship between an adult with a disability and the supporter with whom the adult enters into a supported decision-making agreement:

(1) is one of trust and confidence; and

(2) does not undermine the decision-making authority of the adult.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 23, effective September 1, 2015; Enacted by Acts 2015, 84th Leg., ch. 1224 (S.B. 1881), § 1, effective June 19, 2015; am. Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 10, effective September 1, 2017.

Sec. 1357.0525. Designation of Alternate Supporter in Certain Circumstances.

In order to prevent a conflict of interest, if a determination is made by an adult with a disability that the supporter with whom the adult entered into a supported decision-making agreement is the most appropriate person to provide to the adult supports and services for which the supporter will be compensated, the adult may amend the supported decision-making agreement to designate an alternate person to act as the adult’s supporter for the limited purpose of participating in person-centered planning as it relates to the provision of those supports and services.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 11, effective September 1, 2017.

Sec. 1357.053. Term of Agreement.

(a) Except as provided by Subsection (b), the supported decision-making agreement extends until terminated by either party or by the terms of the agreement.

(b) The supported decision-making agreement is terminated if:

- (1) the Department of Family and Protective Services finds that the adult with a disability has been abused, neglected, or exploited by the supporter;
- (2) the supporter is found criminally liable for conduct described by Subdivision (1); or
- (3) a temporary or permanent guardian of the person or estate appointed for the adult with a disability qualifies.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 23, effective September 1, 2015; Enacted by Acts 2015, 84th Leg., ch. 1224 (S.B. 1881), § 1, effective June 19, 2015; am. Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 12, effective September 1, 2017.

Sec. 1357.054. Access to Personal Information.

(a) A supporter is only authorized to assist the adult with a disability in accessing, collecting, or obtaining information that is relevant to a decision authorized under the supported decision-making agreement.

(b) If a supporter assists an adult with a disability in accessing, collecting, or obtaining personal information, including protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) or educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), the supporter shall ensure the information is kept privileged and confidential, as applicable, and is not subject to unauthorized access, use, or disclosure.

(c) The existence of a supported decision-making agreement does not preclude an adult with a disability from seeking personal information without the assistance of a supporter.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 23, effective September 1, 2015; Enacted by Acts 2015, 84th Leg., ch. 1224 (S.B. 1881), § 1, effective June 19, 2015.

Sec. 1357.055. Authorizing and Witnessing of Supported Decision-Making Agreement.

(a) A supported decision-making agreement must be signed voluntarily, without coercion or undue influence, by the adult with a disability and the supporter in the presence of two or more subscribing witnesses or a notary public.

(b) If signed before two witnesses, the attesting witnesses must be at least 14 years of age.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 23, effective September 1, 2015; Enacted by Acts 2015, 84th Leg., ch. 1224 (S.B. 1881), § 1, effective June 19, 2015.

Sec. 1357.056. Form of Supported Decision-Making Agreement.

(a) Subject to Subsection (b), a supported decision-making agreement is valid only if it is in substantially the following form:

SUPPORTED DECISION-MAKING AGREEMENT

Important Information For Supporter: Duties

When you agree to provide support to an adult with a disability under this supported decision-making agreement, you have a duty to:

- (1) act in good faith;
- (2) act within the authority granted in this agreement;
- (3) act loyally and without self-interest; and
- (4) avoid conflicts of interest.

Appointment of Supporter

I, (insert your name), make this agreement of my own free will.

I agree and designate that: _____

Name: _____

Address: _____

Phone Number: _____

E-mail Address: _____

is my supporter. My supporter may help me with making everyday life decisions relating to the following:

Y/N obtaining food, clothing, and shelter

Y/N taking care of my physical health

Y/N managing my financial affairs.

My supporter is not allowed to make decisions for me. To help me with my decisions, my supporter may:

1. Help me access, collect, or obtain information that is relevant to a decision, including medical, psychological, financial, educational, or treatment records;

2. Help me understand my options so I can make an informed decision; or

3. Help me communicate my decision to appropriate persons.

Y/N A release allowing my supporter to see protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) is attached.

Y/N A release allowing my supporter to see educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) is attached.

Effective Date of Supported Decision-Making Agreement

This supported decision-making agreement is effective immediately and will continue until (insert date) or until the agreement is terminated by my supporter or me or by operation of law.

Signed this _____ day of _____, 20_____

Consent of Supporter

I, (name of supporter), consent to act as a supporter under this agreement.

(signature of supporter) (printed name of supporter)

Signature

(my signature) (my printed name)

(witness 1 signature) (printed name of witness 1)

(witness 2 signature) (printed name of witness 2)

State of _____

County of _____

This document was acknowledged before me

2017, 85th Leg., ch. 514 (S.B. 39), § 13, effective September 1, 2017.

on _____(date)

by _____ and _____
(name of adult with a disability) (name of supporter)

(signature of notarial officer)

(Seal, if any, of notary)

(printed name)

My commission expires:

WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY

IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE ADULT WITH A DISABILITY IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY THE SUPPORTER, THE PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT, OR EXPLOITATION TO THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES BY CALLING THE ABUSE HOTLINE AT 1-800-252-5400 OR ONLINE AT WWW.TXABUSEHOTLINE.ORG.

(b) A supported decision-making agreement may be in any form not inconsistent with Subsection (a) and the other requirements of this chapter.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 23, effective September 1, 2015; Enacted by Acts 2015, 84th Leg., ch. 1224 (S.B. 1881), § 1, effective June 19, 2015; am. Acts

Subchapter C

Duty of Certain Persons with Respect to Agreement

Sec. 1357.101. Reliance on Agreement; Limitation of Liability.

(a) A person who receives the original or a copy of a supported decision-making agreement shall rely on the agreement.

(b) A person is not subject to criminal or civil liability and has not engaged in professional misconduct for an act or omission if the act or omission is done in good faith and in reliance on a supported decision-making agreement.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 23, effective September 1, 2015; Enacted by Acts 2015, 84th Leg., ch. 1224 (S.B. 1881), § 1, effective June 19, 2015.

Sec. 1357.102. Reporting of Suspected Abuse, Neglect, or Exploitation.

If a person who receives a copy of a supported decision-making agreement or is aware of the existence of a supported decision-making agreement has cause to believe that the adult with a disability is being abused, neglected, or exploited by the supporter, the person shall report the alleged abuse, neglect, or exploitation to the Department of Family and Protective Services in accordance with Section 48.051, Human Resources Code.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 23, effective September 1, 2015; Enacted by Acts 2015, 84th Leg., ch. 1224 (S.B. 1881), § 1, effective June 19, 2015.

TEXAS FAMILY CODE

TITLE 2 CHILD IN RELATION TO THE FAMILY

SUBTITLE A

LIMITATIONS OF MINORITY

Chapter 32.	Consent to Treatment of Child by Non-Parent or Child
35A.	Temporary Authorization for Inpatient Mental Health Services for Minor Child

CHAPTER 32

Consent to Treatment of Child by Non-Parent or Child

Subchapter A. Consent to Medical, Dental, Psychological, and Surgical Treatment

Section 32.001.	Consent by Non-Parent.
32.002.	Consent Form.
32.003.	Consent to Treatment by Child.
32.004.	Consent to Counseling.
32.005.	Examination Without Consent of Abuse or Neglect of Child.
32.006 to 32.100.	[Reserved].

Subchapter C. Miscellaneous Provisions

32.201.	Emergency Shelter or Care for Minors.
32.202.	Consent to Emergency Shelter or Care by Minor.
32.203.	Consent by Minor to Housing or Care Provided Through Transitional Living Program.

Subchapter A

Consent to Medical, Dental, Psychological, and Surgical Treatment

Sec. 32.001. Consent by Non-Parent.

(a) The following persons may consent to medical, dental, psychological, and surgical treatment of a child when the person having the right to consent as otherwise provided by law cannot be contacted and that person has not given actual notice to the contrary:

- (1) a grandparent of the child;
- (2) an adult brother or sister of the child;
- (3) an adult aunt or uncle of the child;
- (4) an educational institution in which the child is enrolled that has received written authorization to consent from a person having the right to consent;
- (5) an adult who has actual care, control, and possession of the child and has written authorization to consent from a person having the right to consent;

(6) a court having jurisdiction over a suit affecting the parent-child relationship of which the child is the subject;

(7) an adult responsible for the actual care, control, and possession of a child under the jurisdiction of a juvenile court or committed by a juvenile court to the care of an agency of the state or county; or

(8) a peace officer who has lawfully taken custody of a minor, if the peace officer has reasonable grounds to believe the minor is in need of immediate medical treatment.

(b) Except as otherwise provided by this subsection, the Texas Juvenile Justice Department may consent to the medical, dental, psychological, and surgical treatment of a child committed to the department under Title 3 when the person having the right to consent has been contacted and that person has not given actual notice to the contrary. Consent for medical, dental, psychological, and surgical treatment of a child for whom the Department of Family and Protective Services has been appointed managing conservator and who is committed to the Texas Juvenile Justice Department is governed by Sections 266.004, 266.009, and 266.010.

(c) This section does not apply to consent for the immunization of a child.

(d) A person who consents to the medical treatment of a minor under Subsection (a)(7) or (8) is immune from liability for damages resulting from the examination or treatment of the minor, except to the extent of the person's own acts of negligence. A physician or dentist licensed to practice in this state, or a hospital or medical facility at which a minor is treated is immune from liability for damages resulting from the examination or treatment of a minor under this section, except to the extent of the person's own acts of negligence.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 1, effective April 20, 1995; am. Acts 1995, 74th Leg., ch. 751 (H.B. 433), § 5, effective September 1, 1995; am. Acts 2009, 81st Leg., ch. 108 (H.B. 1629), § 1, effective May 23, 2009; am. Acts 2015, 84th Leg., ch. 734 (H.B. 1549), § 37, effective September 1, 2015.

Sec. 32.002. Consent Form.

(a) Consent to medical treatment under this subchapter must be in writing, signed by the person giving consent, and given to the doctor, hospital, or other medical facility that administers the treatment.

(b) The consent must include:

- (1) the name of the child;
- (2) the name of one or both parents, if known, and the name of any managing conservator or guardian of the child;
- (3) the name of the person giving consent and the person's relationship to the child;
- (4) a statement of the nature of the medical treatment to be given; and
- (5) the date the treatment is to begin.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 1, effective April 20, 1995.

Sec. 32.003. Consent to Treatment by Child.

(a) A child may consent to medical, dental, psychological,

cal, and surgical treatment for the child by a licensed physician or dentist if the child:

(1) is on active duty with the armed services of the United States of America;

(2) is:

(A) 16 years of age or older and resides separate and apart from the child's parents, managing conservator, or guardian, with or without the consent of the parents, managing conservator, or guardian and regardless of the duration of the residence; and

(B) managing the child's own financial affairs, regardless of the source of the income;

(3) consents to the diagnosis and treatment of an infectious, contagious, or communicable disease that is required by law or a rule to be reported by the licensed physician or dentist to a local health officer or the Texas Department of Health, including all diseases within the scope of Section 81.041, Health and Safety Code;

(4) is unmarried and pregnant and consents to hospital, medical, or surgical treatment, other than abortion, related to the pregnancy;

(5) consents to examination and treatment for drug or chemical addiction, drug or chemical dependency, or any other condition directly related to drug or chemical use;

(6) is unmarried, is the parent of a child, and has actual custody of his or her child and consents to medical, dental, psychological, or surgical treatment for the child; or

(7) is serving a term of confinement in a facility operated by or under contract with the Texas Department of Criminal Justice, unless the treatment would constitute a prohibited practice under Section 164.052(a)(19), Occupations Code.

(b) Consent by a child to medical, dental, psychological, and surgical treatment under this section is not subject to disaffirmance because of minority.

(c) Consent of the parents, managing conservator, or guardian of a child is not necessary in order to authorize hospital, medical, surgical, or dental care under this section.

(d) A licensed physician, dentist, or psychologist may, with or without the consent of a child who is a patient, advise the parents, managing conservator, or guardian of the child of the treatment given to or needed by the child.

(e) A physician, dentist, psychologist, hospital, or medical facility is not liable for the examination and treatment of a child under this section except for the provider's or the facility's own acts of negligence.

(f) A physician, dentist, psychologist, hospital, or medical facility may rely on the written statement of the child containing the grounds on which the child has capacity to consent to the child's medical treatment.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 1, effective April 20, 1995; am. Acts 1995, 74th Leg., ch. 751 (H.B. 433), § 6, effective September 1, 1995; am. Acts 2001, 77th Leg., ch. 821 (H.B. 920), § 2.01, effective June 14, 2001; am. Acts 2007, 80th Leg., ch. 1227 (H.B. 2389), § 2, effective June 15, 2007.

Sec. 32.004. Consent to Counseling.

(a) A child may consent to counseling for:

(1) suicide prevention;

(2) chemical addiction or dependency; or

(3) sexual, physical, or emotional abuse.

(b) A licensed or certified physician, psychologist, counselor, or social worker having reasonable grounds to believe that a child has been sexually, physically, or emotionally abused, is contemplating suicide, or is suffering from a chemical or drug addiction or dependency may:

(1) counsel the child without the consent of the child's parents or, if applicable, managing conservator or guardian;

(2) with or without the consent of the child who is a client, advise the child's parents or, if applicable, managing conservator or guardian of the treatment given to or needed by the child; and

(3) rely on the written statement of the child containing the grounds on which the child has capacity to consent to the child's own treatment under this section.

(c) Unless consent is obtained as otherwise allowed by law, a physician, psychologist, counselor, or social worker may not counsel a child if consent is prohibited by a court order.

(d) A physician, psychologist, counselor, or social worker counseling a child under this section is not liable for damages except for damages resulting from the person's negligence or wilful misconduct.

(e) A parent, or, if applicable, managing conservator or guardian, who has not consented to counseling treatment of the child is not obligated to compensate a physician, psychologist, counselor, or social worker for counseling services rendered under this section.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 1, effective April 20, 1995.

Sec. 32.005. Examination Without Consent of Abuse or Neglect of Child.

(a) Except as provided by Subsection (c), a physician, dentist, or psychologist having reasonable grounds to believe that a child's physical or mental condition has been adversely affected by abuse or neglect may examine the child without the consent of the child, the child's parents, or other person authorized to consent to treatment under this subchapter.

(b) An examination under this section may include X-rays, blood tests, photographs, and penetration of tissue necessary to accomplish those tests.

(c) Unless consent is obtained as otherwise allowed by law, a physician, dentist, or psychologist may not examine a child:

(1) 16 years of age or older who refuses to consent; or

(2) for whom consent is prohibited by a court order.

(d) A physician, dentist, or psychologist examining a child under this section is not liable for damages except for damages resulting from the physician's or dentist's negligence.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 1, effective April 20, 1995; am. Acts 1997, 75th Leg., ch. 575 (H.B. 1826), § 1, effective September 1, 1997.

Secs. 32.006 to 32.100. [Reserved for expansion].

Subchapter C
Miscellaneous Provisions

Sec. 32.201. Emergency Shelter or Care for Minors.

(a) An emergency shelter facility may provide shelter and care to a minor and the minor's child or children, if any.

(b) An emergency shelter facility may provide shelter or care only during an emergency constituting an immediate danger to the physical health or safety of the minor or the minor's child or children.

(c) Shelter or care provided under this section may not be provided after the 15th day after the date the shelter or care is commenced unless:

(1) the facility receives consent to continue services from the minor in accordance with Section 32.202; or

(2) the minor has qualified for financial assistance under Chapter 31, Human Resources Code, and is on the waiting list for housing assistance.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 1, effective April 20, 1995; am. Acts 2003, 78th Leg., ch. 192 (H.B. 1364), § 1, effective June 2, 2003.

Sec. 32.202. Consent to Emergency Shelter or Care by Minor.

(a) A minor may consent to emergency shelter or care to be provided to the minor or the minor's child or children, if any, under Section 32.201(c) if the minor is:

(1) 16 years of age or older and:

(A) resides separate and apart from the minor's parent, managing conservator, or guardian, regardless of whether the parent, managing conservator, or guardian consents to the residence and regardless of the duration of the residence; and

(B) manages the minor's own financial affairs, regardless of the source of income; or

(2) unmarried and is pregnant or is the parent of a child.

(b) Consent by a minor to emergency shelter or care under this section is not subject to disaffirmance because of minority.

(c) An emergency shelter facility may, with or without the consent of the minor's parent, managing conservator, or guardian, provide emergency shelter or care to the minor or the minor's child or children under Section 32.201(c).

(d) An emergency shelter facility is not liable for providing emergency shelter or care to the minor or the minor's child or children if the minor consents as provided by this section, except that the facility is liable for the facility's own acts of negligence.

(e) An emergency shelter facility may rely on the minor's written statement containing the grounds on which the minor has capacity to consent to emergency shelter or care.

(f) To the extent of any conflict between this section and Section 32.003, Section 32.003 prevails.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 192 (H.B. 1364), § 2, effective June 2, 2003.

Sec. 32.203. Consent by Minor to Housing or Care Provided Through Transitional Living Program.

(a) In this section, "transitional living program" means a residential services program for children provided in a residential child-care facility licensed or certified by the Department of Family and Protective Services under Chapter 42, Human Resources Code, that:

(1) is designed to provide basic life skills training and the opportunity to practice those skills, with a goal of basic life skills development toward independent living; and

(2) is not an independent living program.

(b) A minor may consent to housing or care provided to the minor or the minor's child or children, if any, through a transitional living program if the minor is:

(1) 16 years of age or older and:

(A) resides separate and apart from the minor's parent, managing conservator, or guardian, regardless of whether the parent, managing conservator, or guardian consents to the residence and regardless of the duration of the residence; and

(B) manages the minor's own financial affairs, regardless of the source of income; or

(2) unmarried and is pregnant or is the parent of a child.

(c) Consent by a minor to housing or care under this section is not subject to disaffirmance because of minority.

(d) A transitional living program may, with or without the consent of the parent, managing conservator, or guardian, provide housing or care to the minor or the minor's child or children.

(e) A transitional living program must attempt to notify the minor's parent, managing conservator, or guardian regarding the minor's location.

(f) A transitional living program is not liable for providing housing or care to the minor or the minor's child or children if the minor consents as provided by this section, except that the program is liable for the program's own acts of negligence.

(g) A transitional living program may rely on a minor's written statement containing the grounds on which the minor has capacity to consent to housing or care provided through the program.

(h) To the extent of any conflict between this section and Section 32.003, Section 32.003 prevails.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 587 (S.B. 717), § 1, effective June 14, 2013.

CHAPTER 35A

Temporary Authorization for Inpatient Mental Health Services for Minor Child

Section	Applicability.
35A.001.	Temporary Authorization.
35A.002.	Petition for Temporary Authorization.
35A.003.	Notice; Hearing.
35A.004.	Order for Temporary Authorization.
35A.005.	

Sec. 35A.001. Applicability.

This chapter applies to a person whose relationship to a child would make the person eligible to consent to treat-

ment under Section 32.001(a)(1), (2), or (3), and who has had actual care, custody, and control of the child for the six months preceding the filing of a petition under this chapter.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 988 (S.B. 1238), § 1, effective September 1, 2019.

Sec. 35A.002. Temporary Authorization.

A person described by Section 35A.001 may seek a court order for temporary authorization to consent to voluntary inpatient mental health services for a child by filing a petition in the district court in the county in which the person resides.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 988 (S.B. 1238), § 1, effective September 1, 2019.

Sec. 35A.003. Petition for Temporary Authorization.

A petition for temporary authorization to consent to voluntary inpatient mental health services for a child must:

- (1) be styled “ex parte” and be in the name of the child;
- (2) be verified by the petitioner;
- (3) state:
 - (A) the name, date of birth, and current physical address of the child;
 - (B) the name, date of birth, and current physical address of the petitioner; and
 - (C) the name and, if known, the current physical and mailing addresses of the child’s parents, conservators, or guardians;
- (4) describe the status and location of any court proceeding in this or another state with respect to the child;
- (5) describe the petitioner’s relationship to the child;
- (6) provide the dates during the preceding six months that the child has resided with the petitioner;
- (7) contain a certificate of medical examination for mental illness prepared by a physician who has examined the child not earlier than the third day before the date the petition is filed and be accompanied by a sworn statement containing the physician’s opinion, and the detailed reasons for that opinion, that the child is a person:
 - (A) with mental illness or who demonstrates symptoms of a serious emotional disorder; and
 - (B) who presents a risk of serious harm to self or others if not immediately restrained or hospitalized; and
- (8) state any reason that the petitioner is unable to obtain signed, written documentation from a parent, conservator, or guardian of the child.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 988 (S.B. 1238), § 1, effective September 1, 2019.

Sec. 35A.004. Notice; Hearing.

- (a) On receipt of the petition, the court shall set a hearing.
- (b) A copy of the petition and notice of the hearing shall be delivered to the parent, conservator, or guardian of the

child by personal service or by certified mail, return receipt requested, at the last known address of the parent, conservator, or guardian.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 988 (S.B. 1238), § 1, effective September 1, 2019.

Sec. 35A.005. Order for Temporary Authorization.

(a) At the hearing on the petition, the court may hear evidence relating to the child’s need for inpatient mental health services by the petitioner, any other matter raised in the petition, and any objection or other testimony of the child’s parent, conservator, or guardian.

(b) The court shall dismiss the petition for temporary authorization if an objection is made by the child’s parent, conservator, or guardian.

(c) The court shall grant the petition for temporary authorization only if the court finds:

- (1) by a preponderance of the evidence that the child does not have available a parent, conservator, guardian, or other legal representative to give consent under Section 572.001, Health and Safety Code, for voluntary inpatient mental health services; and
- (2) by clear and convincing evidence that the child is a person:
 - (A) with mental illness or who demonstrates symptoms of a serious emotional disorder; and
 - (B) who presents a risk of serious harm to self or others if not immediately restrained or hospitalized.

(d) Subject to Subsection (e), the order granting temporary authorization under this chapter expires on the earliest of:

- (1) the date the petitioner requests that the child be discharged from the inpatient mental health facility;
- (2) the date a physician determines that the criteria listed in Subsection (c)(2) no longer apply to the child; or
- (3) subject to Subsection (e), the 10th day after the date the order for temporary authorization is issued under this section.

(e) The order granting temporary authorization continues in effect until the earlier occurrence of an event described by Subsection (d)(1) or (2) if the petitioner obtains an order for temporary managing conservatorship before the order expires as provided by Subsection (d)(3).

(f) A copy of an order granting temporary authorization must:

- (1) be filed under the cause number in any court that has rendered a conservatorship or guardian order regarding the child; and
- (2) be sent to the last known address of the child’s parent, conservator, or guardian.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 988 (S.B. 1238), § 1, effective September 1, 2019.

TITLE 3

JUVENILE JUSTICE CODE

Chapter	
51.	General Provisions
54.	Judicial Proceedings
55.	Proceedings Concerning Children with Mental Illness or Intellectual Disability
56.	Appeal

Chapter
58.

Records; Juvenile Justice Information System

CHAPTER 51

General Provisions

Section
51.20.
51.21.

Physical or Mental Examination.
Mental Health Screening and Referral.

Sec. 51.20. Physical or Mental Examination.

(a) At any stage of the proceedings under this title, including when a child is initially detained in a pre-adjudication secure detention facility or a post-adjudication secure correctional facility, the juvenile court may, at its discretion or at the request of the child's parent or guardian, order a child who is referred to the juvenile court or who is alleged by a petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision to be examined by a disinterested expert, including a physician, psychiatrist, or psychologist, qualified by education and clinical training in mental health or mental retardation and experienced in forensic evaluation, to determine whether the child has a mental illness as defined by Section 571.003, Health and Safety Code, is a person with mental retardation as defined by Section 591.003, Health and Safety Code, or suffers from chemical dependency as defined by Section 464.001, Health and Safety Code. If the examination is to include a determination of the child's fitness to proceed, an expert may be appointed to conduct the examination only if the expert is qualified under Subchapter B, Chapter 46B, Code of Criminal Procedure, to examine a defendant in a criminal case, and the examination and the report resulting from an examination under this subsection must comply with the requirements under Subchapter B, Chapter 46B, Code of Criminal Procedure, for the examination and resulting report of a defendant in a criminal case.

(b) If, after conducting an examination of a child ordered under Subsection (a) and reviewing any other relevant information, there is reason to believe that the child has a mental illness or mental retardation or suffers from chemical dependency, the probation department shall refer the child to the local mental health or mental retardation authority or to another appropriate and legally authorized agency or provider for evaluation and services, unless the prosecuting attorney has filed a petition under Section 53.04.

(c) If, while a child is under deferred prosecution supervision or court-ordered probation, a qualified professional determines that the child has a mental illness or mental retardation or suffers from chemical dependency and the child is not currently receiving treatment services for the mental illness, mental retardation, or chemical dependency, the probation department shall refer the child to the local mental health or mental retardation authority or to another appropriate and legally authorized agency or provider for evaluation and services.

(d) A probation department shall report each referral of a child to a local mental health or mental retardation authority or another agency or provider made under

Subsection (b) or (c) to the Texas Juvenile Justice Department in a format specified by the department.

(e) At any stage of the proceedings under this title, the juvenile court may order a child who has been referred to the juvenile court or who is alleged by the petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision to be subjected to a physical examination by a licensed physician.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 4, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 828 (H.B. 1171), § 5(a), effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 6, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 949 (H.B. 1575), § 7, effective September 1, 2005; am. Acts 2013, 83rd Leg., ch. 225 (H.B. 144), § 1, effective September 1, 2013.

Sec. 51.21. Mental Health Screening and Referral.

(a) A probation department that administers the mental health screening instrument or clinical assessment required by Section 221.003, Human Resources Code, shall refer the child to the local mental health authority for assessment and evaluation if:

- (1) the child's scores on the screening instrument or clinical assessment indicate a need for further mental health assessment and evaluation; and
- (2) the department and child do not have access to an internal, contract, or private mental health professional.

(b) A probation department shall report each referral of a child to a local mental health authority made under Subsection (a) to the Texas Juvenile Justice Department in a format specified by the Texas Juvenile Justice Department.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 949 (H.B. 1575), § 8, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 3.005, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 734 (H.B. 1549), § 46, effective September 1, 2015.

CHAPTER 54

Judicial Proceedings

Section
54.0408.

Referral of Child Exiting Probation to Mental Health or Mental Retardation Authority.

Sec. 54.0408. Referral of Child Exiting Probation to Mental Health or Mental Retardation Authority.

A juvenile probation officer shall refer a child who has been determined to have a mental illness or mental retardation to an appropriate local mental health or mental retardation authority at least three months before the child is to complete the child's juvenile probation term unless the child is currently receiving treatment from the local mental health or mental retardation authority of the county in which the child resides.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 949 (H.B. 1575), § 14, effective September 1, 2005.

CHAPTER 55

Proceedings Concerning Children with Mental Illness or Intellectual Disability

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Subchapter D. Lack of Responsibility for Conduct As a Result of Mental Illness or Intellectual Disability

55.51.	Lack of Responsibility for Conduct Determination; Examination.
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55.53.	Transportation to and from Facility.
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55.55.	Report That Child Does Not Have Mental Illness or Intellectual Disability; Hearing on Objection.
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55.57.	Commitment Proceedings in Juvenile Court for Mental Illness.
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55.59.	Report That Child Has Intellectual Disability; Initiation of Commitment Proceedings.
55.60.	Commitment Proceedings in Juvenile Court for Children with Intellectual Disability.
55.61.	Referral for Commitment Proceedings for Children with Intellectual Disability.

Subchapter A

General Provisions

Sec. 55.01. Meaning of “Having a Mental Illness”.

For purposes of this chapter, a child who is described as having a mental illness means a child with a mental illness as defined by Section 571.003, Health and Safety Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.002, effective April 2, 2015.

Sec. 55.02. Mental Health and Intellectual Disability Jurisdiction.

For the purpose of initiating proceedings to order mental health or intellectual disability services for a child or for commitment of a child as provided by this chapter, the juvenile court has jurisdiction of proceedings under Subtitle C or D, Title 7, Health and Safety Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.003, effective April 2, 2015.

Sec. 55.03. Standards of Care.

(a) Except as provided by this chapter, a child for whom inpatient mental health services is ordered by a court under this chapter shall be cared for as provided by Subtitle C, Title 7, Health and Safety Code.

(b) Except as provided by this chapter, a child who is committed by a court to a residential care facility due to an intellectual disability shall be cared for as provided by Subtitle D, Title 7, Health and Safety Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.004, effective April 2, 2015.

Sec. 55.04. Unfitness to Proceed [Renumbered].

Renumbered to Tex. Fam. Code §§ 55.31 and 55.32 by Acts 1999, 76th Leg., ch. 1477, (H.B. 3517), § 14, effective September 1, 1999.

Sec. 55.05. Lack of Responsibility for Conduct [Renumbered].

Renumbered to Tex. Fam. Code § 55.51 by Acts 1999,

76th Leg., ch. 1477, (H.B. 3517), § 14, effective September 1, 1999.

Secs. 55.06 to 55.10. [Reserved for expansion].

Subchapter B

Child with Mental Illness

Sec. 55.11. Mental Illness Determination; Examination.

(a) On a motion by a party, the juvenile court shall determine whether probable cause exists to believe that a child who is alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision has a mental illness. In making its determination, the court may:

- (1) consider the motion, supporting documents, professional statements of counsel, and witness testimony; and
- (2) make its own observation of the child.

(b) If the court determines that probable cause exists to believe that the child has a mental illness, the court shall temporarily stay the juvenile court proceedings and immediately order the child to be examined under Section 51.20. The information obtained from the examination must include expert opinion as to whether the child has a mental illness and whether the child meets the commitment criteria under Subtitle C, Title 7, Health and Safety Code. If ordered by the court, the information must also include expert opinion as to whether the child is unfit to proceed with the juvenile court proceedings.

(c) After considering all relevant information, including information obtained from an examination under Section 51.20, the court shall:

- (1) if the court determines that evidence exists to support a finding that the child has a mental illness and that the child meets the commitment criteria under Subtitle C, Title 7, Health and Safety Code, proceed under Section 55.12; or
- (2) if the court determines that evidence does not exist to support a finding that the child has a mental illness or that the child meets the commitment criteria under Subtitle C, Title 7, Health and Safety Code, dissolve the stay and continue the juvenile court proceedings.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999.

Sec. 55.12. Initiation of Commitment Proceedings.

If, after considering all relevant information, the juvenile court determines that evidence exists to support a finding that a child has a mental illness and that the child meets the commitment criteria under Subtitle C, Title 7, Health and Safety Code, the court shall:

- (1) initiate proceedings as provided by Section 55.13 to order temporary or extended mental health services, as provided in Subchapter C, Chapter 574, Health and Safety Code; or
- (2) refer the child's case as provided by Section 55.14 to the appropriate court for the initiation of proceedings

in that court for commitment of the child under Subchapter C, Chapter 574, Health and Safety Code.

HISTORY: Enacted by Acts 1973, 63rd Leg., ch. 544 (S.B. 111), § 1, effective September 1, 1973; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 47, effective May 31, 1995; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999 (renumbered from Sec. 55.02(a)).

Sec. 55.13. Commitment Proceedings in Juvenile Court.

(a) If the juvenile court initiates proceedings for temporary or extended mental health services under Section 55.12(1), the prosecuting attorney or the attorney for the child may file with the juvenile court an application for court-ordered mental health services under Section 574.001, Health and Safety Code. The juvenile court shall:

- (1) set a date for a hearing and provide notice as required by Sections 574.005 and 574.006, Health and Safety Code; and
- (2) conduct the hearing in accordance with Subchapter C, Chapter 574, Health and Safety Code.

(b) The burden of proof at the hearing is on the party who filed the application.

(c) The juvenile court shall appoint the number of physicians necessary to examine the child and to complete the certificates of medical examination for mental illness required under Section 574.009, Health and Safety Code.

(d) After conducting a hearing on an application under this section, the juvenile court shall:

- (1) if the criteria under Section 574.034 or 574.0345, Health and Safety Code, are satisfied, order temporary mental health services for the child; or
- (2) if the criteria under Section 574.035 or 574.0355, Health and Safety Code, are satisfied, order extended mental health services for the child.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; am. Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 3, effective September 1, 2019.

Sec. 55.14. Referral for Commitment Proceedings.

(a) If the juvenile court refers the child's case to the appropriate court for the initiation of commitment proceedings under Section 55.12(2), the juvenile court shall:

- (1) send all papers relating to the child's mental illness to the clerk of the court to which the case is referred;
- (2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the appropriate district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and
- (3) if the child is in detention:

- (A) order the child released from detention to the child's home or another appropriate place;
- (B) order the child detained in an appropriate place other than a juvenile detention facility; or
- (C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

(b) The papers sent to the clerk of a court under Subsection (a)(1) constitute an application for mental

health services under Section 574.001, Health and Safety Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999.

Sec. 55.15. Standards of Care; Expiration of Court Order for Mental Health Services.

If the juvenile court or a court to which the child's case is referred under Section 55.12(2) orders mental health services for the child, the child shall be cared for, treated, and released in conformity to Subtitle C, Title 7, Health and Safety Code, except:

(1) a court order for mental health services for a child automatically expires on the 120th day after the date the child becomes 18 years of age; and

(2) the administrator of a mental health facility shall notify, in writing, by certified mail, return receipt requested, the juvenile court that ordered mental health services or the juvenile court that referred the case to a court that ordered the mental health services of the intent to discharge the child at least 10 days prior to discharge.

HISTORY: Enacted by Acts 1973, 63rd Leg., ch. 544 (S.B. 111), § 1, effective September 1, 1973; am. Acts 1975, 64th Leg., ch. 693 (S.B. 247), § 20, effective September 1, 1975; am. Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 9, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 47, effective May 31, 1995; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999 (renumbered from Sec. 55.02(c)).

Sec. 55.16. Order for Mental Health Services; Stay of Proceedings.

(a) If the court to which the child's case is referred under Section 55.12(2) orders temporary or extended inpatient mental health services for the child, the court shall immediately notify in writing the referring juvenile court of the court's order for mental health services.

(b) If the juvenile court orders temporary or extended inpatient mental health services for the child or if the juvenile court receives notice under Subsection (a) from the court to which the child's case is referred, the proceedings under this title then pending in juvenile court shall be stayed.

HISTORY: Enacted by Acts 1973, 63rd Leg., ch. 544 (S.B. 111), § 1, effective September 1, 1973; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 47, effective May 31, 1995; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999 (renumbered from Sec. 55.02(d)).

Sec. 55.17. Mental Health Services Not Ordered; Dissolution of Stay.

(a) If the court to which a child's case is referred under Section 55.12(2) does not order temporary or extended inpatient mental health services for the child, the court shall immediately notify in writing the referring juvenile court of the court's decision.

(b) If the juvenile court does not order temporary or extended inpatient mental health services for the child or if the juvenile court receives notice under Subsection (a) from the court to which the child's case is referred, the juvenile court shall dissolve the stay and continue the juvenile court proceedings.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999.

Sec. 55.18. Discharge from Mental Health Facility Before Reaching 18 Years of Age.

If the child is discharged from the mental health facility before reaching 18 years of age, the juvenile court may:

(1) dismiss the juvenile court proceedings with prejudice; or

(2) continue with proceedings under this title as though no order of mental health services had been made.

HISTORY: Enacted by Acts 1973, 63rd Leg., ch. 544 (S.B. 111), § 1, effective September 1, 1973; am. Acts 1975, 64th Leg., ch. 693 (S.B. 247), § 21, effective September 1, 1975; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 47, effective May 31, 1995; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999 (renumbered from Sec. 55.02(e)).

Sec. 55.19. Transfer to Criminal Court on 18th Birthday.

(a) The juvenile court shall transfer all pending proceedings from the juvenile court to a criminal court on the 18th birthday of a child for whom the juvenile court or a court to which the child's case is referred under Section 55.12(2) has ordered inpatient mental health services if:

(1) the child is not discharged or furloughed from the inpatient mental health facility before reaching 18 years of age; and

(2) the child is alleged to have engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045 and no adjudication concerning the alleged conduct has been made.

(b) The juvenile court shall send notification of the transfer of a child under Subsection (a) to the inpatient mental health facility. The criminal court shall, within 90 days of the transfer, institute proceedings under Chapter 46B, Code of Criminal Procedure. If those or any subsequent proceedings result in a determination that the defendant is competent to stand trial, the defendant may not receive a punishment for the delinquent conduct described by Subsection (a)(2) that results in confinement for a period longer than the maximum period of confinement the defendant could have received if the defendant had been adjudicated for the delinquent conduct while still a child and within the jurisdiction of the juvenile court.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 47, effective May 31, 1995; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999 (renumbered from Sec. 55.02(f), (g)); am. Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 7, effective January 1, 2004.

Secs. 55.20 to 55.30. [Reserved for expansion].

Subchapter C

Child Unfit to Proceed As a Result of Mental Illness or Intellectual Disability

Sec. 55.31. Unfitness to Proceed Determination; Examination.

(a) A child alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for

supervision who as a result of mental illness or an intellectual disability lacks capacity to understand the proceedings in juvenile court or to assist in the child's own defense is unfit to proceed and shall not be subjected to discretionary transfer to criminal court, adjudication, disposition, or modification of disposition as long as such incapacity endures.

(b) On a motion by a party, the juvenile court shall determine whether probable cause exists to believe that a child who is alleged by petition or who is found to have engaged in delinquent conduct or conduct indicating a need for supervision is unfit to proceed as a result of mental illness or an intellectual disability. In making its determination, the court may:

(1) consider the motion, supporting documents, professional statements of counsel, and witness testimony; and

(2) make its own observation of the child.

(c) If the court determines that probable cause exists to believe that the child is unfit to proceed, the court shall temporarily stay the juvenile court proceedings and immediately order the child to be examined under Section 51.20. The information obtained from the examination must include expert opinion as to whether the child is unfit to proceed as a result of mental illness or an intellectual disability.

(d) After considering all relevant information, including information obtained from an examination under Section 51.20, the court shall:

(1) if the court determines that evidence exists to support a finding that the child is unfit to proceed, proceed under Section 55.32; or

(2) if the court determines that evidence does not exist to support a finding that the child is unfit to proceed, dissolve the stay and continue the juvenile court proceedings.

HISTORY: Enacted by Acts 1973, 63rd Leg., ch. 544 (S.B. 111), § 1, effective September 1, 1973; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 47, effective May 31, 1995; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999 (renumbered from Sec. 55.04(a), (b)); am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.006, effective April 2, 2015.

Sec. 55.32. Hearing on Issue of Fitness to Proceed.

(a) If the juvenile court determines that evidence exists to support a finding that a child is unfit to proceed as a result of mental illness or an intellectual disability, the court shall set the case for a hearing on that issue.

(b) The issue of whether the child is unfit to proceed as a result of mental illness or an intellectual disability shall be determined at a hearing separate from any other hearing.

(c) The court shall determine the issue of whether the child is unfit to proceed unless the child or the attorney for the child demands a jury before the 10th day before the date of the hearing.

(d) Unfitness to proceed as a result of mental illness or an intellectual disability must be proved by a preponderance of the evidence.

(e) If the court or jury determines that the child is fit to proceed, the juvenile court shall continue with proceedings under this title as though no question of fitness to proceed had been raised.

(f) If the court or jury determines that the child is unfit to proceed as a result of mental illness or an intellectual disability, the court shall:

(1) stay the juvenile court proceedings for as long as that incapacity endures; and

(2) proceed under Section 55.33.

(g) The fact that the child is unfit to proceed as a result of mental illness or an intellectual disability does not preclude any legal objection to the juvenile court proceedings which is susceptible of fair determination prior to the adjudication hearing and without the personal participation of the child.

HISTORY: Enacted by Acts 1973, 63rd Leg., ch. 544 (S.B. 111), § 1, effective September 1, 1973; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 47, effective May 31, 1995; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999 (renumbered from Sec. 55.04(c) to (f)); am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.007, effective April 2, 2015.

Sec. 55.33. Proceedings Following Finding of Unfitness to Proceed.

(a) If the juvenile court or jury determines under Section 55.32 that a child is unfit to proceed with the juvenile court proceedings for delinquent conduct, the court shall:

(1) if the unfitness to proceed is a result of mental illness or an intellectual disability:

(A) provided that the child meets the commitment criteria under Subtitle C or D, Title 7, Health and Safety Code, order the child placed with the Department of State Health Services or the Department of Aging and Disability Services, as appropriate, for a period of not more than 90 days, which order may not specify a shorter period, for placement in a facility designated by the department; or

(B) on application by the child's parent, guardian, or guardian ad litem, order the child placed in a private psychiatric inpatient facility for a period of not more than 90 days, which order may not specify a shorter period, but only if the placement is agreed to in writing by the administrator of the facility; or

(2) if the unfitness to proceed is a result of mental illness and the court determines that the child may be adequately treated in an alternative setting, order the child to receive treatment for mental illness on an outpatient basis for a period of not more than 90 days, which order may not specify a shorter period.

(b) If the court orders a child placed in a private psychiatric inpatient facility under Subsection (a)(1)(B), the state or a political subdivision of the state may be ordered to pay any costs associated with the child's placement, subject to an express appropriation of funds for the purpose.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.008, effective April 2, 2015.

Sec. 55.34. Transportation to and from Facility.

(a) If the court issues a placement order under Section 55.33(a)(1), the court shall order the probation department or sheriff's department to transport the child to the designated facility.

(b) On receipt of a report from a facility to which a child has been transported under Subsection (a), the court shall

order the probation department or sheriff's department to transport the child from the facility to the court. If the child is not transported to the court before the 11th day after the date of the court's order, an authorized representative of the facility shall transport the child from the facility to the court.

(c) The county in which the juvenile court is located shall reimburse the facility for the costs incurred in transporting the child to the juvenile court as required by Subsection (b).

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999.

Sec. 55.35. Information Required to Be Sent to Facility; Report to Court.

(a) If the juvenile court issues a placement order under Section 55.33(a), the court shall order the probation department to send copies of any information in the possession of the department and relevant to the issue of the child's mental illness or intellectual disability to the public or private facility or outpatient center, as appropriate.

(b) Not later than the 75th day after the date the court issues a placement order under Section 55.33(a), the public or private facility or outpatient center, as appropriate, shall submit to the court a report that:

(1) describes the treatment of the child provided by the facility or center; and

(2) states the opinion of the director of the facility or center as to whether the child is fit or unfit to proceed.

(c) The court shall provide a copy of the report submitted under Subsection (b) to the prosecuting attorney and the attorney for the child.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.009, effective April 2, 2015.

Sec. 55.36. Report That Child Is Fit to Proceed; Hearing on Objection.

(a) If a report submitted under Section 55.35(b) states that a child is fit to proceed, the juvenile court shall find that the child is fit to proceed unless the child's attorney objects in writing or in open court not later than the second day after the date the attorney receives a copy of the report under Section 55.35(c).

(b) On objection by the child's attorney under Subsection (a), the juvenile court shall promptly hold a hearing to determine whether the child is fit to proceed, except that the hearing may be held after the date that the placement order issued under Section 55.33(a) expires. At the hearing, the court shall determine the issue of the fitness of the child to proceed unless the child or the child's attorney demands in writing a jury before the 10th day before the date of the hearing.

(c) If, after a hearing, the court or jury finds that the child is fit to proceed, the court shall dissolve the stay and continue the juvenile court proceedings as though a question of fitness to proceed had not been raised.

(d) If, after a hearing, the court or jury finds that the child is unfit to proceed, the court shall proceed under Section 55.37.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999.

Sec. 55.37. Report That Child Is Unfit to Proceed As a Result of Mental Illness; Initiation of Commitment Proceedings.

If a report submitted under Section 55.35(b) states that a child is unfit to proceed as a result of mental illness and that the child meets the commitment criteria for civil commitment under Subtitle C, Title 7, Health and Safety Code, the director of the public or private facility or outpatient center, as appropriate, shall submit to the court two certificates of medical examination for mental illness. On receipt of the certificates, the court shall:

(1) initiate proceedings as provided by Section 55.38 in the juvenile court for commitment of the child under Subtitle C, Title 7, Health and Safety Code; or

(2) refer the child's case as provided by Section 55.39 to the appropriate court for the initiation of proceedings in that court for commitment of the child under Subtitle C, Title 7, Health and Safety Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999.

Sec. 55.38. Commitment Proceedings in Juvenile Court for Mental Illness.

(a) If the juvenile court initiates commitment proceedings under Section 55.37(1), the prosecuting attorney may file with the juvenile court an application for court-ordered mental health services under Section 574.001, Health and Safety Code. The juvenile court shall:

(1) set a date for a hearing and provide notice as required by Sections 574.005 and 574.006, Health and Safety Code; and

(2) conduct the hearing in accordance with Subchapter C, Chapter 574, Health and Safety Code.

(b) After conducting a hearing under Subsection (a)(2), the juvenile court shall:

(1) if the criteria under Section 574.034 or 574.0345, Health and Safety Code, are satisfied, order temporary mental health services; or

(2) if the criteria under Section 574.035 or 574.0355, Health and Safety Code, are satisfied, order extended mental health services.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; am. Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 4, effective September 1, 2019.

Sec. 55.39. Referral for Commitment Proceedings for Mental Illness.

(a) If the juvenile court refers the child's case to an appropriate court for the initiation of commitment proceedings under Section 55.37(2), the juvenile court shall:

(1) send all papers relating to the child's unfitness to proceed, including the verdict and judgment of the juvenile court finding the child unfit to proceed, to the clerk of the court to which the case is referred;

(2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the appropriate district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and

(3) if the child is in detention:

(A) order the child released from detention to the child's home or another appropriate place;

(B) order the child detained in an appropriate place other than a juvenile detention facility; or

(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

(b) The papers sent to a court under Subsection (a)(1) constitute an application for mental health services under Section 574.001, Health and Safety Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999.

Sec. 55.40. Report That Child Is Unfit to Proceed As a Result of Intellectual Disability.

If a report submitted under Section 55.35(b) states that a child is unfit to proceed as a result of an intellectual disability and that the child meets the commitment criteria for civil commitment under Subtitle D, Title 7, Health and Safety Code, the director of the residential care facility shall submit to the court an affidavit stating the conclusions reached as a result of the diagnosis. On receipt of the affidavit, the court shall:

(1) initiate proceedings as provided by Section 55.41 in the juvenile court for commitment of the child under Subtitle D, Title 7, Health and Safety Code; or

(2) refer the child's case as provided by Section 55.42 to the appropriate court for the initiation of proceedings in that court for commitment of the child under Subtitle D, Title 7, Health and Safety Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.010, effective April 2, 2015.

Sec. 55.41. Commitment Proceedings in Juvenile Court for Children with Intellectual Disability.

(a) If the juvenile court initiates commitment proceedings under Section 55.40(1), the prosecuting attorney may file with the juvenile court an application for placement under Section 593.041, Health and Safety Code. The juvenile court shall:

(1) set a date for a hearing and provide notice as required by Sections 593.047 and 593.048, Health and Safety Code; and

(2) conduct the hearing in accordance with Sections 593.049–593.056, Health and Safety Code.

(b) After conducting a hearing under Subsection (a)(2), the juvenile court may order commitment of the child to a residential care facility if the commitment criteria under Section 593.052, Health and Safety Code, are satisfied.

(c) On receipt of the court's order, the Department of Aging and Disability Services or the appropriate community center shall admit the child to a residential care facility.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1297 (H.B. 1118), § 30, effective September 1, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 1.011, 1.012, effective April 2, 2015.

Sec. 55.42. Referral for Commitment Proceedings for Children with Intellectual Disability.

(a) If the juvenile court refers the child's case to an

appropriate court for the initiation of commitment proceedings under Section 55.40(2), the juvenile court shall:

(1) send all papers relating to the child's intellectual disability to the clerk of the court to which the case is referred;

(2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the appropriate district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and

(3) if the child is in detention:

(A) order the child released from detention to the child's home or another appropriate place;

(B) order the child detained in an appropriate place other than a juvenile detention facility; or

(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

(b) The papers sent to a court under Subsection (a)(1) constitute an application for placement under Section 593.041, Health and Safety Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 1.013, 1.014, effective April 2, 2015.

Sec. 55.43. Restoration Hearing.

(a) The prosecuting attorney may file with the juvenile court a motion for a restoration hearing concerning a child if:

(1) the child is found unfit to proceed as a result of mental illness or an intellectual disability; and

(2) the child:

(A) is not:

(i) ordered by a court to receive inpatient mental health services;

(ii) committed by a court to a residential care facility; or

(iii) ordered by a court to receive treatment on an outpatient basis; or

(B) is discharged or currently on furlough from a mental health facility or outpatient center before the child reaches 18 years of age.

(b) At the restoration hearing, the court shall determine the issue of whether the child is fit to proceed.

(c) The restoration hearing shall be conducted without a jury.

(d) The issue of fitness to proceed must be proved by a preponderance of the evidence.

(e) If, after a hearing, the court finds that the child is fit to proceed, the court shall continue the juvenile court proceedings.

(f) If, after a hearing, the court finds that the child is unfit to proceed, the court shall dismiss the motion for restoration.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; am. Acts 2007, 80th Leg., ch. 908, (H.B. 2884), § 13, effective September 1, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.015, effective April 2, 2015.

Sec. 55.44. Transfer to Criminal Court on 18th Birthday of Child.

(a) The juvenile court shall transfer all pending proceedings from the juvenile court to a criminal court on the

18th birthday of a child for whom the juvenile court or a court to which the child's case is referred has ordered inpatient mental health services or residential care for persons with an intellectual disability if:

(1) the child is not discharged or currently on furlough from the facility before reaching 18 years of age; and

(2) the child is alleged to have engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045 and no adjudication concerning the alleged conduct has been made.

(b) The juvenile court shall send notification of the transfer of a child under Subsection (a) to the facility. The criminal court shall, before the 91st day after the date of the transfer, institute proceedings under Chapter 46B, Code of Criminal Procedure. If those or any subsequent proceedings result in a determination that the defendant is competent to stand trial, the defendant may not receive a punishment for the delinquent conduct described by Subsection (a)(2) that results in confinement for a period longer than the maximum period of confinement the defendant could have received if the defendant had been adjudicated for the delinquent conduct while still a child and within the jurisdiction of the juvenile court.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 8, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 908, (H.B. 2884), § 14, effective September 1, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.016, effective April 2, 2015.

Sec. 55.45. Standards of Care; Notice of Release or Furlough.

(a) If the juvenile court or a court to which the child's case is referred under Section 55.37(2) orders mental health services for the child, the child shall be cared for, treated, and released in accordance with Subtitle C, Title 7, Health and Safety Code, except that the administrator of a mental health facility shall notify, in writing, by certified mail, return receipt requested, the juvenile court that ordered mental health services or that referred the case to a court that ordered mental health services of the intent to discharge the child on or before the 10th day before the date of discharge.

(b) If the juvenile court or a court to which the child's case is referred under Section 55.40(2) orders the commitment of the child to a residential care facility, the child shall be cared for, treated, and released in accordance with Subtitle D, Title 7, Health and Safety Code, except that the administrator of the residential care facility shall notify, in writing, by certified mail, return receipt requested, the juvenile court that ordered commitment of the child or that referred the case to a court that ordered commitment of the child or that referred the case to a court that ordered discharge or furlough the child on or before the 20th day before the date of discharge or furlough.

(c) If the referred child, as described in Subsection (b), is alleged to have committed an offense listed in Article 42A.054, Code of Criminal Procedure, the administrator of the residential care facility shall apply, in writing, by certified mail, return receipt requested, to the juvenile court that ordered commitment of the child or that referred the case to a court that ordered commitment of the

child and show good cause for any release of the child from the facility for more than 48 hours. Notice of this request must be provided to the prosecuting attorney responsible for the case. The prosecuting attorney, the juvenile, or the administrator may apply for a hearing on this application. If no one applies for a hearing, the trial court shall resolve the application on the written submission. The rules of evidence do not apply to this hearing. An appeal of the trial court's ruling on the application is not allowed. The release of a child described in this subsection without the express approval of the trial court is punishable by contempt.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1297 (H.B. 1118), § 31, effective September 1, 2001; am. Acts 2007, 80th Leg., ch. 908 (H.B. 2884), § 15, effective September 1, 2007; am. Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 2.34, effective January 1, 2017.

Secs. 55.46 to 55.50. [Reserved for expansion].

Subchapter D

Lack of Responsibility for Conduct As a Result of Mental Illness or Intellectual Disability

Sec. 55.51. Lack of Responsibility for Conduct Determination; Examination.

(a) A child alleged by petition to have engaged in delinquent conduct or conduct indicating a need for supervision is not responsible for the conduct if at the time of the conduct, as a result of mental illness or an intellectual disability, the child lacks substantial capacity either to appreciate the wrongfulness of the child's conduct or to conform the child's conduct to the requirements of law.

(b) On a motion by a party in which it is alleged that a child may not be responsible as a result of mental illness or an intellectual disability for the child's conduct, the court shall order the child to be examined under Section 51.20. The information obtained from the examinations must include expert opinion as to whether the child is not responsible for the child's conduct as a result of mental illness or an intellectual disability.

(c) The issue of whether the child is not responsible for the child's conduct as a result of mental illness or an intellectual disability shall be tried to the court or jury in the adjudication hearing.

(d) Lack of responsibility for conduct as a result of mental illness or an intellectual disability must be proved by a preponderance of the evidence.

(e) In its findings or verdict the court or jury must state whether the child is not responsible for the child's conduct as a result of mental illness or an intellectual disability.

(f) If the court or jury finds the child is not responsible for the child's conduct as a result of mental illness or an intellectual disability, the court shall proceed under Section 55.52.

(g) A child found to be not responsible for the child's conduct as a result of mental illness or an intellectual disability shall not be subject to proceedings under this title with respect to such conduct, other than proceedings under Section 55.52.

HISTORY: Enacted by Acts 1973, 63rd Leg., ch. 544 (S.B. 111), § 1, effective September 1, 1973; am. Acts 1995, 74th Leg., ch.

262 (H.B. 327), § 47, effective May 31, 1995; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999 (renumbered from Sec. 55.05); am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.018, effective April 2, 2015.

Sec. 55.52. Proceedings Following Finding of Lack of Responsibility for Conduct.

(a) If the court or jury finds that a child is not responsible for the child's conduct under Section 55.51, the court shall:

(1) if the lack of responsibility is a result of mental illness or an intellectual disability:

(A) provided that the child meets the commitment criteria under Subtitle C or D, Title 7, Health and Safety Code, order the child placed with the Department of State Health Services or the Department of Aging and Disability Services, as appropriate, for a period of not more than 90 days, which order may not specify a shorter period, for placement in a facility designated by the department; or

(B) on application by the child's parent, guardian, or guardian ad litem, order the child placed in a private psychiatric inpatient facility for a period of not more than 90 days, which order may not specify a shorter period, but only if the placement is agreed to in writing by the administrator of the facility; or

(2) if the child's lack of responsibility is a result of mental illness and the court determines that the child may be adequately treated in an alternative setting, order the child to receive treatment on an outpatient basis for a period of not more than 90 days, which order may not specify a shorter period.

(b) If the court orders a child placed in a private psychiatric inpatient facility under Subsection (a)(1)(B), the state or a political subdivision of the state may be ordered to pay any costs associated with the child's placement, subject to an express appropriation of funds for the purpose.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.019, effective April 2, 2015.

Sec. 55.53. Transportation to and from Facility.

(a) If the court issues a placement order under Section 55.52(a)(1), the court shall order the probation department or sheriff's department to transport the child to the designated facility.

(b) On receipt of a report from a facility to which a child has been transported under Subsection (a), the court shall order the probation department or sheriff's department to transport the child from the facility to the court. If the child is not transported to the court before the 11th day after the date of the court's order, an authorized representative of the facility shall transport the child from the facility to the court.

(c) The county in which the juvenile court is located shall reimburse the facility for the costs incurred in transporting the child to the juvenile court as required by Subsection (b).

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999.

Sec. 55.54. Information Required to Be Sent to Facility; Report to Court.

(a) If the juvenile court issues a placement order under Section 55.52(a), the court shall order the probation department to send copies of any information in the possession of the department and relevant to the issue of the child's mental illness or intellectual disability to the public or private facility or outpatient center, as appropriate.

(b) Not later than the 75th day after the date the court issues a placement order under Section 55.52(a), the public or private facility or outpatient center, as appropriate, shall submit to the court a report that:

(1) describes the treatment of the child provided by the facility or center; and

(2) states the opinion of the director of the facility or center as to whether the child has a mental illness or an intellectual disability.

(c) The court shall send a copy of the report submitted under Subsection (b) to the prosecuting attorney and the attorney for the child.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.020, effective April 2, 2015.

Sec. 55.55. Report That Child Does Not Have Mental Illness or Intellectual Disability; Hearing on Objection.

(a) If a report submitted under Section 55.54(b) states that a child does not have a mental illness or an intellectual disability, the juvenile court shall discharge the child unless:

(1) an adjudication hearing was conducted concerning conduct that included a violation of a penal law listed in Section 53.045(a) and a petition was approved by a grand jury under Section 53.045; and

(2) the prosecuting attorney objects in writing not later than the second day after the date the attorney receives a copy of the report under Section 55.54(c).

(b) On objection by the prosecuting attorney under Subsection (a), the juvenile court shall hold a hearing without a jury to determine whether the child has a mental illness or an intellectual disability and whether the child meets the commitment criteria for civil commitment under Subtitle C or D, Title 7, Health and Safety Code.

(c) At the hearing, the burden is on the state to prove by clear and convincing evidence that the child has a mental illness or an intellectual disability and that the child meets the commitment criteria for civil commitment under Subtitle C or D, Title 7, Health and Safety Code.

(d) If, after a hearing, the court finds that the child does not have a mental illness or an intellectual disability and that the child does not meet the commitment criteria under Subtitle C or D, Title 7, Health and Safety Code, the court shall discharge the child.

(e) If, after a hearing, the court finds that the child has a mental illness or an intellectual disability and that the child meets the commitment criteria under Subtitle C or D, Title 7, Health and Safety Code, the court shall issue an appropriate commitment order.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.021, effective April 2, 2015.

Sec. 55.56. Report That Child Has Mental Illness; Initiation of Commitment Proceedings.

If a report submitted under Section 55.54(b) states that a child has a mental illness and that the child meets the commitment criteria for civil commitment under Subtitle C, Title 7, Health and Safety Code, the director of the public or private facility or outpatient center, as appropriate, shall submit to the court two certificates of medical examination for mental illness. On receipt of the certificates, the court shall:

- (1) initiate proceedings as provided by Section 55.57 in the juvenile court for commitment of the child under Subtitle C, Title 7, Health and Safety Code; or
- (2) refer the child's case as provided by Section 55.58 to the appropriate court for the initiation of proceedings in that court for commitment of the child under Subtitle C, Title 7, Health and Safety Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999.

Sec. 55.57. Commitment Proceedings in Juvenile Court for Mental Illness.

(a) If the juvenile court initiates commitment proceedings under Section 55.56(1), the prosecuting attorney may file with the juvenile court an application for court-ordered mental health services under Section 574.001, Health and Safety Code. The juvenile court shall:

- (1) set a date for a hearing and provide notice as required by Sections 574.005 and 574.006, Health and Safety Code; and
- (2) conduct the hearing in accordance with Subchapter C, Chapter 574, Health and Safety Code.

(b) After conducting a hearing under Subsection (a)(2), the juvenile court shall:

- (1) if the criteria under Section 574.034 or 574.0345, Health and Safety Code, are satisfied, order temporary mental health services; or
- (2) if the criteria under Section 574.035 or 574.0355, Health and Safety Code, are satisfied, order extended mental health services.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; am. Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 5, effective September 1, 2019.

Sec. 55.58. Referral for Commitment Proceedings for Mental Illness.

(a) If the juvenile court refers the child's case to an appropriate court for the initiation of commitment proceedings under Section 55.56(2), the juvenile court shall:

- (1) send all papers relating to the child's mental illness, including the verdict and judgment of the juvenile court finding that the child was not responsible for the child's conduct, to the clerk of the court to which the case is referred;
- (2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and
- (3) if the child is in detention:
 - (A) order the child released from detention to the child's home or another appropriate place;

(B) order the child detained in an appropriate place other than a juvenile detention facility; or

(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

(b) The papers sent to a court under Subsection (a)(1) constitute an application for mental health services under Section 574.001, Health and Safety Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999.

Sec. 55.59. Report That Child Has Intellectual Disability; Initiation of Commitment Proceedings.

If a report submitted under Section 55.54(b) states that a child has an intellectual disability and that the child meets the commitment criteria for civil commitment under Subtitle D, Title 7, Health and Safety Code, the director of the residential care facility shall submit to the court an affidavit stating the conclusions reached as a result of the diagnosis. On receipt of an affidavit, the juvenile court shall:

- (1) initiate proceedings in the juvenile court as provided by Section 55.60 for commitment of the child under Subtitle D, Title 7, Health and Safety Code; or
- (2) refer the child's case to the appropriate court as provided by Section 55.61 for the initiation of proceedings in that court for commitment of the child under Subtitle D, Title 7, Health and Safety Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.022, effective April 2, 2015.

Sec. 55.60. Commitment Proceedings in Juvenile Court for Children with Intellectual Disability.

(a) If the juvenile court initiates commitment proceedings under Section 55.59(1), the prosecuting attorney may file with the juvenile court an application for placement under Section 593.041, Health and Safety Code. The juvenile court shall:

- (1) set a date for a hearing and provide notice as required by Sections 593.047 and 593.048, Health and Safety Code; and
- (2) conduct the hearing in accordance with Sections 593.049–593.056, Health and Safety Code.

(b) After conducting a hearing under Subsection (a)(2), the juvenile court may order commitment of the child to a residential care facility only if the commitment criteria under Section 593.052, Health and Safety Code, are satisfied.

(c) On receipt of the court's order, the Department of Aging and Disability Services or the appropriate community center shall admit the child to a residential care facility.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1297 (H.B. 1118), § 32, effective September 1, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 1.023, 1.024, effective April 2, 2015.

Sec. 55.61. Referral for Commitment Proceedings for Children with Intellectual Disability.

(a) If the juvenile court refers the child's case to an

appropriate court for the initiation of commitment proceedings under Section 55.59(2), the juvenile court shall:

- (1) send all papers relating to the child's intellectual disability to the clerk of the court to which the case is referred;
- (2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the appropriate district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and
- (3) if the child is in detention:

(A) order the child released from detention to the child's home or another appropriate place;

(B) order the child detained in an appropriate place other than a juvenile detention facility; or

(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

(b) The papers sent to a court under Subsection (a)(1) constitute an application for placement under Section 593.041, Health and Safety Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 1.025, 1.026, effective April 2, 2015.

CHAPTER 56

Appeal

Section
56.01.

Right to Appeal.

Sec. 56.01. Right to Appeal.

(a) Except as provided by Subsection (b-1), an appeal from an order of a juvenile court is to a court of appeals and the case may be carried to the Texas Supreme Court by writ of error or upon certificate, as in civil cases generally.

(b) The requirements governing an appeal are as in civil cases generally. When an appeal is sought by filing a notice of appeal, security for costs of appeal, or an affidavit of inability to pay the costs of appeal, and the filing is made in a timely fashion after the date the disposition order is signed, the appeal must include the juvenile court adjudication and all rulings contributing to that adjudication. An appeal of the adjudication may be sought notwithstanding that the adjudication order was signed more than 30 days before the date the notice of appeal, security for costs of appeal, or affidavit of inability to pay the costs of appeal was filed.

(b-1) A motion for new trial seeking to vacate an adjudication is:

(1) timely if the motion is filed not later than the 30th day after the date on which the disposition order is signed; and

(2) governed by Rule 21, Texas Rules of Appellate Procedure.

(c) An appeal may be taken:

(1) except as provided by Subsection (n), by or on behalf of a child from an order entered under:

(A) Section 54.02 respecting transfer of the child for prosecution as an adult;

(B) Section 54.03 with regard to delinquent conduct or conduct indicating a need for supervision;

(C) Section 54.04 disposing of the case;

(D) Section 54.05 respecting modification of a previous juvenile court disposition; or

(E) Chapter 55 by a juvenile court committing a child to a facility for the mentally ill or intellectually disabled; or

(2) by a person from an order entered under Section 54.11(i)(2) transferring the person to the custody of the Texas Department of Criminal Justice.

(d) A child has the right to:

(1) appeal, as provided by this subchapter;

(2) representation by counsel on appeal; and

(3) appointment of an attorney for the appeal if an attorney cannot be obtained because of indigency.

(e) On entering an order that is appealable under this section, the court shall advise the child and the child's parent, guardian, or guardian ad litem of the child's rights listed under Subsection (d) of this section.

(f) If the child and his parent, guardian, or guardian ad litem express a desire to appeal, the attorney who represented the child before the juvenile court shall file a notice of appeal with the juvenile court and inform the court whether that attorney will handle the appeal. Counsel shall be appointed under the standards provided in Section 51.10 of this code unless the right to appeal is waived in accordance with Section 51.09 of this code.

(g) An appeal does not suspend the order of the juvenile court, nor does it release the child from the custody of that court or of the person, institution, or agency to whose care the child is committed, unless the juvenile court so orders. However, the appellate court may provide for a personal bond.

(g-1) An appeal from an order entered under Section 54.02 respecting transfer of the child for prosecution as an adult does not stay the criminal proceedings pending the disposition of that appeal.

(h) If the order appealed from takes custody of the child from the child's parent, guardian, or custodian or waives jurisdiction under Section 54.02 and transfers the child to criminal court for prosecution, the appeal has precedence over all other cases.

(h-1) The supreme court shall adopt rules accelerating the disposition by the appellate court and the supreme court of an appeal of an order waiving jurisdiction under Section 54.02 and transferring a child to criminal court for prosecution.

(i) The appellate court may affirm, reverse, or modify the judgment or order, including an order of disposition or modified disposition, from which appeal was taken. It may reverse or modify an order of disposition or modified order of disposition while affirming the juvenile court adjudication that the child engaged in delinquent conduct or conduct indicating a need for supervision. It may remand an order that it reverses or modifies for further proceedings by the juvenile court.

(j) Neither the child nor his family shall be identified in an appellate opinion rendered in an appeal or habeas corpus proceedings related to juvenile court proceedings under this title. The appellate opinion shall be styled, "In the matter of _____," identifying the child by his initials only.

(k) The appellate court shall dismiss an appeal on the state’s motion, supported by affidavit showing that the appellant has escaped from custody pending the appeal and, to the affiant’s knowledge, has not voluntarily returned to the state’s custody on or before the 10th day after the date of the escape. The court may not dismiss an appeal, or if the appeal has been dismissed, shall reinstate the appeal, on the filing of an affidavit of an officer or other credible person showing that the appellant voluntarily returned to custody on or before the 10th day after the date of the escape.

(l) The court may order the child, the child’s parent, or other person responsible for support of the child to pay the child’s costs of appeal, including the costs of representation by an attorney, unless the court determines the person to be ordered to pay the costs is indigent.

(m) For purposes of determining indigency of the child under this section, the court shall consider the assets and income of the child, the child’s parent, and any other person responsible for the support of the child.

(n) A child who enters a plea or agrees to a stipulation of evidence in a proceeding held under this title may not appeal an order of the juvenile court entered under Section 54.03, 54.04, or 54.05 if the court makes a disposition in accordance with the agreement between the state and the child regarding the disposition of the case, unless:

- (1) the court gives the child permission to appeal; or
- (2) the appeal is based on a matter raised by written motion filed before the proceeding in which the child entered the plea or agreed to the stipulation of evidence.

(o) This section does not limit a child’s right to obtain a writ of habeas corpus.

HISTORY: Enacted by Acts 1973, 63rd Leg., ch. 544 (S.B. 111), § 1, effective September 1, 1973; am. Acts 1987, 70th Leg., ch. 385 (H.B. 682), § 14, effective September 1, 1987; am. Acts 1991, 72nd Leg., ch. 680 (H.B. 889), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 48, effective January 1, 1996; am. Acts 1997, 75th Leg., ch. 1086 (H.B. 1550), § 15, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 74 (H.B. 251), § 2, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 15, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1297 (H.B. 1118), § 33, effective September 1, 2001; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.059, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 642 (H.B. 1688), § 2, effective September 1, 2009; am. Acts 2015, 84th Leg., ch. 74 (S.B. 888), § 3, effective September 1, 2015.

CHAPTER 58

Records; Juvenile Justice Information System

Subchapter A

Creation and Confidentiality of Juvenile Records

Section 58.0051.	Interagency Sharing of Educational Records.
58.0052.	Interagency Sharing of Certain Noneducational Records.

Sec. 58.0051. Interagency Sharing of Educational Records.

(a) In this section:

(1) “Educational records” means records in the possession of a primary or secondary educational institution that contain information relating to a student, including information relating to the student’s:

- (A) identity;
- (B) special needs;
- (C) educational accommodations;
- (D) assessment or diagnostic test results;
- (E) attendance records;
- (F) disciplinary records;
- (G) medical records; and
- (H) psychological diagnoses.

(2) “Juvenile service provider” means a governmental entity that provides juvenile justice or prevention, medical, educational, or other support services to a juvenile. The term includes:

- (A) a state or local juvenile justice agency as defined by Section 58.101;
- (B) health and human services agencies, as defined by Section 531.001, Government Code, and the Health and Human Services Commission;
- (C) the Department of Family and Protective Services;
- (D) the Department of Public Safety;
- (E) the Texas Education Agency;
- (F) an independent school district;
- (G) a juvenile justice alternative education program;
- (H) a charter school;
- (I) a local mental health or mental retardation authority;
- (J) a court with jurisdiction over juveniles;
- (K) a district attorney’s office;
- (L) a county attorney’s office; and
- (M) a children’s advocacy center established under Section 264.402.

(3) “Student” means a person who:

- (A) is registered or in attendance at a primary or secondary educational institution; and
- (B) is younger than 18 years of age.

(b) At the request of a juvenile service provider, an independent school district or a charter school shall disclose to the juvenile service provider confidential information contained in the student’s educational records if the student has been:

- (1) taken into custody under Section 52.01; or
- (2) referred to a juvenile court for allegedly engaging in delinquent conduct or conduct indicating a need for supervision.

(c) An independent school district or charter school that discloses confidential information to a juvenile service provider under Subsection (b) may not destroy a record of the disclosed information before the seventh anniversary of the date the information is disclosed.

(d) An independent school district or charter school shall comply with a request under Subsection (b) regardless of whether other state law makes that information confidential.

(e) A juvenile service provider that receives confidential information under this section shall:

- (1) certify in writing that the juvenile service provider receiving the confidential information has agreed

not to disclose it to a third party, other than another juvenile service provider; and

(2) use the confidential information only to:

(A) verify the identity of a student involved in the juvenile justice system; and

(B) provide delinquency prevention or treatment services to the student.

(f) A juvenile service provider may establish an internal protocol for sharing information with other juvenile service providers as necessary to efficiently and promptly disclose and accept the information. The protocol may specify the types of information that may be shared under this section without violating federal law, including any federal funding requirements. A juvenile service provider may enter into a memorandum of understanding with another juvenile service provider to share information according to the juvenile service provider's protocols. A juvenile service provider shall comply with this section regardless of whether the juvenile service provider establishes an internal protocol or enters into a memorandum of understanding under this subsection unless compliance with this section violates federal law.

(g) This section does not affect the confidential status of the information being shared. The information may be released to a third party only as directed by a court order or as otherwise authorized by law. Personally identifiable information disclosed to a juvenile service provider under this section is not subject to disclosure to a third party under Chapter 552, Government Code.

(h) A juvenile service provider that requests information under this section shall pay a fee to the disclosing juvenile service provider in the same amounts charged for the provision of public information under Subchapter F, Chapter 552, Government Code, unless:

(1) a memorandum of understanding between the requesting provider and the disclosing provider:

(A) prohibits the payment of a fee;

(B) provides for the waiver of a fee; or

(C) provides an alternate method of assessing a fee;

(2) the disclosing provider waives the payment of the fee; or

(3) disclosure of the information is required by law other than this subchapter.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 217 (H.B. 1749), § 1, effective May 24, 1999; am. Acts 2007, 80th Leg., ch. 908 (H.B. 2884), § 16, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 493 (S.B. 1106), § 2, effective June 17, 2011; am. Acts 2017, 85th Leg., ch. 316 (H.B. 5), § 1, effective September 1, 2017.

Sec. 58.0052. Interagency Sharing of Certain Non-educational Records.

(a) In this section:

(1) "Juvenile justice agency" has the meaning assigned by Section 58.101.

(2) "Juvenile service provider" has the meaning assigned by Section 58.0051.

(3) "Multi-system youth" means a person who:

(A) is younger than 19 years of age; and

(B) has received services from two or more juvenile service providers.

(4) "Personal health information" means personally identifiable information regarding a multi-system youth's physical or mental health or the provision of or payment for health care services, including case management services, to a multi-system youth. The term does not include clinical psychological notes or substance abuse treatment information.

(b) Subject to Subsection (c), at the request of a juvenile service provider, another juvenile service provider shall disclose to that provider a multi-system youth's personal health information or a history of governmental services provided to the multi-system youth, including:

(1) identity records;

(2) medical and dental records;

(3) assessment or diagnostic test results;

(4) special needs;

(5) program placements;

(6) psychological diagnoses; and

(7) other related records or information.

(b-1) In addition to the information provided under Subsection (b), the Department of Family and Protective Services and the Texas Juvenile Justice Department shall coordinate and develop protocols for sharing with each other, on request, any other information relating to a multi-system youth necessary to:

(1) identify and coordinate the provision of services to the youth and prevent duplication of services;

(2) enhance rehabilitation of the youth; and

(3) improve and maintain community safety.

(b-2) At the request of the Department of Family and Protective Services or a single source continuum contractor who contracts with the department to provide foster care services, a state or local juvenile justice agency shall share with the department or contractor information in the possession of the juvenile justice agency that is necessary to improve and maintain community safety or that assists the department or contractor in the continuation of services for or providing services to a multi-system youth who is or has been in the custody or control of the juvenile justice agency.

(b-3) At the request of a state or local juvenile justice agency, the Department of Family and Protective Services or a single source continuum contractor who contracts with the department to provide foster care services shall, not later than the 14th business day after the date of the request, share with the juvenile justice agency information in the possession of the department or contractor that is necessary to improve and maintain community safety or that assists the agency in the continuation of services for or providing services to a multi-system youth who:

(1) is or has been in the temporary or permanent managing conservatorship of the department;

(2) is or was the subject of a family-based safety services case with the department;

(3) has been reported as an alleged victim of abuse or neglect to the department;

(4) is the perpetrator in a case in which the department investigation concluded that there was a reason to believe that abuse or neglect occurred; or

(5) is a victim in a case in which the department investigation concluded that there was a reason to believe that abuse or neglect occurred.

(c) A juvenile service provider may disclose personally identifiable information under this section only for the purposes of:

- (1) identifying a multi-system youth;
- (2) coordinating and monitoring care for a multi-system youth; and
- (3) improving the quality of juvenile services provided to a multi-system youth.

(d) To the extent that this section conflicts with another law of this state with respect to confidential information held by a governmental agency, this section controls.

(e) A juvenile service provider may establish an internal protocol for sharing information with other juvenile service providers as necessary to efficiently and promptly disclose and accept the information. The protocol may specify the types of information that may be shared under this section without violating federal law, including any federal funding requirements. A juvenile service provider may enter into a memorandum of understanding with another juvenile service provider to share information according to the juvenile service provider's protocols. A juvenile service provider shall comply with this section regardless of whether the juvenile service provider establishes an internal protocol or enters into a memorandum of understanding under this subsection unless compliance with this section violates federal law.

(f) This section does not affect the confidential status of the information being shared. The information may be released to a third party only as directed by a court order or as otherwise authorized by law. Personally identifiable information disclosed to a juvenile service provider under this section is not subject to disclosure to a third party under Chapter 552, Government Code.

(g) This section does not affect the authority of a governmental agency to disclose to a third party for research purposes information that is not personally identifiable as provided by the governmental agency's protocol.

(h) A juvenile service provider that requests information under this section shall pay a fee to the disclosing juvenile service provider in the same amounts charged for the provision of public information under Subchapter F, Chapter 552, Government Code, unless:

- (1) a memorandum of understanding between the requesting provider and the disclosing provider:
 - (A) prohibits the payment of a fee;
 - (B) provides for the waiver of a fee; or
 - (C) provides an alternate method of assessing a fee;
- (2) the disclosing provider waives the payment of the fee; or
- (3) disclosure of the information is required by law other than this subchapter.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 493 (S.B. 1106), § 2, effective June 17, 2011; am. Acts 2015, 84th Leg., ch. 944 (S.B. 206), § 5, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 317 (H.B. 7), § 3, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 746 (S.B. 1304), § 10, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 1021 (H.B. 1521), § 1, effective June 15, 2017; 2019, 86th Leg., ch. 131 (H.B. 1760), § 2, effective September 1, 2019.

**TITLE 3A
TRUANCY COURT PROCEEDINGS**

CHAPTER 65

Truancy Court Proceedings

Subchapter B

Initial Procedures

Section
65.065.

Child Alleged to Be Mentally Ill.

Sec. 65.065. Child Alleged to Be Mentally Ill.

(a) A party may make a motion requesting that a petition alleging a child to have engaged in truant conduct be dismissed because the child has a mental illness, as defined by Section 571.003, Health and Safety Code. In response to the motion, the truancy court shall temporarily stay the proceedings to determine whether probable cause exists to believe the child has a mental illness. In making a determination, the court may:

- (1) consider the motion, supporting documents, professional statements of counsel, and witness testimony; and
- (2) observe the child.

(b) If the court determines that probable cause exists to believe that the child has a mental illness, the court shall dismiss the petition. If the court determines that evidence does not exist to support a finding that the child has a mental illness, the court shall dissolve the stay and continue with the truancy court proceedings.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 935 (H.B. 2398), § 27, effective September 1, 2015.

**TITLE 5
THE PARENT-CHILD
RELATIONSHIP AND THE SUIT
AFFECTING THE PARENT-CHILD
RELATIONSHIP**

SUBTITLE E

PROTECTION OF THE CHILD

Chapter
264.
266.

Child Welfare Services
Medical Care and Educational Services for
Children in Conservatorship of Depart-
ment of Family and Protective Services

CHAPTER 264

Child Welfare Services

Subchapter B. Foster Care

Section
264.121.

Transitional Living Services Program.

Subchapter E. Children's Advocacy Centers

Section
264.4031. Multidisciplinary Team Working Protocol.
264.405. Center Duties.

*Subchapter B**Foster Care***Sec. 264.121. Transitional Living Services Program.**

(a) The department shall address the unique challenges facing foster children in the conservatorship of the department who must transition to independent living by:

(1) expanding efforts to improve transition planning and increasing the availability of transitional family group decision-making to all youth age 14 or older in the department's permanent managing conservatorship, including enrolling the youth in the Preparation for Adult Living Program before the age of 16;

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

(A) extend foster care eligibility and transition services for youth up to age 21 and develop policy to permit eligible youth to return to foster care as necessary to achieve the goals of the Transitional Living Services Program; and

(B) extend Medicaid coverage for foster care youth and former foster care youth up to age 21 with a single application at the time the youth leaves foster care; and

(3) entering into cooperative agreements with the Texas Workforce Commission and local workforce development boards to further the objectives of the Preparation for Adult Living Program. The department, the Texas Workforce Commission, and the local workforce development boards shall ensure that services are prioritized and targeted to meet the needs of foster care and former foster care children and that such services will include, where feasible, referrals for short-term stays for youth needing housing.

(a-1) The department shall require a foster care provider to provide or assist youth who are age 14 or older in obtaining experiential life-skills training to improve their transition to independent living. Experiential life-skills training must be tailored to a youth's skills and abilities and must include training in practical activities that include grocery shopping, meal preparation and cooking, performing basic household tasks, and, when appropriate, using public transportation.

(a-2) The experiential life-skills training under Subsection (a-1) must include:

(1) a financial literacy education program developed in collaboration with the Office of Consumer Credit Commissioner and the State Securities Board that:

(A) includes instruction on:

- (i) obtaining and interpreting a credit score;
- (ii) protecting, repairing, and improving a credit score;
- (iii) avoiding predatory lending practices;

(iv) saving money and accomplishing financial goals through prudent financial management practices;

(v) using basic banking and accounting skills, including balancing a checkbook;

(vi) using debit and credit cards responsibly;

(vii) understanding a paycheck and items withheld from a paycheck;

(viii) understanding the time requirements and process for filing federal taxes;

(ix) protecting financial, credit, and personally identifying information in personal and professional relationships and online;

(x) forms of identity and credit theft; and

(xi) using insurance to protect against the risk of financial loss; and

(B) assists a youth who has a source of income to:

(i) establish a savings plan and, if available, a savings account that the youth can independently manage; and

(ii) prepare a monthly budget that includes the following expenses:

(a) rent based on the monthly rent for an apartment advertised for lease during the preceding month;

(b) utilities based on a reasonable utility bill in the area in which the youth resides;

(c) telephone service based on a reasonable bill for telephone service in the area in which the youth resides;

(d) Internet service based on a reasonable bill for Internet service in the area in which the youth resides; and

(e) other reasonable monthly expenses; and

(2) for youth who are 17 years of age or older, lessons related to:

(A) insurance, including applying for and obtaining automobile insurance and residential property insurance, including tenants insurance; and

(B) civic engagement, including the process for registering to vote, the places to vote, and resources for information regarding upcoming elections.

(a-3) The department shall conduct an independent living skills assessment for all youth in the department's conservatorship who are 16 years of age or older.

(a-4) The department shall conduct an independent living skills assessment for all youth in the department's permanent managing conservatorship who are at least 14 years of age but younger than 16 years of age.

(a-5) The department shall annually update the assessment for each youth assessed under Subsections (a-3) and (a-4) to determine the independent living skills the youth learned during the preceding year to ensure that the department's obligation to prepare the youth for independent living has been met. The department shall conduct the annual update through the youth's plan of service in coordination with the youth, the youth's caseworker, the staff of the Preparation for Adult Living Program, and the youth's caregiver.

(a-6) The department, in coordination with stakeholders, shall develop a plan to standardize the curriculum for the Preparation for Adult Living Program that ensures

that youth 14 years of age or older enrolled in the program receive relevant and age-appropriate information and training. The department shall report the plan to the legislature not later than December 1, 2018.

(b) In this section:

(1) "Local workforce development board" means a local workforce development board created under Chapter 2308, Government Code.

(2) "Preparation for Adult Living Program" means a program administered by the department as a component of the Transitional Living Services Program and includes independent living skills assessment, short-term financial assistance, basic self-help skills, and life-skills development and training regarding money management, health and wellness, job skills, planning for the future, housing and transportation, and interpersonal skills.

(3) "Transitional Living Services Program" means a program, administered by the department in accordance with department rules and state and federal law, for youth who are age 14 or older but not more than 21 years of age and are currently or were formerly in foster care, that assists youth in transitioning from foster care to independent living. The program provides transitional living services, Preparation for Adult Living Program services, and Education and Training Voucher Program services.

(c) At the time a child enters the Preparation for Adult Living Program, the department shall provide an information booklet to the child and the foster parent describing the program and the benefits available to the child, including extended Medicaid coverage until age 21, priority status with the Texas Workforce Commission, and the exemption from the payment of tuition and fees at institutions of higher education as defined by Section 61.003, Education Code. The information booklet provided to the child and the foster parent shall be provided in the primary language spoken by that individual.

(d) The department shall allow a youth who is at least 18 years of age to receive transitional living services, other than foster care benefits, while residing with a person who was previously designated as a perpetrator of abuse or neglect if the department determines that despite the person's prior history the person does not pose a threat to the health and safety of the youth.

(e) The department shall ensure that each youth acquires a copy and a certified copy of the youth's birth certificate, a social security card or replacement social security card, as appropriate, and a personal identification certificate under Chapter 521, Transportation Code, on or before the date on which the youth turns 16 years of age. The department shall designate one or more employees in the Preparation for Adult Living Program as the contact person to assist a youth who has not been able to obtain the documents described by this subsection in a timely manner from the youth's primary caseworker. The department shall ensure that:

(1) all youth who are age 16 or older are provided with the contact information for the designated employees; and

(2) a youth who misplaces a document provided under this subsection receives assistance in obtaining a

replacement document or information on how to obtain a duplicate copy, as appropriate.

(e-1) If, at the time a youth is discharged from foster care, the youth is at least 18 years of age or has had the disabilities of minority removed, the department shall provide to the youth, not later than the 30th day before the date the youth is discharged from foster care, the following information and documents unless the youth already has the information or document:

(1) the youth's birth certificate;

(2) the youth's immunization records;

(3) the information contained in the youth's health passport;

(4) a personal identification certificate under Chapter 521, Transportation Code;

(5) a social security card or a replacement social security card, if appropriate; and

(6) proof of enrollment in Medicaid, if appropriate.

(e-2) When providing a youth with a document required by Subsection (e-1), the department shall provide the youth with a copy and a certified copy of the document or with the original document, as applicable.

(e-3) When obtaining a copy of a birth certificate to provide to a foster youth or assisting a foster youth in obtaining a copy of a birth certificate, the department shall obtain the birth certificate from the state registrar. If the department is unable to obtain the birth certificate from the state registrar, the department may obtain the birth certificate from a local registrar or county clerk.

(f) The department shall require a person with whom the department contracts for transitional living services for foster youth to provide or assist youth in obtaining:

(1) housing services;

(2) job training and employment services;

(3) college preparation services;

(4) services that will assist youth in obtaining a general education development certificate;

(5) services that will assist youth in developing skills in food preparation;

(6) nutrition education that promotes healthy food choices;

(7) a savings or checking account if the youth is at least 18 years of age and has a source of income;

(8) mental health services;

(9) financial literacy education and civic engagement lessons required under Subsection (a-2); and

(10) any other appropriate transitional living service identified by the department.

(g) For a youth taking prescription medication, the department shall ensure that the youth's transition plan includes provisions to assist the youth in managing the use of the medication and in managing the child's long-term physical and mental health needs after leaving foster care, including provisions that inform the youth about:

(1) the use of the medication;

(2) the resources that are available to assist the youth in managing the use of the medication; and

(3) informed consent and the provision of medical care in accordance with Section 266.010(1).

(h) An entity with which the department contracts for transitional living services for foster youth shall, when appropriate, partner with a community-based organiza-

tion to assist the entity in providing the transitional living services.

(i) The department shall ensure that the transition plan for each youth 16 years of age or older includes provisions to assist the youth in managing the youth's housing needs after the youth leaves foster care, including provisions that:

- (1) identify the cost of housing in relation to the youth's sources of income, including any benefits or rental assistance available to the youth;
- (2) if the youth's housing goals include residing with family or friends, state that the department has addressed the following with the youth:
 - (A) the length of time the youth expects to stay in the housing arrangement;
 - (B) expectations for the youth regarding paying rent and meeting other household obligations;
 - (C) the youth's psychological and emotional needs, as applicable; and
 - (D) any potential conflicts with other household members, or any difficulties connected to the type of housing the youth is seeking, that may arise based on the youth's psychological and emotional needs;
- (3) inform the youth about emergency shelters and housing resources, including supervised independent living and housing at colleges and universities, such as dormitories;
- (4) require the department to review a common rental application with the youth and ensure that the youth possesses all of the documentation required to obtain rental housing; and
- (5) identify any individuals who are able to serve as cosigners or references on the youth's applications for housing.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 1.51, effective September 1, 2005; Acts 2007, 80th Leg., ch. 1406 (S.B. 758), § 10, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 1406 (S.B. 758), § 17, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 57 (S.B. 983), § 1, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 407 (H.B. 1912), §§ 1, 2, effective September 1, 2009; am. Acts 2013, 83rd Leg., ch. 168 (S.B. 1589), § 1, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 204 (H.B. 915), § 6, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 342 (H.B. 2111), § 1, effective June 14, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.194, effective April 2, 2015; am. Acts 2015, 84th Leg., ch. 81 (S.B. 1117), § 1, effective September 1, 2015; am. Acts 2015, 84th Leg., ch. 944 (S.B. 206), §§ 55, 56, effective September 1, 2015 (renumbered from Sec. 264.014); am. Acts 2015, 84th Leg., ch. 944 (S.B. 206), §§ 55, 56, effective September 1, 2015; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), §§ 7.004, 7.005, 21.001(18), effective September 1, 2015; am. Acts § 7.0052015, 84th Leg., ch. 1236 (S.B. 1296), § 7.005, 21.001(18), effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 937 (S.B. 1758), § 6, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 707 (H.B. 53), § 1, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 1024 (H.B. 123), § 1, effective September 1, 2019.

Subchapter E

Children's Advocacy Centers

Sec. 264.4031. Multidisciplinary Team Working Protocol.

(a) A center shall adopt a multidisciplinary team working protocol. The working protocol must include:

- (1) the center's mission statement;
 - (2) the role of each participating agency on the multidisciplinary team and the agency's commitment to the center;
 - (3) specific criteria for referral of cases for a multidisciplinary team response and specific criteria for the referral and provision of each service provided by the center;
 - (4) processes and general procedures for:
 - (A) the intake of cases, including direct referrals from participating agencies described by Section 264.403(a) and reports from the department that involve the suspected abuse or neglect of a child or the death of a child from abuse or neglect;
 - (B) the availability outside scheduled business hours of a multidisciplinary team response to cases and provision of necessary center services;
 - (C) information sharing to ensure the timely exchange of relevant information;
 - (D) forensic interviews;
 - (E) family and victim advocacy;
 - (F) medical evaluations and medical treatment;
 - (G) mental health evaluations and mental health treatment;
 - (H) multidisciplinary team case review; and
 - (I) case tracking; and
 - (5) provisions for addressing conflicts within the multidisciplinary team and for maintaining the confidentiality of information shared among members of the multidisciplinary team.
- (b) The working protocol must be executed by the participating agencies required to enter into the memorandum of understanding under Section 264.403.
- (c) The working protocol must be reexecuted:
- (1) at least every three years;
 - (2) on a significant change to the working protocol; or
 - (3) on a change of a signatory of a participating agency.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 396 (S.B. 821), § 3, effective September 1, 2019.

Sec. 264.405. Center Duties.

- (a) A center shall:
- (1) receive, review, and track department reports relating to the suspected abuse or neglect of a child or the death of a child from abuse or neglect to ensure a consistent, comprehensive approach to all cases that meet the criteria outlined in the multidisciplinary team working protocol adopted under Section 264.4031;
 - (2) coordinate the activities of participating agencies relating to abuse and neglect investigations and delivery of services to alleged abuse and neglect victims and their families;
 - (3) facilitate assessment of alleged abuse or neglect victims and their families to determine their need for services relating to the investigation of abuse or neglect and provide needed services; and
 - (4) comply with the standards adopted under Section 264.409(c).
- (b) A center shall provide:
- (1) facilitation of a multidisciplinary team response to abuse or neglect allegations;

(2) a formal process that requires the multidisciplinary team to routinely discuss and share information regarding investigations, case status, and services needed by children and families;

(3) a system to monitor the progress and track the outcome of each case;

(4) a child-focused setting that is comfortable, private, and physically and psychologically safe for diverse populations at which a multidisciplinary team can meet to facilitate the efficient and appropriate disposition of abuse and neglect cases through the civil and criminal justice systems;

(5) culturally competent services for children and families throughout the duration of a case;

(6) victim support and advocacy services for children and families;

(7) forensic interviews that are conducted in a neutral, fact-finding manner and coordinated to avoid duplicative interviewing;

(8) access to specialized medical evaluations and treatment services for victims of alleged abuse or neglect;

(9) evidence-based, trauma-focused mental health services for children and nonoffending members of the child's family; and

(10) opportunities for community involvement through a formalized volunteer program dedicated to supporting the center.

(c) The duties prescribed to a center under Subsection (a)(1) do not relieve the department or a law enforcement agency of its duty to investigate a report of abuse or neglect as required by other law.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 255 (S.B. 81), § 1, effective September 1, 1995; am. Acts 2019, 86th Leg., ch. 396 (S.B. 821), § 5, effective September 1, 2019.

CHAPTER 266

Medical Care and Educational Services for Children in Conservatorship of Department of Family and Protective Services

Section 266.003.	Medical Services for Child Abuse and Neglect Victims.
266.004.	Consent for Medical Care.
266.0042.	Consent for Psychotropic Medication.
266.005.	Finding on Health Care Consultation.
266.006.	Health Passport.
266.007.	Judicial Review of Medical Care.
266.009.	Provision of Medical Care in Emergency.
266.010.	Consent to Medical Care by Foster Child at Least 16 Years of Age.
266.011.	Monitoring Use of Psychotropic Drug.
266.012.	Comprehensive Assessments.

Sec. 266.003. Medical Services for Child Abuse and Neglect Victims.

(a) The department shall collaborate with the commission and health care and child welfare professionals to design a comprehensive, cost-effective medical services delivery model, either directly or by contract, to meet the needs of children served by the department. The medical services delivery model must include:

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

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

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

(4) the development and implementation of health passports as described in Section 266.006;

(5) establishment and use of a management information system that allows monitoring of medical care that is provided to all children in foster care;

(6) the use of medical advisory committees and medical review teams, as appropriate, to establish treatment guidelines and criteria by which individual cases of medical care provided to children in foster care will be identified for further, in-depth review;

(7) development of the training program described by Section 266.004(h);

(8) provision for the summary of medical care described by Section 266.007; and

(9) provision for the participation of the person authorized to consent to medical care for a child in foster care in each appointment of the child with the provider of medical care.

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

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

(d) The commission is responsible for administering contracts with managed care providers for the provision of medical care to children in foster care. The department shall collaborate with the commission to ensure that medical care services provided by managed care providers match the needs of children in foster care.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 1.65(a), effective September 1, 2005; am. Acts 2017, 85th Leg., ch. 316 (H.B. 5), § 18, effective September 1, 2017.

Sec. 266.004. Consent for Medical Care.

(a) Medical care may not be provided to a child in foster care unless the person authorized by this section has provided consent.

(b) Except as provided by Section 266.010, the court may authorize the following persons to consent to medical care for a foster child:

(1) an individual designated by name in an order of the court, including the child's foster parent or the child's parent, if the parent's rights have not been terminated and the court determines that it is in the

best interest of the parent's child to allow the parent to make medical decisions on behalf of the child; or

(2) the department or an agent of the department.

(c) If the person authorized by the court to consent to medical care is the department or an agent of the department, the department shall, not later than the fifth business day after the date the court provides authorization, file with the court and each party the name of the individual who will exercise the duty and responsibility of providing consent on behalf of the department. The department may designate the child's foster parent or the child's parent, if the parent's rights have not been terminated, to exercise the duty and responsibility of providing consent on behalf of the department under this subsection. If the individual designated under this subsection changes, the department shall file notice of the change with the court and each party not later than the fifth business day after the date of the change.

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

(e) The department, a person authorized to consent to medical care under Subsection (b), the child's parent if the parent's rights have not been terminated, a guardian ad litem or attorney ad litem if one has been appointed, or the person providing foster care to the child may petition the court for any order related to medical care for a foster child that the department or other person believes is in the best interest of the child. Notice of the petition must be given to each person entitled to notice under Section 263.0021(b).

(f) If a physician who has examined or treated the foster child has concerns regarding the medical care provided to the foster child, the physician may file a letter with the court stating the reasons for the physician's concerns. The court shall provide a copy of the letter to each person entitled to notice under Section 263.0021(b).

(g) On its own motion or in response to a petition under Subsection (e) or Section 266.010, the court may issue any order related to the medical care of a foster child that the court determines is in the best interest of the child.

(h) Notwithstanding Subsection (b), a person may not be authorized to consent to medical care provided to a foster child unless the person has completed a department-approved training program related to informed consent and the provision of all areas of medical care as defined by Section 266.001. This subsection does not apply to a parent whose rights have not been terminated unless the court orders the parent to complete the training.

(h-1) The training required by Subsection (h) must include training related to informed consent for the administration of psychotropic medication and the appropriate use of psychosocial therapies, behavior strategies, and other non-pharmacological interventions that should be considered before or concurrently with the administration of psychotropic medications.

(h-2) Each person required to complete a training program under Subsection (h) must acknowledge in writing that the person:

(1) has received the training described by Subsection (h-1);

(2) understands the principles of informed consent for the administration of psychotropic medication; and

(3) understands that non-pharmacological interventions should be considered and discussed with the prescribing physician, physician assistant, or advanced practice nurse before consenting to the use of a psychotropic medication.

(i) The person authorized under Subsection (b) to consent to medical care of a foster child shall participate in each appointment of the child with the provider of the medical care.

(j) Nothing in this section requires the identity of a foster parent to be publicly disclosed.

(k) The department may consent to health care services ordered or prescribed by a health care provider authorized to order or prescribe health care services regardless of whether the services are provided under the medical assistance program under Chapter 32, Human Resources Code, if the department otherwise has the authority under this section to consent to health care services.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 1.65(a), effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 727 (H.B. 2580), § 1, effective June 15, 2007; am. Acts 2013, 83rd Leg., ch. 204 (H.B. 915), § 8, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 944 (S.B. 206), § 65, effective September 1, 2015.

Sec. 266.0042. Consent for Psychotropic Medication.

Consent to the administration of a psychotropic medication is valid only if:

(1) the consent is given voluntarily and without undue influence; and

(2) the person authorized by law to consent for the foster child receives verbally or in writing information that describes:

(A) the specific condition to be treated;

(B) the beneficial effects on that condition expected from the medication;

(C) the probable health and mental health consequences of not consenting to the medication;

(D) the probable clinically significant side effects and risks associated with the medication; and

(E) the generally accepted alternative medications and non-pharmacological interventions to the medication, if any, and the reasons for the proposed course of treatment.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 204 (H.B. 915), § 9, effective September 1, 2013.

Sec. 266.005. Finding on Health Care Consultation.

If a court finds that a health care professional has been consulted regarding a health care service, procedure, or treatment for a child in the conservatorship of the department and the court declines to follow the recommendation of the health care professional, the court shall make findings in the record supporting the court's order.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 317 (H.B. 7), § 38, effective September 1, 2017.

Sec. 266.006. Health Passport.

(a) The commission, in conjunction with the department, and with the assistance of physicians and other

health care providers experienced in the care of foster children and children with disabilities and with the use of electronic health records, shall develop and provide a health passport for each foster child. The passport must be maintained in an electronic format and use the department's existing computer resources to the greatest extent possible.

(b) The executive commissioner, in collaboration with the commissioner, shall adopt rules specifying the information required to be included in the passport. The required information may include:

- (1) the name and address of each of the child's physicians and health care providers;
- (2) a record of each visit to a physician or other health care provider, including routine checkups conducted in accordance with the Texas Health Steps program;
- (3) an immunization record that may be exchanged with ImmTrac;
- (4) a list of the child's known health problems and allergies;
- (5) information on all medications prescribed to the child in adequate detail to permit refill of prescriptions, including the disease or condition that the medication treats; and
- (6) any other available health history that physicians and other health care providers who provide care for the child determine is important.

(c) The system used to access the health passport must be secure and maintain the confidentiality of the child's health records.

(d) Health passport information shall be part of the department's record for the child as long as the child remains in foster care.

(e) The commission, in collaboration with the department, shall provide training or instructional materials to foster parents, physicians, and other health care providers regarding use of the health passport.

(f) The department shall make health passport information available in printed and electronic formats to the following individuals when a child is discharged from foster care:

- (1) the child's legal guardian, managing conservator, or parent; or
- (2) the child, if the child is at least 18 years of age or has had the disabilities of minority removed.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 1.65(a), effective September 1, 2005; am. Acts 2017, 85th Leg., ch. 316 (H.B. 5), § 19, effective September 1, 2017.

Sec. 266.007. Judicial Review of Medical Care.

(a) At each hearing under Chapter 263, or more frequently if ordered by the court, the court shall review a summary of the medical care provided to the foster child since the last hearing. The summary must include information regarding:

- (1) the nature of any emergency medical care provided to the child and the circumstances necessitating emergency medical care, including any injury or acute illness suffered by the child;
- (2) all medical and mental health treatment that the child is receiving and the child's progress with the treatment;

(3) any medication prescribed for the child, the condition, diagnosis, and symptoms for which the medication was prescribed, and the child's progress with the medication;

(4) for a child receiving a psychotropic medication:

(A) any psychosocial therapies, behavior strategies, or other non-pharmacological interventions that have been provided to the child; and

(B) the dates since the previous hearing of any office visits the child had with the prescribing physician, physician assistant, or advanced practice nurse as required by Section 266.011;

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

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

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

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

(9) other information required by department rule or by the court.

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

- (1) the court;
- (2) the person authorized to consent to medical treatment for the child;
- (3) the guardian ad litem or attorney ad litem, if one has been appointed by the court;
- (4) the child's parent, if the parent's rights have not been terminated; and
- (5) any other person determined by the department or the court to be necessary or appropriate for review of the provision of medical care to foster children.

(c) At each hearing under Chapter 263, the foster child shall be provided the opportunity to express to the court the child's views on the medical care being provided to the child.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 1.65(a), effective September 1, 2005; am. Acts 2013, 83rd Leg., ch. 204 (H.B. 915), § 12, effective September 1, 2013.

Sec. 266.009. Provision of Medical Care in Emergency.

(a) Consent or court authorization for the medical care of a foster child otherwise required by this chapter is not required in an emergency during which it is immediately necessary to provide medical care to the foster child to prevent the imminent probability of death or substantial bodily harm to the child or others, including circumstances in which:

- (1) the child is overtly or continually threatening or attempting to commit suicide or cause serious bodily harm to the child or others; or
- (2) the child is exhibiting the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that

the absence of immediate medical attention could reasonably be expected to result in placing the child's health in serious jeopardy, serious impairment of bodily functions, or serious dysfunction of any bodily organ or part.

(b) The physician providing the medical care or designee shall notify the person authorized to consent to medical care for a foster child about the decision to provide medical care without consent or court authorization in an emergency not later than the second business day after the date of the provision of medical care under this section. This notification must be documented in the foster child's health passport.

(c) This section does not apply to the administration of medication under Subchapter G, Chapter 574, Health and Safety Code, to a foster child who is at least 16 years of age and who is placed in an inpatient mental health facility.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 1.65(a), effective September 1, 2005.

Sec. 266.010. Consent to Medical Care by Foster Child at Least 16 Years of Age.

(a) A foster child who is at least 16 years of age may consent to the provision of medical care, except as provided by Chapter 33, if the court with continuing jurisdiction determines that the child has the capacity to consent to medical care. If the child provides consent by signing a consent form, the form must be written in language the child can understand.

(b) A court with continuing jurisdiction may make the determination regarding the foster child's capacity to consent to medical care during a hearing under Chapter 263 or may hold a hearing to make the determination on its own motion. The court may issue an order authorizing the child to consent to all or some of the medical care as defined by Section 266.001. In addition, a foster child who is at least 16 years of age, or the foster child's attorney ad litem, may file a petition with the court for a hearing. If the court determines that the foster child lacks the capacity to consent to medical care, the court may consider whether the foster child has acquired the capacity to consent to medical care at subsequent hearings under Section 263.5031.

(c) If the court determines that a foster child lacks the capacity to consent to medical care, the person authorized by the court under Section 266.004 shall continue to provide consent for the medical care of the foster child.

(d) If a foster child who is at least 16 years of age and who has been determined to have the capacity to consent to medical care refuses to consent to medical care and the department or private agency providing substitute care or case management services to the child believes that the medical care is appropriate, the department or the private agency may file a motion with the court requesting an order authorizing the provision of the medical care.

(e) The motion under Subsection (d) must include:

(1) the child's stated reasons for refusing the medical care; and

(2) a statement prepared and signed by the treating physician that the medical care is the proper course of treatment for the foster child.

(f) If a motion is filed under Subsection (d), the court shall appoint an attorney ad litem for the foster child if one has not already been appointed. The foster child's attorney ad litem shall:

(1) discuss the situation with the child;

(2) discuss the suitability of the medical care with the treating physician;

(3) review the child's medical and mental health records; and

(4) advocate to the court on behalf of the child's expressed preferences regarding the medical care.

(g) The court shall issue an order authorizing the provision of the medical care in accordance with a motion under Subsection (d) to the foster child only if the court finds, by clear and convincing evidence, after the hearing that the medical care is in the best interest of the foster child and:

(1) the foster child lacks the capacity to make a decision regarding the medical care;

(2) the failure to provide the medical care will result in an observable and material impairment to the growth, development, or functioning of the foster child; or

(3) the foster child is at risk of suffering substantial bodily harm or of inflicting substantial bodily harm to others.

(h) In making a decision under this section regarding whether a foster child has the capacity to consent to medical care, the court shall consider:

(1) the maturity of the child;

(2) whether the child is sufficiently well informed to make a decision regarding the medical care; and

(3) the child's intellectual functioning.

(i) In determining whether the medical care is in the best interest of the foster child, the court shall consider:

(1) the foster child's expressed preference regarding the medical care, including perceived risks and benefits of the medical care;

(2) likely consequences to the foster child if the child does not receive the medical care;

(3) the foster child's prognosis, if the child does receive the medical care; and

(4) whether there are alternative, less intrusive treatments that are likely to reach the same result as provision of the medical care.

(j) This section does not apply to emergency medical care. An emergency relating to a foster child who is at least 16 years of age, other than a child in an inpatient mental health facility, is governed by Section 266.009.

(k) This section does not apply to the administration of medication under Subchapter G, Chapter 574, Health and Safety Code, to a foster child who is at least 16 years of age and who is placed in an inpatient mental health facility.

(l) Before a foster child reaches the age of 16, the department or the private agency providing substitute care or case management services to the foster child shall advise the foster child of the right to a hearing under this section to determine whether the foster child may consent to medical care. The department or the private agency providing substitute care or case management services shall provide the foster child with training on informed consent and the provision of medical care as part of the Preparation for Adult Living Program.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 1.65(a), effective September 1, 2005; am. Acts 2015, 84th Leg., ch. 944 (S.B. 206), § 67, effective September 1, 2015.

Sec. 266.011. Monitoring Use of Psychotropic Drug.

The person authorized to consent to medical treatment for a foster child prescribed a psychotropic medication shall ensure that the child has been seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days to allow the physician, physician assistant, or advanced practice nurse to:

- (1) appropriately monitor the side effects of the medication; and
- (2) determine whether:
 - (A) the medication is helping the child achieve the treatment goals; and
 - (B) continued use of the medication is appropriate.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 204 (H.B. 915), § 13, effective September 1, 2013.

Sec. 266.012. Comprehensive Assessments.

(a) Not later than the 45th day after the date a child enters the conservatorship of the department, the child shall receive a developmentally appropriate comprehensive assessment. The assessment must include:

(1) a screening for trauma; and

(2) interviews with individuals who have knowledge of the child's needs.

(b) The department shall develop guidelines regarding the contents of an assessment report.

(c) A single source continuum contractor under Subchapter B-1, Chapter 264, providing therapeutic foster care services to a child shall ensure that the child receives a comprehensive assessment under this section at least once every 90 days.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 11 (S.B. 125), § 1, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 319 (S.B. 11), § 22, effective September 1, 2017.

GOVERNMENT CODE

TITLE 2 JUDICIAL BRANCH

Subchapter A Supreme Court

SUBTITLE A COURTS

Chapter	
21.	General Provisions
22.	Appellate Courts
25.	Statutory County Courts
26.	Constitutional County Courts

CHAPTER 21 General Provisions

Section	
21.009.	Definitions.

Sec. 21.009. Definitions.

In this title:

(1) "County court" means the court created in each county by Article V, Section 15, of the Texas Constitution.

(2) "Statutory county court" means a county court created by the legislature under Article V, Section 1, of the Texas Constitution, including county courts at law, county criminal courts, county criminal courts of appeals, and county civil courts at law, but does not include statutory probate courts as defined by Chapter 22, Estates Code.

(3) "County judge" means the judge of the county court.

(4) "Statutory probate court" has the meaning assigned by Chapter 22, Estates Code.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.02, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(18), effective August 28, 1989 (renumbered from Sec. 21.008); am. Acts 1991, 72nd Leg., ch. 394 (S.B. 542), § 1, effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 746 (H.B. 66), § 1, effective October 1, 1991; am. Acts 1999, 76th Leg., ch. 431 (S.B. 1150), § 1, effective September 1, 1999; am. Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 22.021, effective September 1, 2017.

CHAPTER 22 Appellate Courts

Subchapter A. Supreme Court

Section	
22.0135.	Judicial Guidance Related to Child Protective Services Cases and Juvenile Cases.
22.017.	Grants by Commissions Established by Supreme Court.

Subchapter B. Court of Criminal Appeals

22.1106.	Judicial Instruction Related to Court-Ordered Outpatient Mental Health Services.
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Sec. 22.0135. Judicial Guidance Related to Child Protective Services Cases and Juvenile Cases.

(a) The supreme court, in conjunction with the Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families, annually shall provide guidance to judges who preside over child protective services cases or juvenile cases to establish greater uniformity across the state for:

(1) in child protective services cases, issues related to:

(A) placement of children with severe mental health issues;

(B) changes in placement; and

(C) final termination of parental rights; and

(2) in juvenile cases, issues related to:

(A) placement of children with severe mental health issues;

(B) the release of children detained in juvenile detention facilities;

(C) certification of juveniles to stand trial as adults;

(D) a child's appearance before a court in a judicial proceeding, including the use of a restraint on the child and the clothing worn by the child during the proceeding; and

(E) commitment of children to the Texas Juvenile Justice Department.

(b) The supreme court shall adopt the rules necessary to accomplish the purposes of this section.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 844 (H.B. 2737), § 1, effective September 1, 2019.

Sec. 22.017. Grants by Commissions Established by Supreme Court.

(a) In this section:

(1) "Children's commission" means the Permanent Judicial Commission for Children, Youth and Families established by the supreme court.

(2) "Mental health commission" means the Texas Judicial Commission on Mental Health established by the supreme court.

(b) The children's commission shall develop and administer a program to provide grants from available funds for initiatives that will:

(1) improve well-being, safety, and permanency outcomes in child protection cases; or

(2) enhance due process for the parties or the timeliness of resolution in cases involving the welfare of a child.

(c) The children's commission may develop and administer a program to provide grants from available funds for:

(1) initiatives designed to prevent or minimize the involvement of children in the juvenile justice system or

promote the rehabilitation of children involved in the juvenile justice system; and

(2) any other initiatives identified by the children’s commission or the supreme court to improve the administration of justice for children.

(d) To be eligible for a grant administered by the children’s commission under this section, a prospective recipient must:

(1) use the grant money to:

(A) improve well-being, safety, or permanency outcomes in child protection cases;

(B) enhance due process for the parties or the timeliness of resolution in cases involving the welfare of a child;

(C) prevent or minimize the involvement of children in the juvenile justice system or promote the rehabilitation of children involved in the juvenile justice system; or

(D) accomplish any other initiatives identified by the children’s commission or the supreme court to improve the administration of justice for children; and

(2) apply for the grant in accordance with procedures developed by the children’s commission and comply with any other requirements of the supreme court.

(e) The mental health commission may develop and administer a program to provide grants from available funds for initiatives that will improve the administration of justice for individuals with mental health needs or an intellectual or developmental disability.

(f) To be eligible for a grant administered by the mental health commission under this section, a prospective recipient must:

(1) use the grant money to improve the administration of justice for individuals with mental health needs or an intellectual or developmental disability; and

(2) apply for the grant in accordance with procedures developed by the mental health commission and comply with any other requirements of the supreme court.

(g) If the children’s commission or the mental health commission awards a grant under this section, the commission administering the grant shall:

(1) direct the comptroller to distribute the grant money; and

(2) monitor the use of the grant money.

(h) The children’s commission and the mental health commission may accept gifts, grants, and donations for purposes of this section.

HISTORY: Enacted by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 8.02, effective January 1, 2012; am. Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 12.01, effective September 1, 2019.

Subchapter B

Court of Criminal Appeals

Sec. 22.1106. Judicial Instruction Related to Court-Ordered Outpatient Mental Health Services.

The court of criminal appeals shall ensure that judicial training related to court-ordered outpatient mental health services is provided at least once every year. The instruc-

tion may be provided at the annual Judicial Education Conference.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 6, effective September 1, 2019.

CHAPTER 25

Statutory County Courts

Subchapter A. General Provisions

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25.0003.	Jurisdiction. [Effective September 1, 2020]
25.0003.	Exchange of Judges in Certain County Courts at Law and County Criminal Courts.
25.0012.	

Subchapter B. General Provisions Relating to Statutory Probate Courts

25.0021.	Jurisdiction.
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Subchapter C. Provisions Relating to Particular Counties

25.0173.	Bexar County Probate Courts.
25.0332.	Cameron County Court at Law Provisions.
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Subchapter A

General Provisions

Sec. 25.0002. Definitions.

In this chapter:

(1) “Criminal law cases and proceedings” includes cases and proceedings for allegations of conduct punishable in part by confinement in the county jail not to exceed one year.

(2) “Family law cases and proceedings” includes cases and proceedings under Titles 1, 2, 4, and 5, Family Code.

(3) “Juvenile law cases and proceedings” includes all cases and proceedings brought under Title 3, Family Code.

(4) “Mental health cases and proceedings” includes all cases and proceedings brought under Chapter 462,

Health and Safety Code, or Subtitle C or D, Title 7, Health and Safety Code.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 4.01, effective September 1, 1987; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.01, effective January 1, 2012.

Sec. 25.0003. Jurisdiction. [Effective until September 1, 2020]

(a) A statutory county court has jurisdiction over all causes and proceedings, civil and criminal, original and appellate, prescribed by law for county courts.

(b) A statutory county court does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways and the general administration of county business that is within the jurisdiction of the commissioners court of each county.

(c) In addition to other jurisdiction provided by law, a statutory county court exercising civil jurisdiction concurrent with the constitutional jurisdiction of the county court has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds \$500 but does not exceed \$200,000, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs, as alleged on the face of the petition; and

(2) appeals of final rulings and decisions of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims, regardless of the amount in controversy.

(d) Except as provided by Subsection (e), a statutory county court has, concurrent with the county court, the probate jurisdiction provided by general law for county courts.

(e) In a county that has a statutory probate court, a statutory probate court is the only county court created by statute with probate jurisdiction.

(f) A statutory county court does not have the jurisdiction of a statutory probate court granted statutory probate courts by the Estates Code.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 4.01, effective September 1, 1987; am. Acts 1991, 72nd Leg., ch. 746 (H.B. 66), §§ 2, 3, effective October 1, 1991; am. Acts 1999, 76th Leg., ch. 431 (S.B. 1150), § 2, effective September 1, 1999; am. Acts 2005, 79th Leg., ch. 265 (H.B. 7), § 6.002, effective September 1, 2005; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.02, effective January 1, 2012; am. Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 22.022, effective September 1, 2017.

Sec. 25.0003. Jurisdiction. [Effective September 1, 2020]

(a) A statutory county court has jurisdiction over all causes and proceedings, civil and criminal, original and appellate, prescribed by law for county courts.

(b) A statutory county court does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways and the general administration of county business that is within the jurisdiction of the commissioners court of each county.

(c) In addition to other jurisdiction provided by law, a statutory county court exercising civil jurisdiction concurrent with the constitutional jurisdiction of the county court has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds \$500 but does not exceed \$250,000, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs, as alleged on the face of the petition; and

(2) appeals of final rulings and decisions of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims, regardless of the amount in controversy.

(d) Except as provided by Subsection (e), a statutory county court has, concurrent with the county court, the probate jurisdiction provided by general law for county courts.

(e) In a county that has a statutory probate court, a statutory probate court is the only county court created by statute with probate jurisdiction.

(f) A statutory county court does not have the jurisdiction of a statutory probate court granted statutory probate courts by the Estates Code.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 4.01, effective September 1, 1987; am. Acts 1991, 72nd Leg., ch. 746 (H.B. 66), §§ 2, 3, effective October 1, 1991; am. Acts 1999, 76th Leg., ch. 431 (S.B. 1150), § 2, effective September 1, 1999; am. Acts 2005, 79th Leg., ch. 265 (H.B. 7), § 6.002, effective September 1, 2005; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.02, effective January 1, 2012; am. Acts 2019, 86th Leg., ch. 696 (S.B. 2342), § 2, effective September 1, 2020.

Sec. 25.0012. Exchange of Judges in Certain County Courts at Law and County Criminal Courts.

In any county with a population of more than 300,000, the judge of a county criminal court and the judge of a county court at law may hold court for or with one another. The county criminal court has the necessary civil jurisdiction to hold court for the county court at law.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 4.01, effective September 1, 1987.

Subchapter B

General Provisions Relating to Statutory Probate Courts

Sec. 25.0021. Jurisdiction.

(a) If this section conflicts with a specific provision for a particular statutory probate court or county, the specific provision controls, except that this section controls over a specific provision for a particular court or county if the specific provision attempts to create jurisdiction in a statutory probate court other than jurisdiction over probate, guardianship, mental health, or eminent domain proceedings.

(b) A statutory probate court as that term is defined in Section 22.007(c), Estates Code, has:

(1) the general jurisdiction of a probate court as provided by the Estates Code; and

(2) the jurisdiction provided by law for a county court to hear and determine actions, cases, matters, or proceedings instituted under:

(A) Section 166.046, 192.027, 193.007, 552.015, 552.019, 711.004, or 714.003, Health and Safety Code;

(B) Chapter 462, Health and Safety Code; or

(C) Subtitle C or D, Title 7, Health and Safety Code.

(c) [Expired pursuant to Acts 2001, 77th Leg., ch. 635 (H.B. 689), § 1, effective May 1, 2002.]

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 4.01, effective September 1, 1987; am. Acts 2001, 77th Leg., ch. 635 (H.B. 689), § 1, effective September 1, 2001; am. Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 22.023, effective September 1, 2017.

Subchapter C

Provisions Relating to Particular Counties

Sec. 25.0173. Bexar County Probate Courts.

(a) A statutory probate court in Bexar County has the general jurisdiction of a probate court as provided by Section 25.0021. Probate Courts Nos. 1 and 2 have eminent domain jurisdiction and jurisdiction to decide the issue of title to real or personal property. Notwithstanding the local rules adopted under Section 74.093, the county clerk shall docket all eminent domain cases equally in Probate Court No. 1 and Probate Court No. 2.

(b) [Repealed by Acts 1999, 76th Leg., ch. 42 (S.B. 158), § 4, effective September 1, 1999.]

(c), (d) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(8), effective January 1, 2012.]

(e) [Repealed by Acts 2007, 80th Leg., ch. 331 (H.B. 2967), § 2, effective October 1, 2007.]

(f) The judge of a statutory probate court shall be paid an annual salary in an amount not less than the total annual salary, including supplements, received by the judge of a district court in the county.

(g) The county clerk shall appoint a deputy clerk for each statutory probate court. An appointment takes effect when it is confirmed in writing by the judge of the court to which the deputy clerk is assigned. A deputy clerk serves at the pleasure of the judge of the court to which the deputy clerk is assigned. A deputy clerk must take the constitutional oath of office, and the county clerk may require the deputy clerk to furnish a bond in an amount, conditioned and payable, as required by law. A deputy clerk acts in the name of the county clerk and may perform any official act or service required of the county clerk and shall perform any other service required by the judge of a statutory probate court. A deputy clerk must attend all sessions of the court to which he is assigned. A deputy clerk is entitled to receive an annual salary set by the judge in an amount that does not exceed the amount paid the deputies of the county courts at law of Bexar County. The salary shall be paid in equal monthly installments as provided by law for the payment of salaries of deputy clerks.

(h), (i) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(8), effective January 1, 2012.]

(j) Appeals may be taken from interlocutory orders appointing a receiver and overruling a motion to vacate an order appointing a receiver in Probate Court No. 2. The procedure and manner in which appeals from interlocutory orders are taken are governed by the laws relating to appeals from similar orders of district courts.

(k) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(8), effective January 1, 2012.]

(l) The official court reporter of a statutory probate court is entitled to receive an annual salary set by the judge and approved by the commissioners court at an amount not less than \$35,256.

(m) [Repealed by Acts 1991, 72nd Leg., ch. 394 (S.B. 542), § 4, effective August 26, 1991 and Acts 1991, 72nd Leg., ch. 746 (H.B. 66), § 70, effective October 1, 1991.]

(n) Probate Court No. 1 has primary responsibility for mental illness proceedings.

(o) Notwithstanding the local rules adopted under Section 74.093, the county clerk shall docket all mental health matters in Probate Court No. 1 and shall docket all even-numbered probate cases in Probate Court No. 2 and all odd-numbered probate cases in Probate Court No. 1.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 4.01, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 410 (H.B. 1536), §§ 4, 5, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 394 (S.B. 542), § 4, effective August 26, 1991; Acts 1991, 72nd Leg., ch. 746 (H.B. 66), § 70, effective October 1, 1991; am. Acts 1999, 76th Leg., ch. 42 (S.B. 158), §§ 3, 4, effective September 1, 1999; am. Acts 2007, 80th Leg., ch. 331 (H.B. 2967), § 2, effective October 1, 2007; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(8), effective January 1, 2012.

Sec. 25.0332. Cameron County Court at Law Provisions.

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Cameron County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in civil cases in which the amount in controversy exceeds \$500 but does not exceed \$1 million, excluding interest.

(b) The County Court at Law No. 4 of Cameron County shall give preference to probate, guardianship, and mental health matters.

(c) An appeal or writ of error may not be taken to a court of appeals from a final judgment of a county court at law if:

(1) the court had original or appellate jurisdiction with the justice court; and

(2) the judgment or amount in controversy does not exceed \$100, excluding interest and costs.

(d) Appeals from the justice court and other inferior courts in Cameron County must be made directly to a county court at law.

(e) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(17), effective January 1, 2012.]

(f) [Repealed by Acts 1991, 72nd Leg., ch. 746 (H.B. 66), § 70, effective October 1, 1991.]

(g) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(17), effective January 1, 2012.]

(h) The judge of a county court at law shall be paid an annual salary that does not exceed 90 percent of the amount paid district judges in the county. The salary shall be paid out of the county treasury on orders of the commissioners court.

(i) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(17), effective January 1, 2012.]

(j) The county clerk may appoint a deputy to attend the county courts at law.

(k) to (m) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(17), effective January 1, 2012.]

(n) Section 25.0006(a) does not apply to County Court at Law No. 1 of Cameron County. Section 25.0008 does not apply to County Court at Law No. 2 of Cameron County.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 4.01, effective September 1, 1987; am. Acts 1991, 72nd Leg., ch. 688 (H.B. 1354), § 1, effective June 16, 1991; am. Acts 1991, 72nd Leg., ch. 746 (H.B. 66), § 70, effective October 1, 1991; am. Acts 1997, 75th Leg., ch. 1444 (H.B. 3545), § 2, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 777 (H.B. 1350), § 1, effective September 1, 1999; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(17), effective January 1, 2012; am. Acts 2015, 84th Leg., ch. 1182 (S.B. 1139), § 3.01(b), effective September 1, 2015.

Sec. 25.0595. Dallas County Probate Courts.

(a) [Repealed by Acts 2001, 77th Leg., ch. 635 (H.B. 689), § 3(2), effective September 1, 2001.]

(b) The Probate Court No. 3 of Dallas County has primary responsibility for mental illness proceedings.

(c), (d) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(28), effective January 1, 2012.]

(e) [Repealed by Acts 1995, 74th Leg., ch. 95 (H.B. 1235), § 2, effective May 16, 1995.]

(f), (g) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(28), effective January 1, 2012.]

(h) A judge of a statutory probate court shall be paid an annual salary not less than the total annual salary, including supplements, received by a district judge in the county. Each statutory probate court judge is entitled to receive the same amount of compensation. The commissioners court shall pay the salary out of the county treasury.

(i) Section 25.0027 does not apply to a statutory probate court in Dallas County.

(j) In addition to the uses authorized by Section 118.064(b), Local Government Code, fees collected under Section 118.052(2)(A)(vi), Local Government Code, may be used by Dallas County for providing staff for the statutory probate courts and for court-related purposes for the support of the statutory probate courts. In determining if the fee produces more revenue than required as provided by Section 118.064(c), Local Government Code, the commissioners court shall include the uses authorized by this subsection.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 4.01, effective September 1, 1987; am. Acts 1991, 72nd Leg., ch. 394 (S.B. 542), § 3 effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 746 (H.B. 66), § 8, effective October 1, 1991; am. Acts 1993, 73rd Leg., ch. 389 (H.B. 2849), § 1, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 95 (H.B. 1235), § 2, effective May 16, 1995; am. Acts 2001, 77th Leg., ch. 426 (H.B. 2814), § 3, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 635 (H.B. 689), § 3(2), effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 9.001(d), effective September 1, 2001; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(28), effective January 1, 2012.

Sec. 25.0631. Denton County.

(a) Denton County has the following statutory county courts:

- (1) County Court at Law No. 1 of Denton County;
- (2) County Court at Law No. 2 of Denton County;
- (3) County Criminal Court No. 1 of Denton County;
- (4) County Criminal Court No. 2 of Denton County;

(5) County Criminal Court No. 3 of Denton County;

(6) County Criminal Court No. 4 of Denton County;
and

(7) County Criminal Court No. 5 of Denton County.

(b) Denton County has one statutory probate court, the Probate Court of Denton County.

(c) The statutory county courts of Denton County sit in the county seat or at another location in the county as assigned by the local administrative statutory county court judge. The statutory probate court of Denton County sits in the county seat and may conduct docket matters at other locations in the county as the statutory probate court judge considers necessary for the protection of wards or mental health respondents or as otherwise provided by law.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 4.01, effective September 1, 1987; am. Acts 1995, 74th Leg., ch. 328 (S.B. 240), § 1, effective August 28, 1995; am. Acts 1997, 75th Leg., ch. 1109 (H.B. 2555), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 557 (S.B. 376), § 1, effective October 1, 2000; am. Acts 2001, 77th Leg., ch. 267 (S.B. 1094), § 1, effective May 22, 2001; am. Acts 2001, 77th Leg., ch. 536 (H.B. 2314), § 1, effective May 1, 2002.

Sec. 25.0633. Denton County Court at Law Provisions.

(a) The County Court at Law No. 1 of Denton County shall give preference to juvenile matters under Chapter 25 and Title 3, Family Code, and the ancillary and pendent jurisdiction necessary to enforce orders of the court in juvenile matters.

(b) [Repealed by Acts 2001, 77th Leg., ch. 267 (S.B. 1094), § 2, effective May 22, 2001.]

(c) Notwithstanding Section 25.0003, the County Court at Law No. 1 of Denton County does not have jurisdiction over civil, civil appellate, probate, or mental health matters or over family law cases and proceedings other than juvenile proceedings.

(d) If the juvenile board designates the County Court at Law No. 1 of Denton County as the juvenile court of the county, the court shall give first preference to juvenile matters and second preference to criminal appeals from convictions in justice or municipal courts. Notwithstanding Chapter 53, Family Code, the criminal district attorney of Denton County is the designated official to receive all felony grade referrals regarding juveniles. If the court is not designated as the juvenile court, the court shall give first preference to criminal appeals cases and second preference to misdemeanor criminal matters.

(e) The County Court at Law No. 2 of Denton County has jurisdiction over all civil causes and proceedings, original and appellate, prescribed by law for county courts.

(f) The County Court at Law No. 2 of Denton County does not have jurisdiction over:

- (1) causes and proceedings concerning roads, bridges, and public highways;
- (2) the general administration of county business that is within the jurisdiction of the commissioners court of each county; or
- (3) criminal causes and proceedings.

(g) The County Court at Law No. 2 of Denton County has the jurisdiction provided by general law for county

courts, statutory county courts, or district courts over civil penalties and forfeitures, including bail bond forfeitures and escheats, regardless of the amount in controversy or remedy sought.

(h) Appeals in all cases from judgments and orders of the County Court at Law No. 2 of Denton County are to the court of appeals as provided for an appeal from a district or county court.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 328 (S.B. 240), § 3, effective August 28, 1995; am. Acts 2001, 77th Leg., ch. 267 (S.B. 1094), § 2, effective May 22, 2001; am. Acts 2001, 77th Leg., ch. 536 (H.B. 2314), § 2, effective May 1, 2002.

Sec. 25.0634. Denton County Criminal Court Provisions.

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, the county criminal courts of Denton County have felony jurisdiction concurrent with the district court over matters involving intoxication arising by a true bill of indictment by a grand jury charging one or more offenses under Chapter 49, Penal Code. The jurisdiction provided by this subsection shall be exercised on assignment by a district judge, by the local administrative district judge, or the regional presiding judge after the return of the true bill of indictment.

(b) A county criminal court has no jurisdiction over civil, civil appellate, probate, or mental health matters.

(c), (d) [Repealed by Acts 2001, 77th Leg., ch. 267 (S.B. 1094), § 2, effective May 22, 2001.]

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 328 (S.B. 240), § 3, effective August 28, 1995; am. Acts 2001, 77th Leg., ch. 267 (S.B. 1094), § 2, effective May 22, 2001.

Sec. 25.0733. El Paso County Probate Court Provisions.

(a) Sections 25.0732(q) and (r), relating to county courts at law in El Paso County, apply to a statutory probate court in El Paso County.

(b) The Probate Court No. 2 of El Paso County has primary responsibility for mental illness proceedings and for all administration related to mental illness proceedings, including budget preparation, staff management, and the adoption of administrative policy. The Probate Court No. 1 of El Paso County has secondary responsibility for mental illness proceedings.

(c), (d) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(34), effective January 1, 2012.]

(e) [Repealed by Acts 2001, 77th Leg., ch. 635 (H.B. 689), § 3(2), effective September 1, 2001.]

(f) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(34), effective January 1, 2012.]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 512, § 2, effective June 13, 1991; am. Acts 2001, 77th Leg., ch. 426 (H.B. 2814), § 4, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 635 (H.B. 689), § 3(2), effective September 1, 2001; am. Acts 2005, 79th Leg., ch. 662 (H.B. 3475), § 2, effective September 1, 2005; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), §§ 4.23, 4.50(a)(34), effective January 1, 2012.

Sec. 25.1034. Harris County Probate Court Provisions.

(a) [Repealed by Acts 2001, 77th Leg., ch. 635 (H.B. 689), § 3(2), effective September 1, 2001.]

(b) The Probate Court No. 3 of Harris County has primary responsibility for mental illness proceedings and for all administration related to mental illness proceedings, including budget preparation, staff management, and the adoption of administrative policy. The Probate Court No. 4 of Harris County has secondary responsibility for mental illness proceedings.

(c) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(43), effective January 1, 2012.]

(d), (e) [Repealed by Acts 1989, 71st Leg., ch. 1078 (S.B. 1770), § 2, effective August 28, 1989.]

(f) [Repealed by Acts 2007, 80th Leg., ch. 331 (H.B. 2967), § 2, effective October 1, 2007.]

(g) The judge of a statutory probate court shall be paid an annual salary that is at least equal to the total annual salary, including supplements, received by a district judge in the county.

(h) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(43), effective January 1, 2012.]

(i) With the approval of the commissioners court, a judge of a statutory probate court may appoint an administrative assistant, a court coordinator, an auditor, and other staff necessary for the operation of the courts. The commissioners court, with the advice and counsel of the judges, sets the salaries of the staff.

(j) The county clerk shall keep a separate docket for each court. The county clerk shall assign and docket at random matters and proceedings filed in the statutory probate courts according to the following percentages: Probate Court No. 1 of Harris County, 30 percent; Probate Court No. 2 of Harris County, 30 percent; Probate Court No. 3 of Harris County, 20 percent; and Probate Court No. 4 of Harris County, 20 percent.

(k), (l) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(43), effective January 1, 2012.]

(m) [Repealed by Acts 1991, 72nd Leg., ch. 394 (S.B. 542), § 4, effective August 26, 1991 and Acts 1991, 72nd Leg., ch. 746 (H.B. 66), § 70, effective October 1, 1991.]

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 4.01, effective September 1, 1987; am. Acts 1987, 70th Leg., ch. 466 (H.B. 367), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 1078 (S.B. 1770), §§ 1, 2, effective August 28, 1989; am. Acts 1991, 72nd Leg., ch. 394 (S.B. 542), § 4, effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 746 (H.B. 66), § 70, effective October 1, 1991; am. Acts 1999, 76th Leg., ch. 1153 (H.B. 3854), § 1, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 635 (H.B. 689), § 3(2), effective September 1, 2001; am. Acts 2007, 80th Leg., ch. 331 (H.B. 2967), § 2, effective October 1, 2007; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(43), effective January 1, 2012.

Sec. 25.1132. Hood County Court at Law Provisions. [Effective until September 1, 2020]

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Hood County has the jurisdiction provided by this section.

(b) A county court at law in Hood County has concurrent jurisdiction with the county court in mental health cases.

(c) A county court at law in Hood County has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds \$500 but does not exceed \$250,000, excluding interest;

- (2) family law cases and related proceedings;
- (3) contested probate matters under Section 32.003(a), Estates Code; and
- (4) contested matters in guardianship proceedings under Section 1022.003(a), Estates Code.

(d) The county court and each county court at law and district court in Hood County has jurisdiction over juvenile matters and may be designated a juvenile court. The county court has primary jurisdiction over juvenile matters.

(e) Except as provided by Subsection (c)(3) or (4), a county court at law does not have probate jurisdiction.

(f) to (h) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(50), effective January 1, 2012.]

(i) The judge of a county court at law shall be paid an annual salary that is not less than 90 percent of the annual salary of a district judge in the county. The salary shall be paid from the county treasury on order of the commissioners court. The judge is entitled to travel expenses and necessary office expenses, including administrative and clerical personnel, in the same manner as the county judge.

(j) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(50), effective January 1, 2012.]

(k) A special judge must take the oath of office required by law for the regular judge and has the same authority as the regular judge. A special judge may sign orders, judgments, decrees, and other processes of the court as "Judge Presiding" when acting for the regular judge. The appointment of a special judge to a county court at law does not affect the jurisdiction of the court.

(l), (m) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(50), effective January 1, 2012.]

(n) The official court reporter of a county court at law is entitled to compensation set by the commissioners court in an amount at least equal to the compensation paid to the court reporter of a district court in Hood County.

(o) If a family law case or proceeding is tried before a jury in a county court at law, the jury shall be composed of 12 members. In all other cases, the jury shall be composed of six members.

(p) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(50), effective January 1, 2012.]

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 629 (S.B. 1810), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 774 (H.B. 3605), § 1, effective September 1, 2003; am. Acts 2009, 81st Leg., ch. 1351 (S.B. 408), § 12(e), effective September 1, 2009; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(50), effective January 1, 2012; am. Acts 2011, 82nd Leg., ch. 1085 (S.B. 1196), § 41, effective September 1, 2011; am. Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 22.027, effective September 1, 2017.

Sec. 25.1132. Hood County Court at Law Provisions. [Effective September 1, 2020]

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Hood County has the jurisdiction provided by this section.

(b) A county court at law in Hood County has concurrent jurisdiction with the county court in mental health cases.

(c) A county court at law in Hood County has concurrent jurisdiction with the district court in:

- (1) family law cases and related proceedings;
- (2) contested probate matters under Section 32.003(a), Estates Code; and
- (3) contested matters in guardianship proceedings under Section 1022.003(a), Estates Code.

(d) The county court and each county court at law and district court in Hood County has jurisdiction over juvenile matters and may be designated a juvenile court. The county court has primary jurisdiction over juvenile matters.

(e) Except as provided by Subsection (c)(3) or (4), a county court at law does not have probate jurisdiction.

(f) to (h) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(50), effective January 1, 2012.]

(i) The judge of a county court at law shall be paid an annual salary that is not less than 90 percent of the annual salary of a district judge in the county. The salary shall be paid from the county treasury on order of the commissioners court. The judge is entitled to travel expenses and necessary office expenses, including administrative and clerical personnel, in the same manner as the county judge.

(j) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(50), effective January 1, 2012.]

(k) A special judge must take the oath of office required by law for the regular judge and has the same authority as the regular judge. A special judge may sign orders, judgments, decrees, and other processes of the court as "Judge Presiding" when acting for the regular judge. The appointment of a special judge to a county court at law does not affect the jurisdiction of the court.

(l), (m) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(50), effective January 1, 2012.]

(n) The official court reporter of a county court at law is entitled to compensation set by the commissioners court in an amount at least equal to the compensation paid to the court reporter of a district court in Hood County.

(o) If a family law case or proceeding is tried before a jury in a county court at law, the jury shall be composed of 12 members. In all other cases, the jury shall be composed of six members except as provided by the constitution, Section 25.0007(c), or other law.

(p) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(50), effective January 1, 2012.]

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 629 (S.B. 1810), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 774 (H.B. 3605), § 1, effective September 1, 2003; am. Acts 2009, 81st Leg., ch. 1351 (S.B. 408), § 12(e), effective September 1, 2009; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(50), effective January 1, 2012; am. Acts 2011, 82nd Leg., ch. 1085 (S.B. 1196), § 41, effective September 1, 2011; am. Acts 2019, 86th Leg., ch. 696 (S.B. 2342), § 14, effective September 1, 2020.

Sec. 25.1801. Nueces County.

(a) Nueces County has the following statutory county courts:

- (1) County Court at Law No. 1 of Nueces County;
- (2) County Court at Law No. 2 of Nueces County;
- (3) County Court at Law No. 3 of Nueces County;
- (4) County Court at Law No. 4 of Nueces County; and
- (5) County Court at Law No. 5 of Nueces County.

(b) The County Court at Law No. 1 of Nueces County and the County Court at Law No. 2 of Nueces County sit in Corpus Christi.

(c) The County Court at Law No. 5 of Nueces County shall give preference to:

- (1) any proceeding involving an order relating to a child in the possession or custody of the Department of Protective and Regulatory Services or for whom the court has appointed a temporary or permanent managing conservator;
- (2) proceedings under Title 3, Family Code; and
- (3) mental health matters over which the court has jurisdiction under Section 25.1802(a)(4).

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 4.01, effective September 1, 1987; am. Acts 1999, 76th Leg., ch. 1134 (H.B. 3780), § 1, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 679 (H.B. 2498), § 1, effective June 20, 2003.

Sec. 25.1802. Nueces County Court at Law Provisions. [Effective until September 1, 2020]

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, and except as limited by Subsection (d), a county court at law in Nueces County has:

- (1) the jurisdiction provided by the constitution and by general law for district courts;
- (2) concurrent jurisdiction with the district court in disputes ancillary to probate, eminent domain, condemnation, or landlord and tenant matters relating to the adjudication and determination of land titles and trusts, whether testamentary, inter vivos, constructive, resulting, or any other class or type of trust, regardless of the amount in controversy or the remedy sought;
- (3) concurrent jurisdiction with the district court over civil forfeitures, including surety bond forfeitures without minimum or maximum limitation as to the amount in controversy or remedy sought;
- (4) jurisdiction in mental health matters, original or appellate, provided by law for constitutional county courts, statutory county courts, or district courts with mental health jurisdiction, including proceedings under:
 - (A) Subtitle C, Title 7, Health and Safety Code;
 - (B) Chapter 462, Health and Safety Code; and
 - (C) Subtitle D, Title 7, Health and Safety Code;
- (5) jurisdiction over the collection and management of estates of minors, mentally disabled persons, and deceased persons;
- (6) concurrent jurisdiction with the district court in all actions by or against a personal representative, in all actions involving an inter vivos trust, in all actions involving a charitable trust, and in all actions involving a testamentary trust, whether the matter is appertaining to or incident to an estate; and
- (7) jurisdiction in all cases assigned, transferred, or heard under Sections 74.054, 74.059, and 74.094, Government Code.

(b) A county court at law has original concurrent jurisdiction with the justice courts in all civil and criminal matters prescribed by law for justice courts. Appeals from justice courts and other courts of inferior jurisdiction in Nueces County must be made directly to a county court at law.

(c) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(71), effective January 1, 2012.]

(d) A county court at law does not have jurisdiction of:

- (1) felony cases, except as otherwise provided by law;
- (2) misdemeanors involving official misconduct unless assigned under Sections 74.054 and 74.059, Government Code;
- (3) contested elections; or
- (4) except as provided by Subsection (r), family law cases.

(e) The judges of the county courts at law in Nueces County shall each be paid an annual salary equal to the amount that is \$1,000 less than the salary paid by the state to a district judge in the county. The salaries shall be paid in the same manner and from the same fund as prescribed by law for the county judge.

(f), (g) [Repealed by Acts 2007, 80th Leg., ch. 1121 (H.B. 4007), § 2, effective June 15, 2007.]

(h) to (l) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(71), effective January 1, 2012.]

(m) A county court at law may not issue writs of habeas corpus in felony cases.

(n) The district clerk serves as clerk of a county court at law in cases enumerated in Subsection (a). The district clerk shall establish a separate docket for each county court at law. In matters of concurrent jurisdiction with the district court, the district clerk shall charge the same fees as are allowed in district court cases, except that in cases enumerated in Subsections (a)(2) and (a)(4) and in misdemeanor cases other than those involving official misconduct, the clerk may not charge higher fees than the fees charged by county clerks for similar cases.

(o) If a jury trial is requested in a case that is in a county court at law's jurisdiction, the jury shall be composed of six members unless the constitution requires a 12-member jury. Failure to object before a six-member jury is seated and sworn constitutes a waiver of a 12-member jury.

(p) If any cause or proceeding is lodged with the district clerk and the district clerk files, docketed, or assigns the cause or proceeding in or to a county court at law and the county court at law does not have subject matter jurisdiction over the cause or proceeding, then the filing, docketing, or assignment of the cause or proceeding in or to a county court at law is considered a clerical error and that clerical error shall be corrected by a judgment or order nunc pro tunc. The cause or proceeding is considered filed, docketed, or assigned to the district court of the local administrative judge in the first instance rather than to a county court at law of Nueces County. The judge of a county court at law of Nueces County who acts in the cause or proceeding is considered assigned to the district court of the local administrative judge for that purpose and has all the powers of the judge of that district court under the assignment.

(q) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(71), effective January 1, 2012.]

(r) In addition to the jurisdiction provided by this section for statutory county courts of Nueces County, the County Court at Law No. 5 of Nueces County has jurisdiction of:

- (1) proceedings under Title 3, Family Code; and

(2) any proceeding involving an order relating to a child in the possession or custody of the Department of Protective and Regulatory Services or for whom the court has appointed a temporary or permanent managing conservator.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 4.01, effective September 1, 1987; am. Acts 1991, 72nd Leg., ch. 746 (H.B. 66), § 70, effective October 1, 1991; am. Acts 1995, 74th Leg., ch. 796 (S.B. 1720), § 1, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 549 (H.B. 3565), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 431 (S.B. 1150), § 3, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 1134 (H.B. 3780), § 2, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 679 (H.B. 2498), § 2, effective June 20, 2003; am. Acts 2007, 80th Leg., ch. 1121 (H.B. 4007), §§ 1, 2, effective June 15, 2007; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(71), effective January 1, 2012.

Sec. 25.1802. Nueces County Court at Law Provisions. [Effective September 1, 2020]

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, and except as limited by Subsection (d), a county court at law in Nueces County has:

(1) the jurisdiction provided by the constitution and by general law for district courts;

(2) concurrent jurisdiction with the district court in disputes ancillary to probate, eminent domain, condemnation, or landlord and tenant matters relating to the adjudication and determination of land titles and trusts, whether testamentary, inter vivos, constructive, resulting, or any other class or type of trust, regardless of the amount in controversy or the remedy sought;

(3) concurrent jurisdiction with the district court over civil forfeitures, including surety bond forfeitures without minimum or maximum limitation as to the amount in controversy or remedy sought;

(4) jurisdiction in mental health matters, original or appellate, provided by law for constitutional county courts, statutory county courts, or district courts with mental health jurisdiction, including proceedings under:

- (A) Subtitle C, Title 7, Health and Safety Code;
- (B) Chapter 462, Health and Safety Code; and
- (C) Subtitle D, Title 7, Health and Safety Code;

(5) jurisdiction over the collection and management of estates of minors, mentally disabled persons, and deceased persons;

(6) concurrent jurisdiction with the district court in all actions by or against a personal representative, in all actions involving an inter vivos trust, in all actions involving a charitable trust, and in all actions involving a testamentary trust, whether the matter is appertaining to or incident to an estate; and

(7) jurisdiction in all cases assigned, transferred, or heard under Sections 74.054, 74.059, and 74.094, Government Code.

(b) A county court at law has original concurrent jurisdiction with the justice courts in all civil and criminal matters prescribed by law for justice courts. Appeals from justice courts and other courts of inferior jurisdiction in Nueces County must be made directly to a county court at law.

(c) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(71), effective January 1, 2012.]

(d) A county court at law does not have jurisdiction of:

(1) felony cases, except as otherwise provided by law;

(2) misdemeanors involving official misconduct unless assigned under Sections 74.054 and 74.059, Government Code;

(3) contested elections; or

(4) except as provided by Subsection (r), family law cases.

(e) The judges of the county courts at law in Nueces County shall each be paid an annual salary equal to the amount that is \$1,000 less than the salary paid by the state to a district judge in the county. The salaries shall be paid in the same manner and from the same fund as prescribed by law for the county judge.

(f), (g) [Repealed by Acts 2007, 80th Leg., ch. 1121 (H.B. 4007), § 2, effective June 15, 2007.]

(h) to (l) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(71), effective January 1, 2012.]

(m) A county court at law may not issue writs of habeas corpus in felony cases.

(n) The district clerk serves as clerk of a county court at law in cases enumerated in Subsection (a). The district clerk shall establish a separate docket for each county court at law. In matters of concurrent jurisdiction with the district court, the district clerk shall charge the same fees as are allowed in district court cases, except that in cases enumerated in Subsections (a)(2) and (a)(4) and in misdemeanor cases other than those involving official misconduct, the clerk may not charge higher fees than the fees charged by county clerks for similar cases.

(o) If a jury trial is requested in a case that is in a county court at law's jurisdiction, the jury shall be composed of six members unless the constitution, Section 25.0007(c), or other law requires a 12-member jury. Failure to object before a six-member jury is seated and sworn constitutes a waiver of a 12-member jury.

(p) If any cause or proceeding is lodged with the district clerk and the district clerk files, docketed, or assigns the cause or proceeding in or to a county court at law and the county court at law does not have subject matter jurisdiction over the cause or proceeding, then the filing, docketing, or assignment of the cause or proceeding in or to a county court at law is considered a clerical error and that clerical error shall be corrected by a judgment or order nunc pro tunc. The cause or proceeding is considered filed, docketed, or assigned to the district court of the local administrative judge in the first instance rather than to a county court at law of Nueces County. The judge of a county court at law of Nueces County who acts in the cause or proceeding is considered assigned to the district court of the local administrative judge for that purpose and has all the powers of the judge of that district court under the assignment.

(q) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(71), effective January 1, 2012.]

(r) In addition to the jurisdiction provided by this section for statutory county courts of Nueces County, the County Court at Law No. 5 of Nueces County has jurisdiction of:

(1) proceedings under Title 3, Family Code; and

(2) any proceeding involving an order relating to a child in the possession or custody of the Department of

Protective and Regulatory Services or for whom the court has appointed a temporary or permanent managing conservator.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 4.01, effective September 1, 1987; am. Acts 1991, 72nd Leg., ch. 746 (H.B. 66), § 70, effective October 1, 1991; am. Acts 1995, 74th Leg., ch. 796 (S.B. 1720), § 1, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 549 (H.B. 3565), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 431 (S.B. 1150), § 3, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 1134 (H.B. 3780), § 2, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 679 (H.B. 2498), § 2, effective June 20, 2003; am. Acts 2007, 80th Leg., ch. 1121 (H.B. 4007), §§ 1, 2, effective June 15, 2007; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(71), effective January 1, 2012; am. Acts 2019, 86th Leg., ch. 696 (S.B. 2342), § 21, effective September 1, 2020.

Sec. 25.1972. Reeves County Court at Law Provisions.

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, and except as limited by Subsection (b), a county court at law in Reeves County has:

(1) concurrent jurisdiction with the district court:

(A) in disputes ancillary to probate, eminent domain, condemnation, or landlord and tenant matters relating to the adjudication and determination of land titles and trusts, whether testamentary, inter vivos, constructive, resulting, or any other class or type of trust, regardless of the amount in controversy or the remedy sought;

(B) over civil forfeitures, including surety bond forfeitures without minimum or maximum limitation as to the amount in controversy or remedy sought;

(C) in all actions by or against a personal representative, in all actions involving an inter vivos trust, in all actions involving a charitable trust, and in all actions involving a testamentary trust, whether the matter is appertaining to or incident to an estate;

(D) in proceedings under Title 3, Family Code; and

(E) in any proceeding involving an order relating to a child in the possession or custody of the Department of Family and Protective Services or for whom the court has appointed a temporary or permanent managing conservator;

(2) jurisdiction in mental health matters, original or appellate, provided by law for constitutional county courts, statutory county courts, or district courts with mental health jurisdiction, including proceedings under:

(A) Chapter 462, Health and Safety Code; and

(B) Subtitles C and D, Title 7, Health and Safety Code;

(3) jurisdiction over the collection and management of estates of minors, persons with a mental illness or intellectual disability, and deceased persons; and

(4) jurisdiction in all cases assigned, transferred, or heard under Sections 74.054, 74.059, and 74.094.

(b) A county court at law does not have jurisdiction of:

(1) felony cases, except as otherwise provided by law;

(2) misdemeanors involving official misconduct unless assigned under Sections 74.054 and 74.059;

(3) contested elections; or

(4) except as provided by Subsections (a)(1)(D) and (E), family law cases.

(c) [Repealed by Acts 1991, 72nd Leg., ch. 746 (H.B. 66), § 70, effective October 1, 1991.]

(d) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(78), effective January 1, 2012.]

(e) A judge of a county court at law in Reeves County shall be paid an annual salary equal to the amount that is \$1,000 less than the salary paid by the state to a district judge in the county. The salary shall be paid in the same manner and from the same fund as prescribed by law for the county judge.

(f) A county court at law may not issue writs of habeas corpus in felony cases.

(g) The district clerk serves as clerk of a county court at law in the cases described by Subsection (a), and the county clerk serves as clerk of the court in all other matters.

(h) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(78), effective January 1, 2012.]

(i) Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings involving family law cases and proceedings are governed by this section and the laws and rules pertaining to district courts. If a family law case is tried before a jury, the jury shall be composed of 12 members.

(j) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(78), effective January 1, 2012.]

(k) All cases appealed from the justice courts and other courts of inferior jurisdiction in the county shall be appealed to a county court at law under the provisions governing appeals to county courts.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 4.01, effective September 1, 1987; am. Acts 1991, 72nd Leg., ch. 746 (H.B. 66), §§ 50, 70, effective October 1, 1991; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(78), effective January 1, 2012; am. Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 2.11, effective September 1, 2019.

Sec. 25.2012. Rockwall County Court at Law Provisions.

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, and except as limited by Subsection (b), a county court at law in Rockwall County has, concurrent with the district court, the jurisdiction provided by the constitution and general law for district courts.

(b) A county court at law does not have jurisdiction of:

(1) felony cases involving capital murder;

(2) suits on behalf of the state to recover penalties or escheated property;

(3) misdemeanors involving official misconduct; or

(4) contested elections.

(c) The district clerk serves as clerk of a county court at law except that the county clerk serves as clerk of a county court at law in matters of mental health, the probate and criminal misdemeanor docket, and all civil matters in which a county court at law does not have concurrent jurisdiction with a district court.

(d), (e) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(79), effective January 1, 2012.]

(f) Notwithstanding Sections 74.091 and 74.0911, a district judge serves as the local administrative judge for

the district and statutory county courts in Rockwall County. The judges of district courts shall elect a district judge as local administrative judge for a term of not more than two years. The local administrative judge may not be elected on the basis of rotation or seniority.

(g) When administering a case for a county court at law, the district clerk shall charge civil fees and court costs as if the case had been filed in a district court. In a case of concurrent jurisdiction, the case shall be assigned to either a district court or a county court at law in accordance with local administrative rules established by the local administrative judge.

(h) The judge of a county court at law shall appoint an official court reporter for the judge's court and shall set the official court reporter's annual salary, subject to approval by the county commissioners court. The official court reporter of a county court at law shall take an oath or affirmation as an officer of the court. The official court reporter holds office at the pleasure of the judge and shall be provided a private office in close proximity to the court. The official court reporter is entitled to all rights and benefits afforded all other county employees.

(i) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(79), effective January 1, 2012.]

(j) Not later than one year after the date of appointment, the bailiff of a county court at law must obtain a peace officer license under Chapter 1701, Occupations Code, from the Texas Commission on Law Enforcement. The sheriff of Rockwall County shall deputize the bailiff of a county court at law. The bailiff of a county court at law is subject to the training and continuing education requirements of a sheriff's deputy of the county. The sheriff shall remove from office a bailiff who does not receive a peace officer license within one year of appointment as required by this subsection.

(k), (l) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(79), effective January 1, 2012.]

(m) In matters of concurrent jurisdiction, the judge of a county court at law and the district judge may exchange benches, transfer cases subject to acceptance, assign each other to hear cases, and otherwise manage their respective dockets under local administrative rules.

(n) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(79), effective January 1, 2012.]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 377 (S.B. 1552), § 5(a), effective September 1, 2003; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), §§ 4.38, 4.50(a)(79), effective January 1, 2012; am. Acts 2013, 83rd Leg., ch. 93 (S.B. 686), § 2.19, effective May 18, 2013; am. Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 2.12(b), effective September 1, 2019.

Sec. 25.2142. Smith County Court at Law Provisions. [Effective until September 1, 2020]

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, and except as limited by Subsection (a-1), a county court at law in Smith County has the jurisdiction provided by the constitution and by general law for district courts.

(a-1) A county court at law does not have jurisdiction of:

- (1) capital felony cases or felonies of the first or second degree;
- (2) suits on behalf of the state to recover penalties, forfeiture, or escheat;

(3) misdemeanors involving official misconduct; or

(4) contested elections.

(b) A county court at law has concurrent jurisdiction with the county court in mental illness matters and proceedings under Subtitle C, Title 7, Health and Safety Code.

(c) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(82), effective January 1, 2012.]

(d) [Repealed by Acts 1991, 72nd Leg., ch. 746 (H.B. 66), § 70, effective October 1, 1991.]

(e) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(82), effective January 1, 2012.]

(f) The commissioners court may, by an issued and signed order, require the judge of a county court at law to execute a bond in an amount set by the commissioners court. The commissioners court may require a bond of any special judge or visiting judge assigned to a county court at law. If the commissioners court requires a bond, the commissioners court must pay the appropriate fee for the bond from county funds.

(g) The judge of a county court at law may be paid an annual salary that is equal to the amount that is \$1,000 less than the total annual salary, including supplements, paid a district judge in the county. The salary shall be paid to the judge in equal installments at the established county pay periods. The salary shall be paid out of the general fund of the county by warrants drawn on the county treasury on order of the commissioners court. The judge of a county court at law shall assess the fees prescribed by law relating to county judges and district judges according to the nature of the matter brought before the judge.

(h) If the office of judge of a county court at law is vacant, if the regular judge is absent, disabled, or disqualified from presiding, or if the regular judge of a county court at law certifies that the orderly administration of justice in the court requires the temporary assistance of a special judge or visiting judge, the presiding judge of the administrative judicial region in which the county is located may appoint a person to sit as a special or visiting judge.

(i) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(82), effective January 1, 2012.]

(j) A special judge of a county court at law must take the constitutional oath of office.

(k) A visiting judge of a county court at law must:

(1) be a former judge of a district court or statutory county court, or an active judge of a district court or county court at law;

(2) not appear and plead as an attorney at law in any court of this state while serving as a visiting judge;

(3) have been a successful candidate for election in at least two general elections for judge of a district court or statutory county court;

(4) not have been removed from office by impeachment, the supreme court, the governor on address of the legislature, or by the State Commission on Judicial Conduct; and

(5) not have resigned as judge of a court while under investigation by the State Commission on Judicial Conduct.

(l) A special judge or visiting judge of a county court at law may sign orders, judgments, decrees, or any other

process authorized by law as “Judge Presiding” when acting for the regular judge.

(m) In appointing a visiting judge, preference shall be given to the appointment of a former judge of a statutory county court. If a judge of a statutory county court is not available, the presiding judge of the judicial district may appoint a former judge of a district court or an active judge of a district court or county court at law.

(n) A former judge sitting as a visiting judge of a county court at law is entitled to receive for services performed the same amount of compensation that the regular judge receives, less an amount equal to the pro rata annuity received from any state, district, or county retirement fund. An active judge sitting as a visiting judge of a county court at law is entitled to receive for services performed the same amount of compensation that the regular judge receives, less an amount equal to the pro rata compensation received from state or county funds as salary, including supplements.

(o) A visiting judge of a county court at law is entitled to receive reimbursement for food and lodging expenses incurred, in an amount not to exceed the sum paid visiting judges of district courts in the state, and for actual travel expenses between the residence of the visiting judge and the county court at law.

(p) The compensation, including authorized expenses, for a county court at law judge, special judge, or visiting judge shall be paid by the commissioners court. Payment to a special judge or visiting judge shall be made on certification by the presiding judge of the administrative judicial region that the special judge or visiting judge has rendered the service and is entitled to receive the compensation. The amount paid to a special judge or visiting judge may not be deducted from the salary or allowable expenses of the regular judge.

(q) A special or visiting judge of a county court at law has all the powers, jurisdiction, authority, duties, immunities, and privilege provided by law for the county court at law or its judge, except those powers and that authority associated with the appointment or assignment of court personnel.

(r) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(82), effective January 1, 2012.]

(s) The official court reporter of a county is entitled to receive a salary set by the commissioners court. If possible, the commissioners court shall set the salary at an amount equal to the amount of compensation, fees, and allowances received by the court reporters of the district courts in Smith County. The official court reporter shall perform any reasonable court-related duties required by the judge of the court.

(t), (u) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(82), effective January 1, 2012.]

(v) Except as otherwise provided by this section, juries in a county court at law shall be composed of six members. In matters of concurrent jurisdiction with the district court, if a party to the suit requests a 12-member jury, the jury shall be composed of 12 members. In a civil case tried in a county court at law, the parties may, by mutual agreement and with the consent of the judge, agree to try the case with any number of jurors and agree to have a verdict rendered and returned by the vote of any number of jurors less than all those hearing the case.

HISTORY: am. Acts 1987, 70th Leg., 2nd C.S., ch. 21 (S.B. 51), § 1, effective September 1, 1987; Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 4.01, effective September 1, 1987; am. Acts 1989, 71st Leg., 2nd C.S., ch. 1 (S.B. 1), § 15.21, effective January 1, 1991; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.44(9), effective August 28, 1989; am. Acts 1991, 72nd Leg., ch. 76 (H.B. 902) § 12, effective September 1, 1991; am. Acts 1991, 72nd Leg., ch. 746 (H.B. 66), §§ 53, 70, effective October 1, 1991; am. Acts 1997, 75th Leg., ch. 449 (H.B. 3504), § 1, effective September 1, 1997; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), §§ 4.39, 4.50(a)(82), effective January 1, 2012.

Sec. 25.2142. Smith County Court at Law Provisions. [Effective September 1, 2020]

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, and except as limited by Subsection (a-1), a county court at law in Smith County has the jurisdiction provided by the constitution and by general law for district courts.

(a-1) A county court at law does not have jurisdiction of:

- (1) capital felony cases or felonies of the first or second degree;
- (2) suits on behalf of the state to recover penalties, forfeiture, or escheat;
- (3) misdemeanors involving official misconduct; or
- (4) contested elections.

(b) A county court at law has concurrent jurisdiction with the county court in mental illness matters and proceedings under Subtitle C, Title 7, Health and Safety Code.

(c) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(82), effective January 1, 2012.]

(d) [Repealed by Acts 1991, 72nd Leg., ch. 746 (H.B. 66), § 70, effective October 1, 1991.]

(e) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(82), effective January 1, 2012.]

(f) The commissioners court may, by an issued and signed order, require the judge of a county court at law to execute a bond in an amount set by the commissioners court. The commissioners court may require a bond of any special judge or visiting judge assigned to a county court at law. If the commissioners court requires a bond, the commissioners court must pay the appropriate fee for the bond from county funds.

(g) The judge of a county court at law may be paid an annual salary that is equal to the amount that is \$1,000 less than the total annual salary, including supplements, paid a district judge in the county. The salary shall be paid to the judge in equal installments at the established county pay periods. The salary shall be paid out of the general fund of the county by warrants drawn on the county treasury on order of the commissioners court. The judge of a county court at law shall assess the fees prescribed by law relating to county judges and district judges according to the nature of the matter brought before the judge.

(h) If the office of judge of a county court at law is vacant, if the regular judge is absent, disabled, or disqualified from presiding, or if the regular judge of a county court at law certifies that the orderly administration of justice in the court requires the temporary assistance of a special judge or visiting judge, the presiding judge of the administrative judicial region in which the county is

located may appoint a person to sit as a special or visiting judge.

(i) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(82), effective January 1, 2012.]

(j) A special judge of a county court at law must take the constitutional oath of office.

(k) A visiting judge of a county court at law must:

(1) be a former judge of a district court or statutory county court, or an active judge of a district court or county court at law;

(2) not appear and plead as an attorney at law in any court of this state while serving as a visiting judge;

(3) have been a successful candidate for election in at least two general elections for judge of a district court or statutory county court;

(4) not have been removed from office by impeachment, the supreme court, the governor on address of the legislature, or by the State Commission on Judicial Conduct; and

(5) not have resigned as judge of a court while under investigation by the State Commission on Judicial Conduct.

(l) A special judge or visiting judge of a county court at law may sign orders, judgments, decrees, or any other process authorized by law as "Judge Presiding" when acting for the regular judge.

(m) In appointing a visiting judge, preference shall be given to the appointment of a former judge of a statutory county court. If a judge of a statutory county court is not available, the presiding judge of the judicial district may appoint a former judge of a district court or an active judge of a district court or county court at law.

(n) A former judge sitting as a visiting judge of a county court at law is entitled to receive for services performed the same amount of compensation that the regular judge receives, less an amount equal to the pro rata annuity received from any state, district, or county retirement fund. An active judge sitting as a visiting judge of a county court at law is entitled to receive for services performed the same amount of compensation that the regular judge receives, less an amount equal to the pro rata compensation received from state or county funds as salary, including supplements.

(o) A visiting judge of a county court at law is entitled to receive reimbursement for food and lodging expenses incurred, in an amount not to exceed the sum paid visiting judges of district courts in the state, and for actual travel expenses between the residence of the visiting judge and the county court at law.

(p) The compensation, including authorized expenses, for a county court at law judge, special judge, or visiting judge shall be paid by the commissioners court. Payment to a special judge or visiting judge shall be made on certification by the presiding judge of the administrative judicial region that the special judge or visiting judge has rendered the service and is entitled to receive the compensation. The amount paid to a special judge or visiting judge may not be deducted from the salary or allowable expenses of the regular judge.

(q) A special or visiting judge of a county court at law has all the powers, jurisdiction, authority, duties, immunities, and privilege provided by law for the county court

at law or its judge, except those powers and that authority associated with the appointment or assignment of court personnel.

(r) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(82), effective January 1, 2012.]

(s) The official court reporter of a county is entitled to receive a salary set by the commissioners court. If possible, the commissioners court shall set the salary at an amount equal to the amount of compensation, fees, and allowances received by the court reporters of the district courts in Smith County. The official court reporter shall perform any reasonable court-related duties required by the judge of the court.

(t), (u) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(82), effective January 1, 2012.]

(v) Except as otherwise provided by this section, the constitution, Section 25.0007(c), or other law, juries in a county court at law shall be composed of six members. In matters of concurrent jurisdiction with the district court to which Section 25.0007(c) does not apply, if a party to the suit requests a 12-member jury, the jury shall be composed of 12 members. In a civil case tried in a county court at law, the parties may, by mutual agreement, agree to try the case with any number of jurors and agree to have a verdict rendered and returned by the vote of any number of jurors less than all those hearing the case.

HISTORY: am. Acts 1987, 70th Leg., 2nd C.S., ch. 21 (S.B. 51), § 1, effective September 1, 1987; Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 4.01, effective September 1, 1987; am. Acts 1989, 71st Leg., 2nd C.S., ch. 1 (S.B. 1), § 15.21, effective January 1, 1991; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.44(9), effective August 28, 1989; am. Acts 1991, 72nd Leg., ch. 76 (H.B. 902) § 12, effective September 1, 1991; am. Acts 1991, 72nd Leg., ch. 746 (H.B. 66), §§ 53, 70, effective October 1, 1991; am. Acts 1997, 75th Leg., ch. 449 (H.B. 3504), § 1, effective September 1, 1997; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), §§ 4.39, 4.50(a)(82), effective January 1, 2012; am. Acts 2019, 86th Leg., ch. 696 (S.B. 2342), § 23, effective September 1, 2020.

Sec. 25.2422. Webb County Court at Law Provisions.

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Webb County has concurrent jurisdiction with the district court in:

(1) family law cases and proceedings;

(2) cases and proceedings involving justiciable controversies and differences between spouses, or between parents, or between parent and child, or between any of these and third persons; and

(3) proceedings to expunge a criminal arrest record under Chapter 55, Code of Criminal Procedure.

(b) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(97), effective January 1, 2012.]

(c) [Repealed by Acts 1991, 72nd Leg., ch. 746 (H.B. 66), § 70, effective October 1, 1991.]

(d) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(97), effective January 1, 2012.]

(e) A judge of a county court at law shall be paid an annual salary that is at least \$20,000, but not more than the salary, including any supplements, paid to a district judge in the county. The salary shall be paid out of the county treasury by order of the commissioners court. A judge of a county court at law is entitled to receive travel

and necessary office expenses, including administrative and clerical assistance, in the same manner as the county judge.

(f) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(97), effective January 1, 2012.]

(g) The district attorney of the 49th Judicial District serves as district attorney of a county court at law, except that the county attorney of Webb County prosecutes all juvenile, child welfare, mental health, and other civil cases in which the state is a party. The district clerk serves as clerk of a county court at law in the cases enumerated in Subsection (a)(2), and the county clerk serves as clerk of a county court at law in all other cases.

(h) If a family law case is tried before a jury, the jury shall be composed of 12 members.

(i), (j) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(97), effective January 1, 2012.]

(k) A meeting of district judges in Webb County held under Section 62.016(a) to determine the number of prospective jurors that are necessary for each week of the year may include the county court at law judges. The judges may designate a county court at law judge to be the judge to whom the general jury panels report for jury service under Section 62.016(c).

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 4.01, effective September 1, 1987; am. Acts 1989, 71st Leg., 2nd C.S., ch. 1 (S.B. 1), § 15.26, effective January 1, 1991; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.11(b), effective August 28, 1989; am. Acts 1989, 71st Leg., ch. 944 (H.B. 153), § 1, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 746 (H.B. 66), §§ 60, 70, effective October 1, 1991; am. Acts 1995, 74th Leg., ch. 105 (H.B. 3168), § 1, effective August 28, 1995; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), §§ 4.45, 4.50(a)(97), effective January 1, 2012.

Sec. 25.2452. Wichita County Court at Law Provisions.

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, including the general jurisdiction provided for a county court at law by the Estates Code, a county court at law in Wichita County has concurrent jurisdiction with the county court in:

- (1) appeals from municipal courts of record in Wichita County as provided by Subchapter H, Chapter 30;
- (2) misdemeanor cases; and
- (3) probate and mental health matters.

(b) All misdemeanor cases, probate and mental health matters, and appeals from municipal courts of record shall be filed in the county court at law. A county court at law may transfer a case or an appeal described by this subsection to the county court with the consent of the county judge.

(c) Except as provided by Section 25.0003 and Subsection (d), a county court at law has concurrent jurisdiction with the district court in:

- (1) family law cases and proceedings under the Family Code; and
- (2) civil cases.

(d) A county court at law does not have jurisdiction of:

- (1) a case under:
 - (A) the Alcoholic Beverage Code;
 - (B) the Election Code; or

(C) the Tax Code;

(2) a matter over which the district court has exclusive jurisdiction; or

(3) a civil case, other than a case under the Family Code or the Estates Code, in which the amount in controversy is:

(A) less than the maximum amount in controversy allowed the justice court in Wichita County; or

(B) more than \$200,000, exclusive of punitive or exemplary damages, penalties, interest, costs, and attorney's fees.

(e) On the motion of any party, a county court at law may transfer a civil case originally filed in a county court at law that exceeds the maximum amount in controversy described by Subsection (d)(3)(B) to the district court in Wichita County, except that an announcement of ready for trial by all parties before a motion to transfer the case to the district court is filed confers original jurisdiction on the county court at law. A case that is transferred to the district court shall be completed under the same cause number and in the same manner as if the case were originally filed in the district court.

(f) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(98), effective January 1, 2012.]

(g) The judge of a county court at law shall be paid an annual salary that is \$1,000 less than the total annual salary received by a district judge in the county. The salary shall be paid out of the county treasury by the commissioners court. The judge shall be paid in installments in the same manner as other county employees. The judge is also entitled to receive travel expenses and necessary office expenses, including administrative and clerical assistance, in the same manner as the county judge.

(h) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(98), effective January 1, 2012.]

(i) The district clerk of Wichita County serves as the clerk of the county courts at law in Wichita County in all civil cases except probate and mental health matters. The county clerk serves as clerk in cases involving criminal, probate, or mental health matters.

(j) [Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.50(a)(98), effective January 1, 2012.]

(k) Except as otherwise required by law, if a case is tried before a jury, the jury shall be composed of six members and may render verdicts by a five to one margin in civil cases and a unanimous verdict in criminal cases.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 4.01, effective September 1, 1987; am. Acts 1989, 71st Leg., 2nd C.S., ch. 1 (S.B. 1), § 15.27, effective January 1, 1991; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.24(b), effective August 28, 1989; am. Acts 1991, 72nd Leg., ch. 746 (H.B. 66), §§ 61, 70, effective October 1, 1991; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 7.28, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 687 (H.B. 3632), § 1, effective September 1, 2001; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), §§ 4.46, 4.50(a)(98), effective January 1, 2012; am. Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 22.029, effective September 1, 2017.

CHAPTER 26

Constitutional County Courts

Subchapter B. Appointment of Visiting Judge

Section
26.012.

Assignment of Visiting Judge for Probate,

Section

Guardianship, and Mental Health Matters.

Subchapter D. Jurisdiction and Powers

26.052. Probate and Mental Health Code Cases.

Subchapter E. Provisions Relating to Particular Counties

26.111. Bastrop County.
 26.149. Cooke County.
 26.223. Jefferson County.

*Subchapter B**Appointment of Visiting Judge***Sec. 26.012. Assignment of Visiting Judge for Probate, Guardianship, and Mental Health Matters.**

If the county judge is absent, incapacitated, recused, or disqualified to act in a probate, guardianship, or mental health matter, a visiting judge shall be assigned in accordance with Section 25.0022(h).

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985; am. Acts 1999, 76th Leg., ch. 1388 (H.B. 1606), § 5, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 820 (H.B. 900), § 2, effective September 1, 2001; am. Acts 2015, 84th Leg., ch. 1031 (H.B. 1438), § 35, effective September 1, 2015.

*Subchapter D**Jurisdiction and Powers***Sec. 26.052. Probate and Mental Health Code Cases.**

(a) In a county in which the county court and any county court created by statute have jurisdiction in both probate matters and proceedings under Subtitle C, Title 7, Health and Safety Code, during each year for which a statement has been filed as provided by Subsection (b), those cases and proceedings must be filed in a county court created by statute with jurisdiction of those cases and proceedings.

(b) A county judge may file, not later than January 15 of each year, a statement with the county clerk electing not to hear probate matters and proceedings under Subtitle C, Title 7, Health and Safety Code.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 746 (H.B. 66), § 65, effective October 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 4.01, effective August 30, 1993.

*Subchapter E**Provisions Relating to Particular Counties***Sec. 26.111. Bastrop County.**

(a) If the county judge is licensed to practice law in this state, the County Court of Bastrop County has jurisdiction concurrent with the County Court at Law of Bastrop County over all causes and proceedings, civil and criminal, juvenile and probate, original and appellate, over which by the constitution and general laws of this state county courts have jurisdiction.

(b) If the county judge is not licensed to practice law in this state, the County Court of Bastrop County has concurrent jurisdiction with the county court at law only in probate proceedings, administrations of estates, guardianship proceedings, mental illness proceedings, and juvenile jurisdiction as provided by Section 26.042(b).

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.22(a), effective September 1, 1987.

Sec. 26.149. Cooke County.

(a) The County Court of Cooke County does not have probate, guardianship, mental health, juvenile, civil, criminal, or appellate jurisdiction.

(b) The judge of the County Court of Cooke County is exempt from the judicial training and instruction required under Chapter 22.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 535 (H.B. 2307), § 2, effective December 1, 2001.

Sec. 26.223. Jefferson County.

(a) If the county judge is licensed to practice law in this state, the County Court of Jefferson County has jurisdiction concurrent with the County Court at Law of Jefferson County over all causes and proceedings, civil and criminal, juvenile and probate, original and appellate, over which by the constitution and general laws of this state county courts have jurisdiction.

(a-1) If the county judge is not licensed to practice law in this state, the County Court of Jefferson County has concurrent jurisdiction with the county courts at law in Jefferson County only in probate proceedings, administrations of estates, guardianship proceedings, mental illness proceedings, and juvenile matters as provided by Section 26.042(b).

(b) The terms of the county court continue until the court has disposed of its business. The commissioners court may change the court terms under Section 26.002.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985; am. Acts 2015, 84th Leg., ch. 1182 (S.B. 1139), § 3.08, effective September 1, 2015.

SUBTITLE C**PROSECUTING ATTORNEYS****CHAPTER 45****County Attorneys***Subchapter B**Provisions Applicable to Specific Counties*Section
45.340.

Webb County.

Sec. 45.340. Webb County.

The county attorney handles or prosecutes all juvenile, child welfare, and mental health cases in Webb County, the other civil cases in Webb County where the state is a party, and the other duties imposed by law on the office of county attorney.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

SUBTITLE D

JUDICIAL PERSONNEL AND OFFICIALS

- Chapter
- 54. Masters; Magistrates; Referees; Associate Judges
- 54A. Associate Judges
- 56. Judicial and Court Personnel Training Fund

CHAPTER 54

Masters; Magistrates; Referees; Associate Judges

Subchapter A. Magistrates in Montgomery County [Repealed]

- Section
- 54.001. Appointment [Repealed].
- 54.002. Qualifications; Oath of Office [Repealed].
- 54.003. Compensation [Repealed].
- 54.004. Judicial Immunity [Repealed].
- 54.005. Jurisdiction; Responsibility [Repealed].
- 54.006. Powers [Repealed].
- 54.007. Powers and Duties [Repealed].
- 54.008. Attendance of Bailiff [Repealed].
- 54.009. Witness [Repealed].
- 54.010. Report Transmitted to Court; Notice [Repealed].
- 54.011. Judicial Action on Master's Report [Repealed].
- 54.012. Appeal to Referring Court [Repealed].
- 54.013. Decree or Order of Court [Repealed].
- 54.014. Jury Trial Demanded [Repealed].
- 54.015. Effect of Master's Report Pending Appeal [Repealed].
- 54.016. Inapplicability of This Subchapter to Masters Appointed Pursuant to Rule 171, Texas Rules of Civil Procedure [Repealed].
- 54.017. Immunity [Repealed].
- 54.018. Court Reporter [Repealed].
- 54.019. Designation [Repealed].
- 54.020 to 54.100. [Reserved].

Subchapter B. Bell County Truancy Masters

- 54.101. Appointment.
- 54.102. Jurisdiction.
- 54.103. Powers and Duties.
- 54.104. Judicial Immunity.
- 54.105. Training.
- 54.106. Failure to Comply with Summons or Order.
- 54.107. Witnesses.

Subchapter B. Bell County Truancy Masters

- 54.101. Appointment.
- 54.102. Jurisdiction.
- 54.103. Powers and Duties.
- 54.104. Judicial Immunity.
- 54.105. Training.
- 54.106. Failure to Comply with Summons or Order.
- 54.107. Witnesses.

Subchapter B. Magistrates in Nolan County [Repealed]

- 54.101. Authorization; Appointment; Elimination [Repealed].
- 54.102. Qualifications [Repealed].
- 54.103. Compensation [Repealed].
- 54.104. Judicial Immunity [Repealed].

- Section
- 54.105. Jurisdiction; Responsibility; Powers [Repealed].
- 54.106. Termination of Employment [Repealed].
- 54.107. Withdrawal of Appointment for a Particular Court [Repealed].
- 54.108. Cases That May Be Referred [Repealed].
- 54.109. Method of Referral [Repealed].
- 54.110. Powers [Repealed].
- 54.111. Effect on Temporary Restraining Order [Repealed].
- 54.112. Jury Demand [Repealed].
- 54.113. Court Reporter [Repealed].
- 54.114. Failure to Comply with Summons or Order [Repealed].
- 54.115. Findings and Recommendations [Repealed].
- 54.116. Notice of Right to Hearing De Novo [Repealed].
- 54.117. Master's Report [Repealed].
- 54.118. Court Action on Report [Repealed].
- 54.119. Request for Hearing De Novo [Repealed].
- 54.120. Effect of Request for Hearing De Novo [Repealed].
- 54.121. Masters in Chancery [Repealed].
- 54.122. Referees [Repealed].
- 54.123 to 54.200. [Reserved].

Subchapter C. Criminal Law Masters in Jefferson County [Repealed]

- 54.201. Application [Repealed].
- 54.202. Appointment and Compensation [Repealed].
- 54.203. Referral of Case [Repealed].
- 54.204. Powers [Repealed].
- 54.205. Papers Transmitted to Judge [Repealed].
- 54.206. Judicial Action [Repealed].
- 54.207. Restriction on Practice of Law [Repealed].
- 54.208 to 54.300. [Reserved].

Subchapter D. Criminal Law Magistrates In Dallas County

- 54.301. Appointment.
- 54.302. Qualifications.
- 54.303. Compensation.
- 54.304. Judicial Immunity.
- 54.305. Termination of Services.
- 54.306. Proceeding That May Be Referred.
- 54.307. Order of Referral.
- 54.308. Powers.
- 54.309. Court Reporter.
- 54.310. Witness.
- 54.311. Papers Transmitted to Judge.
- 54.312. Judicial Action.
- 54.313. Costs of Magistrate. [Repealed effective January 1, 2020]
- 54.314 to 54.400. [Reserved].

Subchapter E. Juvenile Court Referees In Wichita County [Repealed]

- 54.401. Appointment [Repealed].
- 54.402. Qualifications [Repealed].
- 54.403. Compensation [Repealed].
- 54.404. Cases That May Be Referred by District Court [Repealed].
- 54.405. Cases That May Be Referred by Juvenile Court [Repealed].
- 54.406. Order of Referral [Repealed].
- 54.407. Powers [Repealed].
- 54.408. Notice of Hearing [Repealed].
- 54.409. Witness [Repealed].
- 54.410. Papers Transmitted to Judge [Repealed].
- 54.411. Judicial Action on Referee's Report [Repealed].
- 54.412. Hearing Before Judge [Repealed].

Section		Section	
54.413.	Decree of Court [Repealed].	54.663.	Costs of Magistrate. [Repealed effective January 1, 2020]
54.414.	Jury Trial Demanded [Repealed].		
54.415 to 54.500.	[Reserved].	54.664 to 54.680.	[Reserved].
Subchapter F. Associate Judges in Dallas County [Repealed]		Subchapter I. Juvenile Law Masters in Harris County [Repealed]	
54.501.	Application of Subchapter [Repealed].	54.681.	Appointment [Repealed].
54.502.	Appointment of Associate Judges [Repealed].	54.682.	Qualifications [Repealed].
		54.683.	Order of Appointment [Repealed].
54.503.	Qualifications [Repealed].	54.684.	Compensation [Repealed].
54.504.	Compensation [Repealed].	54.685.	Judicial Immunity [Repealed].
54.505.	Judicial Immunity [Repealed].	54.686.	Termination of Employment [Repealed].
54.506.	Matters That May Be Referred [Repealed].	54.687.	Withdrawal of Appointment for a Particular Court [Repealed].
54.5061.	Trial on the Merits [Repealed].		
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Subchapter N. Criminal Law Magistrates In Bexar County

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 54.903. Compensation.
 54.904. Judicial Immunity.
 54.905. Termination of Services.
 54.906. Proceeding That May Be Referred.
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 54.909. Court Reporter.
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 54.922. Qualifications [Repealed].
 54.923. Order of Appointment [Repealed].
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 54.954. Masters in Criminal Cases [Repealed].
 54.955. Judicial Immunity [Repealed].
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 54.972. Qualifications.
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 54.995. Order of Referral.
 54.996. Powers.
 54.997. Return to Referring Court; Findings.
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Subchapter S. Civil, Juvenile, and Criminal Law Associate Judges In Fort Bend County [Repealed]

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54.1006.	Termination of Employment [Repealed].
54.1007.	Withdrawal of Appointment for Particular Court [Repealed].
54.1008.	Proceedings That May Be Referred [Repealed].
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54.1013.	Court Reporter [Repealed].
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54.1019.	Court Action on Report [Repealed].
54.1020.	Decree or Judgment [Repealed].
54.1021.	Master in Chancery [Repealed].
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Subchapter T. Civil Law Associate Judges in Bexar County [Repealed]

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54.1052.	Qualifications [Repealed].
54.1053.	Order of Appointment [Repealed].
54.1054.	Compensation [Repealed].
54.1055.	Judicial Immunity [Repealed].
54.1056.	Termination of Employment [Repealed].
54.1057.	Cases That May Be Referred [Repealed].
54.1058.	Objection to Appointment [Repealed].
54.1059.	Method of Referral [Repealed].
54.1060.	Duties and Powers [Repealed].
54.1061.	Jury [Repealed].
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54.1064.	Perjury [Repealed].
54.1065.	Report [Repealed].
54.1066.	Notice of Right to Appeal [Repealed].
54.1067.	Order of Court [Repealed].
54.1068.	Appeal to Referring Court [Repealed].
54.1069.	Appellate Review [Repealed].
54.1070.	Judicial Action on Associate Judge's Report [Repealed].
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Subchapter U. Magistrates in Brazos County [Repealed]

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54.1102.	Qualifications [Repealed].
54.1103.	Compensation [Repealed].
54.1104.	Judicial Immunity [Repealed].
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54.1106.	Proceedings That May Be Referred [Repealed].
54.1107.	Order of Referral [Repealed].
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54.1109.	Notice of Hearing [Repealed].
54.1110.	Witnesses [Repealed].
54.1111.	Record of Evidence [Repealed].
54.1112.	Report and Papers Transmitted to Judge [Repealed].
54.1113.	Hearing Before Judge [Repealed].
54.1114.	Effect of Magistrate's Report Pending Appeal [Repealed].
54.1115.	Judicial Action [Repealed].
54.1116.	Costs of Magistrate [Repealed].
54.1117 to 54.1130.	[Reserved].

Subchapter V. Associate Judges in Duval County [Repealed]

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54.1132.	Qualifications [Repealed].
54.1133.	Compensation [Repealed].
54.1134.	Private Practice [Repealed].
54.1135.	Termination of Services [Repealed].
54.1136.	Referral of Case [Repealed].
54.1137.	Order of Referral [Repealed].
54.1138.	Powers [Repealed].
54.1139.	Attendance of Bailiff [Repealed].
54.1140.	Witness [Repealed].
54.1141.	Report Transmitted to Court; Notice [Repealed].
54.1142.	Notice of Right to Appeal [Repealed].
54.1143.	Effect of Associate Judge's Report Pending Appeal [Repealed].
54.1144.	Judicial Action on Associate Judge's Report [Repealed].
54.1145.	Decree or Order of Court [Repealed].
54.1146.	Appeal to Referring Court [Repealed].
54.1147.	Appellate Review [Repealed].
54.1148.	Jury Trial Demanded [Repealed].
54.1149.	Inapplicability of Subchapter to Masters Appointed Under Rule 171 [Repealed].
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54.1151.	Court Reporter [Repealed].
54.1152.	Qualifications; Oath of Office [Renumbered].
54.1153.	Compensation [Renumbered].
54.1154.	Judicial Immunity [Renumbered].
54.1155.	Termination of Employment [Renumbered].
54.1156.	Jurisdiction; Responsibility; Powers [Renumbered].
54.1157.	Personnel, Equipment, and Office Space [Renumbered].
54.1158 to 54.1170.	[Reserved].

Subchapter W. Magistrates in Certain County Courts

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54.1172.	Appointment.
54.1173.	Qualifications.
54.1174.	Compensation.
54.1175.	Powers.
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54.1177.	Judicial Immunity.
54.1178 to 54.1200.	[Reserved].

Subchapter X. Criminal Law Magistrates in Harris County [Repealed]

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54.1202.	Appointment [Repealed].
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54.1204.	Compensation [Repealed].
54.1205.	Judicial Immunity [Repealed].
54.1206.	Termination of Services [Repealed].
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 54.1208. Order of Referral [Repealed].
 54.1209. Powers [Repealed].
 54.1210. Record of Proceedings [Repealed].
 54.1211. Witness [Repealed].
 54.1212. Papers Transmitted to the Judge [Repealed].
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 54.1214. Criminal Law Magistrates [Repealed].
 54.1215 to 54.1230. [Reserved].

Subchapter Y. Magistrates In Comal County

54.1231. Authorization; Appointment; Elimination.
 54.1232. Qualifications; Oath of Office.
 54.1233. Compensation.
 54.1234. Judicial Immunity.
 54.1235. Termination of Employment.
 54.1236. Jurisdiction; Responsibility; Powers.
 54.1237. Personnel, Equipment, and Office Space.
 54.1238 to 54.1350. [Reserved].

Subchapter BB. Criminal Law Hearing Officers in Cameron County

54.1351. Application of Subchapter.
 54.1352. Appointment.
 54.1353. Qualifications.
 54.1354. Compensation.
 54.1355. Oath.
 54.1356. Criminal Jurisdiction.
 54.1357. Mental Health Jurisdiction.
 54.1358. Duties and Powers.
 54.1359. Judicial Immunity.
 54.1360. Sheriff.
 54.1361. Clerk.
 54.1362. Proceedings That May Be Referred.
 54.1363 to 54.1500. [Reserved].

Subchapter CC. Magistrates in McLennan County [Repealed]

54.1511. Appointment [Repealed].
 54.1512. Qualification [Repealed].
 54.1513. Compensation [Repealed].
 54.1514. Judicial Immunity [Repealed].
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Subchapter DD. Burnet County Criminal Magistrates

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 54.1502. Jurisdiction.
 54.1503. Powers and Duties.
 54.1504. Judicial Immunity.
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Subchapter FF. Criminal Law Magistrates in Nueces County [Repealed]

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 54.1702. Qualifications [Renumbered].
 54.1703. Compensation [Renumbered].
 54.1704. Judicial Immunity [Renumbered].
 54.1705. Jurisdiction; Responsibility; Powers [Renumbered].
 54.1706 to 54.1780. [Reserved].
 54.1781. Application [Repealed].
 54.1782. Appointment; Compensation [Repealed].
 54.1783. Eligibility for Appointment [Repealed].
 54.1784. Judicial Immunity [Repealed].
 54.1785. Staff for Magistrate [Repealed].
 54.1786. Proceedings That May Be Referred [Repealed].
 54.1787. Powers [Repealed].
 54.1788. Dismissal [Repealed].
 54.1789. Termination of Services [Repealed].

Section
 54.1790. Absence of Magistrate [Repealed].
 54.1791. Record of Proceedings [Repealed].
 54.1792. Papers Transmitted to Judge [Repealed].
 54.1793. Judicial Action [Repealed].
 54.1794. Pretrial Diversion [Repealed].
 54.1795 to 54.1800. [Reserved].

Subchapter GG. Magistrates for Drug Court Programs

54.1801. Definition.
 54.1802. Applicability of Subchapter.
 54.1803. Appointment.
 54.1804. Qualifications.
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 54.1809. Powers.
 54.1810 to 54.1850. [Reserved].

Subchapter HH. Brazoria County Criminal Magistrates

54.1851. Appointment.
 54.1852. Jurisdiction.
 54.1853. Powers and Duties.
 54.1854. Judicial Immunity.
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 54.1856 to 54.1900. [Reserved].

Subchapter II. Associate Judges in Brazoria County [Repealed]

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 54.1902. Appointment [Repealed].
 54.1903. Powers [Repealed].
 54.1904. Proceedings That May Be Referred [Repealed].
 54.1905. Judicial Immunity [Repealed].

Subchapter JJ. Magistrates in Certain Counties

54.1951. Application of Subchapter.
 54.1952. Appointment.
 54.1953. Qualifications.
 54.1954. Compensation.
 54.1955. Powers.
 54.1956. Not Guilty Plea Entered or Denial of Alleged Conduct.
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Subchapter KK. Magistrates in Guadalupe County

54.2001. Authorization; Appointment; Elimination.
 54.2002. Qualifications; Oath of Office.
 54.2003. Compensation.
 54.2004. Judicial Immunity.
 54.2005. Termination of Employment.
 54.2006. Jurisdiction; Responsibility; Powers.
 54.2007. Personnel, Equipment, and Office Space.

Subchapter MM. Magistrates in Collin County

54.2201. Authorization; Appointment; Termination; Elimination.
 54.2202. Qualifications; Oath of Office.
 54.2203. Compensation.
 54.2204. Judicial Immunity.
 54.2205. Proceeding That May Be Referred.
 54.2206. Order of Referral.
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 54.2209. Costs.
 54.2210. Clerk.
 54.2211. Court Reporter.
 54.2212. Witness.
 54.2213. Papers Transmitted to Judge.
 54.2214. Costs of Magistrate.
 54.2215. Judicial Action.
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Section	
54.2301.	Authorization; Appointment; Elimination.
54.2302.	Qualifications; Oath of Office.
54.2303.	Compensation.
54.2304.	Judicial Immunity.
54.2305.	Termination of Employment.
54.2306.	Jurisdiction; Responsibility; Powers.
54.2307.	Personnel, Equipment, and Office Space.

Subchapter OO. Magistrates in Fort Bend County

54.2401.	Authorization; Appointment; Elimination.
54.2402.	Qualifications; Oath of Office.
54.2403.	Compensation.
54.2404.	Judicial Immunity.
54.2405.	Proceeding That May Be Referred.
54.2406.	Order of Referral.
54.2407.	Powers.
54.2408.	Forfeitures.
54.2409.	Costs.
54.2410.	Clerk.
54.2411.	Court Reporter.
54.2412.	Witness.
54.2413.	Papers Transmitted to Judge.
54.2414.	Costs of Magistrate.
54.2415.	Judicial Action.
54.2416.	Magistrate As Associate Judge.

*Subchapter A**Magistrates in Montgomery County
[Repealed]***Sec. 54.001. Appointment [Repealed].**

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(1), effective January 1, 2012.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 663 (H.B. 3481), § 1, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(24), effective September 1, 2007 (re-numbered from Sec. 54.1351).

Sec. 54.002. Qualifications; Oath of Office [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(1), effective January 1, 2012.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 663 (H.B. 3481), § 1, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(24), effective September 1, 2007 (re-numbered from Sec. 54.1352).

Sec. 54.003. Compensation [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(1), effective January 1, 2012.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 663 (H.B. 3481), § 1, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(24), effective September 1, 2007 (re-numbered from Sec. 54.1353).

Sec. 54.004. Judicial Immunity [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(1), effective January 1, 2012.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 663 (H.B. 3481), § 1, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(24), effective September 1, 2007 (re-numbered from Sec. 54.1354).

Sec. 54.005. Jurisdiction; Responsibility [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(1), effective January 1, 2012.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 663 (H.B. 3481), § 1, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(24), effective September 1, 2007 (re-numbered from Sec. 54.1355).

Sec. 54.006. Powers [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(1), effective January 1, 2012.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 663 (H.B. 3481), § 1, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(24), effective September 1, 2007 (re-numbered from Sec. 54.1356).

Sec. 54.007. Powers and Duties [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 2(3), effective April 20, 1995.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.02, effective August 31, 1987.

Sec. 54.008. Attendance of Bailiff [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 2(3), effective April 20, 1995.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.02, effective August 31, 1987.

Sec. 54.009. Witness [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 2(3), effective April 20, 1995.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.02, effective August 31, 1987.

Sec. 54.010. Report Transmitted to Court; Notice [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 2(3), effective April 20, 1995.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.02, effective August 31, 1987.

Sec. 54.011. Judicial Action on Master's Report [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 2(3), effective April 20, 1995.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.02, effective August 31, 1987.

Sec. 54.012. Appeal to Referring Court [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 2(3), effective April 20, 1995.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.02, effective August 31, 1987.

Sec. 54.013. Decree or Order of Court [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 2(3), effective April 20, 1995.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.02, effective August 31, 1987.

Sec. 54.014. Jury Trial Demanded [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 2(3), effective April 20, 1995.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.02, effective August 31, 1987.

Sec. 54.015. Effect of Master's Report Pending Appeal [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 2(3), effective April 20, 1995.

HISTORY: Am. Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.02, effective August 31, 1987.

Sec. 54.016. Inapplicability of This Subchapter to Masters Appointed Pursuant to Rule 171, Texas Rules of Civil Procedure [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 2(3), effective April 20, 1995.

HISTORY: Am. Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.02, effective August 31, 1987.

Sec. 54.017. Immunity [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 2(3), effective April 20, 1995.

HISTORY: Am. Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.02, effective August 31, 1987.

Sec. 54.018. Court Reporter [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 2(3), effective April 20, 1995.

HISTORY: Am. Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.02, effective August 31, 1987.

Sec. 54.019. Designation [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 2(3), effective April 20, 1995.

Secs. 54.020 to 54.100. [Reserved for expansion].*Subchapter B**Bell County Truancy Masters***Sec. 54.101. Appointment.**

(a) The Commissioners Court of Bell County may select masters to serve the justice courts of Bell County having jurisdiction in truancy matters.

(b) The commissioners court shall establish the minimum qualifications, salary, benefits, and other compensation of each master position and shall determine whether the position is full-time or part-time.

(c) A master appointed under this section serves at the pleasure of the commissioners court.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.03, effective September 1, 2019.

Sec. 54.102. Jurisdiction.

A master appointed under this subchapter has concurrent jurisdiction with the judges of the justice of the peace courts of Bell County over cases involving truant conduct in accordance with Section 65.004, Family Code.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.03, effective September 1, 2019.

Sec. 54.103. Powers and Duties.

(a) The Commissioners Court of Bell County shall establish the powers and duties of a master appointed under this subchapter.

(b) An order of referral may limit the use or power of a master.

(c) Unless limited by published local rule, by written order, or by an order of referral, a master may perform all acts and take all measures necessary and proper to perform the tasks assigned in a referral.

(d) A master may administer oaths.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.03, effective September 1, 2019.

Sec. 54.104. Judicial Immunity.

A master has the same judicial immunity as a district judge.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.03, effective September 1, 2019.

Sec. 54.105. Training.

A master appointed under this subchapter must successfully complete all training a justice of the peace is required to complete under state law.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.03, effective September 1, 2019.

Sec. 54.106. Failure to Comply with Summons or Order.

If an attorney, party, witness, or any other person fails to comply with a summons or order, the master may certify that failure in writing to the referring court for appropriate action.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.03, effective September 1, 2019.

Sec. 54.107. Witnesses.

(a) A witness appearing before a master is subject to the penalties of perjury as provided by Chapter 37, Penal Code.

(b) A witness referred to the court under Section 54.106 is subject to the same penalties and orders that may be imposed on a witness appearing in a hearing before the court.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.03, effective September 1, 2019.

*Subchapter B**Bell County Truancy Masters***Sec. 54.101. Appointment.**

(a) The Commissioners Court of Bell County may select masters to serve the justice courts of Bell County having jurisdiction in truancy matters.

(b) The commissioners court shall establish the salary, benefits, and other compensation of each master position and shall determine whether the position is full-time or part-time.

(c) A master appointed under this section serves at the pleasure of the commissioners court.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 355 (H.B. 452), § 1, effective September 1, 2019.

Sec. 54.102. Jurisdiction.

A master appointed under this subchapter has concurrent jurisdiction with the judges of the justice of the peace courts of Bell County over cases involving truant conduct in accordance with Section 65.004, Family Code.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 355 (H.B. 452), § 1, effective September 1, 2019.

Sec. 54.103. Powers and Duties.

(a) The Commissioners Court of Bell County shall establish the powers and duties of a master appointed under this subchapter.

(b) An order of referral may limit the use or power of a master.

(c) Unless limited by published local rule, by written order, or by an order of referral, a master may perform all acts and take all measures necessary and proper to perform the tasks assigned in a referral.

(d) A master may administer oaths.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 355 (H.B. 452), § 1, effective September 1, 2019.

Sec. 54.104. Judicial Immunity.

A master has the same judicial immunity as a district judge.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 355 (H.B. 452), § 1, effective September 1, 2019.

Sec. 54.105. Training.

A master appointed under this subchapter must successfully complete all training a justice of the peace is required to complete under state law.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 355 (H.B. 452), § 1, effective September 1, 2019.

Sec. 54.106. Failure to Comply with Summons or Order.

If an attorney, party, witness, or any other person fails to comply with a summons or order, the master may certify that failure in writing to the referring court for appropriate action.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 355 (H.B. 452), § 1, effective September 1, 2019.

Sec. 54.107. Witnesses.

(a) A witness appearing before a master is subject to the penalties of perjury as provided by Chapter 37, Penal Code.

(b) A witness referred to the court under Section 54.106 is subject to the same penalties and orders that may be imposed on a witness appearing in a hearing before the court.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 355 (H.B. 452), § 1, effective September 1, 2019.

*Subchapter B**Magistrates in Nolan County**[Repealed]***Sec. 54.101. Authorization; Appointment; Elimination [Repealed].**

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(2), effective January 1, 2012.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 109 (S.B. 552), § 1, effective May 20, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(25), effective September 1, 2007 (renumbered from Sec. 54.1701).

Sec. 54.102. Qualifications [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(2), effective January 1, 2012.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 109 (S.B. 552), § 1, effective May 20, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(25), effective September 1, 2007 (renumbered from Sec. 54.1702).

Sec. 54.103. Compensation [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(2), effective January 1, 2012.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 109 (S.B. 552), § 1, effective May 20, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(25), effective September 1, 2007 (renumbered from Sec. 54.1703).

Sec. 54.104. Judicial Immunity [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(2), effective January 1, 2012.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 109 (S.B. 552), § 1, effective May 20, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(25), effective September 1, 2007 (renumbered from Sec. 54.1704).

Sec. 54.105. Jurisdiction; Responsibility; Powers [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(2), effective January 1, 2012.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 109 (S.B. 552), § 1, effective May 20, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(25), effective September 1, 2007 (renumbered from Sec. 54.1705).

Sec. 54.106. Termination of Employment [Repealed].

Repealed by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.75, effective September 1, 1987 and by Acts 1987, 70th

Leg., ch. 674 (S.B. 687), § 3.08(1), effective August 31, 1987.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.107. Withdrawal of Appointment for a Particular Court [Repealed].

Repealed by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.75, effective September 1, 1987 and by Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.08(1), effective August 31, 1987.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.108. Cases That May Be Referred [Repealed].

Repealed by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.75, effective September 1, 1987 and by Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.08(1), effective August 31, 1987.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.109. Method of Referral [Repealed].

Repealed by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.75, effective September 1, 1987 and by Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.08(1), effective August 31, 1987.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.110. Powers [Repealed].

Repealed by Acts 1987, 80th Leg., ch. 148 (S.B. 895), § 2.75, effective September 1, 1987 and by Acts 1987, 80th Leg., ch. 674 (S.B. 687), § 3.08(1), effective August 31, 1987.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.111. Effect on Temporary Restraining Order [Repealed].

Repealed by Acts 1987, 80th Leg., ch. 148 (S.B. 895), § 2.75, effective September 1, 1987 and by Acts 1987, 80th Leg., ch. 674 (S.B. 687), § 3.08(1), effective August 31, 1987.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.112. Jury Demand [Repealed].

Repealed by Acts 1987, 80th Leg., ch. 148 (S.B. 895), § 2.75, effective September 1, 1987 and by Acts 1987, 80th Leg., ch. 674 (S.B. 687), § 3.08(1), effective August 31, 1987.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.113. Court Reporter [Repealed].

Repealed by Acts 1987, 80th Leg., ch. 148 (S.B. 895), § 2.75, effective September 1, 1987 and by Acts 1987, 80th

Leg., ch. 674 (S.B. 687), § 3.08(1), effective August 31, 1987.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.114. Failure to Comply with Summons or Order [Repealed].

Repealed by Acts 1987, 80th Leg., ch. 148 (S.B. 895), § 2.75, effective September 1, 1987 and by Acts 1987, 80th Leg., ch. 674 (S.B. 687), § 3.08(1), effective August 31, 1987.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.115. Findings and Recommendations [Repealed].

Repealed by Acts 1987, 80th Leg., ch. 148 (S.B. 895), § 2.75, effective September 1, 1987 and by Acts 1987, 80th Leg., ch. 674 (S.B. 687), § 3.08(1), effective August 31, 1987.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.116. Notice of Right to Hearing De Novo [Repealed].

Repealed by Acts 1987, 80th Leg., ch. 148 (S.B. 895), § 2.75, effective September 1, 1987 and by Acts 1987, 80th Leg., ch. 674 (S.B. 687), § 3.08(1), effective August 31, 1987.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.117. Master's Report [Repealed].

Repealed by Acts 1987, 80th Leg., ch. 148 (S.B. 895), § 2.75, effective September 1, 1987 and by Acts 1987, 80th Leg., ch. 674 (S.B. 687), § 3.08(1), effective August 31, 1987.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.118. Court Action on Report [Repealed].

Repealed by Acts 1987, 80th Leg., ch. 148 (S.B. 895), § 2.75, effective September 1, 1987 and by Acts 1987, 80th Leg., ch. 674 (S.B. 687), § 3.08(1), effective August 31, 1987.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.119. Request for Hearing De Novo [Repealed].

Repealed by Acts 1987, 80th Leg., ch. 148 (S.B. 895), § 2.75, effective September 1, 1987 and by Acts 1987, 80th Leg., ch. 674 (S.B. 687), § 3.08(1), effective August 31, 1987.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.120. Effect of Request for Hearing De Novo [Repealed].

Repealed by Acts 1987, 80th Leg., ch. 148 (S.B. 895), § 2.75, effective September 1, 1987 and by Acts 1987, 80th

Leg., ch. 674 (S.B. 687), § 3.08(1), effective August 31, 1987.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.121. Masters in Chancery [Repealed].

Repealed by Acts 1987, 80th Leg., ch. 148 (S.B. 895), § 2.75, effective September 1, 1987 and by Acts 1987, 80th Leg., ch. 674 (S.B. 687), § 3.08(1), effective August 31, 1987.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.122. Referees [Repealed].

Repealed by Acts 1987, 80th Leg., ch. 148 (S.B. 895), § 2.75, effective September 1, 1987 and by Acts 1987, 80th Leg., ch. 674 (S.B. 687), § 3.08(1), effective August 31, 1987.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Secs. 54.123 to 54.200. [Reserved for expansion].

Subchapter C

*Criminal Law Masters in Jefferson County
[Repealed]*

Sec. 54.201. Application [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(3), effective January 1, 2012.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.202. Appointment and Compensation [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(3), effective January 1, 2012.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985; am. Acts 1993, 73rd Leg., ch. 468 (H.B. 567), § 2, effective June 9, 1993.

Sec. 54.203. Referral of Case [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(3), effective January 1, 2012.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.204. Powers [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(3), effective January 1, 2012.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.205. Papers Transmitted to Judge [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(3), effective January 1, 2012.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.206. Judicial Action [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(3), effective January 1, 2012.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.207. Restriction on Practice of Law [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(3), effective January 1, 2012.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 468 (H.B. 567), § 3, effective June 9, 1993.

Secs. 54.208 to 54.300. [Reserved for expansion].

Subchapter D

Criminal Law Magistrates In Dallas County

Sec. 54.301. Appointment.

(a) Each judge of a district court of Dallas County that gives preference to criminal cases, each judge of a criminal district court of Dallas County, and each judge of a county criminal court of Dallas County, with the consent and approval of the Commissioners Court of Dallas County, may appoint a magistrate to perform the duties authorized by this subchapter.

(b) Judges may authorize one or more magistrates to share service with more than one court.

(c) If a magistrate serves more than one court, the magistrate's appointment must be made with the unanimous approval of all the judges under whom the magistrate serves.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985; am. Acts 1997, 75th Leg., ch. 215 (S.B. 611), § 1, effective May 23, 1997.

Sec. 54.302. Qualifications.

To be eligible for appointment as a magistrate, a person must:

- (1) be a resident of this state; and
- (2) have been licensed to practice law in this state for at least four years.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.303. Compensation.

(a) A magistrate is entitled to the salary determined by the Commissioners Court of Dallas County.

(b) The salary may not be less than the salary authorized to be paid to a master for family law cases appointed under Subchapter A.

(c) The magistrate's salary is paid from the county fund available for payment of officers' salaries.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.304. Judicial Immunity.

A magistrate has the same judicial immunity as a district judge.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.305. Termination of Services.

(a) A magistrate who serves a single court serves at the will of the judge.

(b) The services of a magistrate who serves more than one court may be terminated by a majority vote of all the judges whom the magistrate serves.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.306. Proceeding That May Be Referred.

(a) A judge may refer to a magistrate any matter arising out of a criminal case involving:

- (1) a negotiated plea of guilty or nolo contendere before the court;
- (2) a bond forfeiture;
- (3) a pretrial motion;
- (4) a postconviction writ of habeas corpus;
- (5) an examining trial;
- (6) an occupational driver's license;
- (7) an appeal of an administrative driver's license revocation hearing; and
- (8) any other matter the judge considers necessary and proper.

(b) The magistrate may not preside over a trial on the merits, whether or not the trial is before a jury.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985; am. Acts 1997, 75th Leg., ch. 215 (S.B. 611), § 2, effective May 23, 1997; am. Acts 1999, 76th Leg., ch. 811 (H.B. 1562), § 1, effective September 1, 1999.

Sec. 54.307. Order of Referral.

(a) To refer one or more cases to a magistrate, a judge must issue an order of referral specifying the magistrate's duties.

(b) An order of referral may:

- (1) limit the powers of the magistrate and direct the magistrate to report only on specific issues, do particular acts, or receive and report on evidence only;
- (2) set the time and place for the hearing;
- (3) prescribe a closing date for the hearing;
- (4) provide a date for filing the magistrate's findings;
- (5) designate proceedings for more than one case over which the magistrate shall preside;
- (6) direct the magistrate to call the court's docket; and
- (7) set forth general powers and limitations of authority of the magistrate applicable to any case referred.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.308. Powers.

(a) Except as limited by an order of referral, a magistrate to whom a case is referred may:

- (1) conduct hearings;
- (2) hear evidence;
- (3) compel production of relevant evidence;
- (4) rule on admissibility of evidence;
- (5) issue summons for the appearance of witnesses;
- (6) examine witnesses;

- (7) swear witnesses for hearings;
- (8) make findings of fact on evidence;
- (9) formulate conclusions of law;
- (10) rule on a pretrial motion;
- (11) recommend the rulings, orders, or judgment to be made in a case;
- (12) regulate proceedings in a hearing; and
- (13) do any act and take any measure necessary and proper for the efficient performance of the duties required by the order of referral.

(b) A magistrate may not enter a ruling on any issue of law or fact if that ruling could result in dismissal or require dismissal of a pending criminal prosecution, but the magistrate may make findings, conclusions, and recommendations on those issues.

(c) Except as limited by an order of referral, a magistrate who is appointed by a district court judge and to whom a case is referred may accept a plea of guilty or nolo contendere in a misdemeanor case for a county criminal court. The magistrate shall forward any fee or fine collected for the misdemeanor offense to the county clerk.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 522 (H.B. 771), § 1, effective June 17, 1987; am. Acts 1997, 75th Leg., ch. 215 (S.B. 611), § 3, effective May 23, 1997.

Sec. 54.309. Court Reporter.

At the request of a party in a felony case, the court shall provide a court reporter to record the proceedings before the magistrate.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985; am. Acts 1997, 75th Leg., ch. 215 (S.B. 611), § 4, effective May 23, 1997.

Sec. 54.310. Witness.

(a) A witness who appears before a magistrate and is sworn is subject to the penalties for perjury provided by law.

(b) A referring court may issue attachment against and may fine or imprison a witness whose failure to appear after being summoned or whose refusal to answer questions has been certified to the court.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.311. Papers Transmitted to Judge.

At the conclusion of the proceedings, a magistrate shall transmit to the referring court any papers relating to the case, including the magistrate's findings, conclusions, orders, recommendations, or other action taken.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.312. Judicial Action.

(a) A referring court may modify, correct, reject, reverse, or recommit for further information any action taken by the magistrate.

(b) If the court does not modify, correct, reject, reverse, or recommit an action of the magistrate, the action becomes the decree of the court.

(c) At the conclusion of each term during which the services of a magistrate are used, the referring court shall

enter a decree on the minutes adopting the actions of the magistrate of which the court approves.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.313. Costs of Magistrate. [Repealed effective January 1, 2020]

The court shall determine if the nonprevailing party is able to defray the costs of the magistrate. If the court determines that the nonprevailing party is able to pay those costs, the court shall tax the magistrate's fees as costs against the nonprevailing party.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985; Repealed by Acts 2019, 86th Leg., ch. 1352 (S.B. 346), § 4.40(7), effective January 1, 2020.

Secs. 54.314 to 54.400. [Reserved for expansion].

Subchapter E

*Juvenile Court Referees In Wichita County
[Repealed]*

Sec. 54.401. Appointment [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(4), effective January 1, 2012.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.402. Qualifications [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(4), effective January 1, 2012.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.403. Compensation [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(4), effective January 1, 2012.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.404. Cases That May Be Referred by District Court [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(4), effective January 1, 2012.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.405. Cases That May Be Referred by Juvenile Court [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(4), effective January 1, 2012.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.406. Order of Referral [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(4), effective January 1, 2012.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.407. Powers [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(4), effective January 1, 2012.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.408. Notice of Hearing [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(4), effective January 1, 2012.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.409. Witness [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(4), effective January 1, 2012.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.410. Papers Transmitted to Judge [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(4), effective January 1, 2012.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.411. Judicial Action on Referee's Report [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(4), effective January 1, 2012.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.412. Hearing Before Judge [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(4), effective January 1, 2012.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.413. Decree of Court [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(4), effective January 1, 2012.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Sec. 54.414. Jury Trial Demanded [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(4), effective January 1, 2012.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985.

Secs. 54.415 to 54.500. [Reserved for expansion].

Subchapter F

*Associate Judges in Dallas County
[Repealed]*

Sec. 54.501. Application of Subchapter [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(5), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.76(a), effective September 1, 1987.

Sec. 54.502. Appointment of Associate Judges [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(5), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.76(a), effective September 1, 1987; am. Acts 2003, 78th Leg., ch. 318 (H.B. 3384), § 2, effective September 1, 2003.

Sec. 54.503. Qualifications [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(5), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.76(a), effective September 1, 1987; am. Acts 2003, 78th Leg., ch. 318 (H.B. 3384), § 3, effective September 1, 2003.

Sec. 54.504. Compensation [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(5), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.76(a), effective September 1, 1987; am. Acts 2003, 78th Leg., ch. 318 (H.B. 3384), § 4, effective September 1, 2003.

Sec. 54.505. Judicial Immunity [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(5), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.76(a), effective September 1, 1987; am. Acts 2003, 78th Leg., ch. 318 (H.B. 3384), § 5, effective September 1, 2003.

Sec. 54.506. Matters That May Be Referred [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(5), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.76(a), effective September 1, 1987; am. Acts 2003, 78th Leg., ch. 318 (H.B. 3384), § 6, effective September 1, 2003.

Sec. 54.5061. Trial on the Merits [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(5), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 318 (H.B. 3384), § 7, effective September 1, 2003.

Sec. 54.507. Methods of Referral [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(5), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.76(a), effective September 1, 1987; am. Acts 2003, 78th Leg., ch. 318 (H.B. 3384), § 8, effective September 1, 2003.

Sec. 54.508. Powers [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(5), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.76(a), effective September 1, 1987; am. Acts 2003, 78th Leg., ch. 318 (H.B. 3384), § 9, effective September 1, 2003.

Sec. 54.509. Record of Evidence [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(5), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.76(a), effective September 1, 1987; am. Acts 2003, 78th Leg., ch. 318 (H.B. 3384), § 10, effective September 1, 2003.

Sec. 54.510. Notice of Decision; Appeal [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(5), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.76(a), effective September 1, 1987; am. Acts 2003, 78th Leg., ch. 318 (H.B. 3384), § 11, effective September 1, 2003.

Sec. 54.511. Witness [Repealed].

Repealed by Acts 2003, 78th Leg., ch. 318 (H.B. 3384), § 12, effective September 1, 2003.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.76(a), effective September 1, 1987.

Sec. 54.512. Papers Transmitted to Judges [Repealed].

Repealed by Acts 2003, 78th Leg., ch. 318 (H.B. 3384), § 12, effective September 1, 2003.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.76(a), effective September 1, 1987.

Sec. 54.513. Judicial Action on Master's Report [Repealed].

Repealed by Acts 2003, 78th Leg., ch. 318 (H.B. 3384), § 12, effective September 1, 2003.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.76(a), effective September 1, 1987.

Sec. 54.514. Hearing Before Judge [Repealed].

Repealed by Acts 2003, 78th Leg., ch. 318 (H.B. 3384), § 12, effective September 1, 2003.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.76(a), effective September 1, 1987.

Sec. 54.515. Decree of Court [Repealed].

Repealed by Acts 2003, 78th Leg., ch. 318 (H.B. 3384), § 12, effective September 1, 2003.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.76(a), effective September 1, 1987.

Sec. 54.516. Jury Trial Demanded [Repealed].

Repealed by Acts 2003, 78th Leg., ch. 318 (H.B. 3384), § 12, effective September 1, 2003.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.76(a), effective September 1, 1987.

Sec. 54.517. Court Action on Report [Renumbered].

Renumbered to Tex. Gov't Code § 54.697 by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(24), effective August 28, 1989.

Sec. 54.518. Decree or Judgment [Renumbered].

Renumbered to Tex. Gov't Code § 54.698 by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(24), effective August 28, 1989.

Sec. 54.519. Masters in Chancery [Renumbered].

Renumbered to Tex. Gov't Code § 54.699 by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(24), effective August 28, 1989.

Sec. 54.520. Referees [Renumbered].

Renumbered to Tex. Gov't Code § 54.700 by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(24), effective August 28, 1989.

Secs. 54.521 to 54.600. [Reserved for expansion].*Subchapter G**Statutory Probate Court Associate Judges
[Renumbered]***Sec. 54.601. Definition [Renumbered].**

Renumbered to Tex. Gov't Code § 54A.201 by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012.

Sec. 54.602. Application [Repealed].

Repealed by Acts 2007, 80th Leg., ch. 1342 (S.B. 1951), § 24, effective September 1, 2007.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1503 (S.B. 294), § 1, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 1066 (H.B. 1539), § 3, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 1176 (H.B. 3557), § 1, effective September 1, 2005.

Sec. 54.603. Appointment [Renumbered].

Renumbered to Tex. Gov't Code § 54A.203 by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012.

Sec. 54.604. Termination of Associate Judge [Renumbered].

Renumbered to Tex. Gov't Code § 54A.206 by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012.

Sec. 54.605. Compensation [Renumbered].

Renumbered to Tex. Gov't Code § 54A.205 by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012.

Sec. 54.606. Oath [Renumbered].

Renumbered to Tex. Gov't Code § 54A.2071 by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012.

Sec. 54.607. Magistrate [Deleted].

Deleted by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1503 (S.B. 294), § 1, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 1066 (H.B. 1539), § 3, effective September 1, 2003.

Sec. 54.608. Cases That May Be Referred [Renumbered].

Renumbered to Tex. Gov't Code § 54A.207 by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012.

Sec. 54.609. Order of Referral [Renumbered].

Renumbered to Tex. Gov't Code § 54A.208 by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012.

Sec. 54.610. Powers of Associate Judge [Renumbered].

Renumbered to Tex. Gov't Code § 54A.209 by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012.

Sec. 54.611. Attendance of Bailiff [Renumbered].

Renumbered to Tex. Gov't Code § 54A.2091 by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012.

Sec. 54.612. Court Reporter [Deleted].

Deleted by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1503 (S.B. 294), § 1, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 1066 (H.B. 1539), § 3, effective September 1, 2003; am. Acts 2009, 81st Leg., ch. 1206 (S.B. 683), § 6, effective September 1, 2009.

Sec. 54.613. Witness [Renumbered].

Renumbered to Tex. Gov't Code § 54A.210 by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012.

Sec. 54.614. Report [Renumbered].

Renumbered to Tex. Gov't Code § 54A.212 by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012.

Sec. 54.615. Notice of Right to De Novo Hearing Before Referring Court [Renumbered].

Renumbered to Tex. Gov't Code § 54A.213 by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012.

Sec. 54.616. Order of Court [Renumbered].

Renumbered to Tex. Gov't Code § 54A.214 by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012.

Sec. 54.617. Judicial Action on Associate Judge's Proposed Order or Judgment [Renumbered].

Renumbered to Tex. Gov't Code § 54A.215 by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012.

Sec. 54.618. De Novo Hearing Before Referring Court [Renumbered].

Renumbered to Tex. Gov't Code § 54A.216 by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012.

Sec. 54.619. Appellate Review [Renumbered].

Renumbered to Tex. Gov't Code § 54A.217 by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012.

Sec. 54.620. Immunity [Renumbered].

Renumbered to Tex. Gov't Code § 54A.218 by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012.

Secs. 54.621 to 54.650. [Reserved for expansion].*Subchapter H**Criminal Law Magistrates In Tarrant County***Sec. 54.651. Appointment.**

(a) The judges of the district courts of Tarrant County that give preference to criminal cases, the judges of the criminal district courts of Tarrant County, and the judges of the county criminal courts of Tarrant County, with the consent and approval of the Commissioners Court of Tarrant County, shall jointly appoint the number of magistrates set by the commissioners court to perform the duties authorized by this subchapter.

(b) Each magistrate's appointment must be made with the approval of at least two-thirds of all the judges described in Subsection (a).

(c) If the number of magistrates is less than the number of judges described in Subsection (a), each magistrate shall serve equally in the courts of those judges.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 81 (H.B. 442), § 1, effective August 31, 1987; am. Acts 1997, 75th Leg., ch. 1147 (H.B. 3588), § 1, effective September 1, 1997; am. Acts 2003, 78th Leg., ch. 910 (S.B. 922), § 1, effective September 1, 2003.

Sec. 54.652. Qualifications.

To be eligible for appointment as a magistrate, a person must:

- (1) be a resident of this state; and
- (2) have been licensed to practice law in this state for at least four years.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 81 (H.B. 442), § 1, effective August 31, 1987.

Sec. 54.653. Compensation.

(a) A full-time magistrate is entitled to the salary determined by the Commissioners Court of Tarrant County.

(b) The salary of a full-time magistrate may not exceed an amount equal to 90 percent of the sum of:

- (1) the state base salary paid to a district judge as set by the General Appropriations Act in accordance with Section 659.012(a); and
- (2) the maximum amount of county contributions and supplements allowed by law to be paid to a district judge under Section 659.012.

(c) The salary of a part-time magistrate is equal to the per-hour salary of a full-time magistrate. The per-hour salary is determined by dividing the annual salary by a 2,080 work-hour year. The judges of the courts trying criminal cases in Tarrant County shall approve the number of hours for which a part-time magistrate is to be paid.

(d) A magistrate's salary is paid from the county fund available for payment of officers' salaries.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 81 (H.B. 442), § 1, effective August 31, 1987; am. Acts 2017, 85th Leg., ch. 1045

(H.B. 1904), § 1, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 1121 (H.B. 2384), § 12, effective September 1, 2019.

Sec. 54.654. Judicial Immunity.

A magistrate has the same judicial immunity as a district judge.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 81 (H.B. 442), § 1, effective August 31, 1987.

Sec. 54.655. Termination of Services.

(a) A magistrate who serves a single court serves at the will of the judge.

(b) The services of a magistrate who serves more than one court may be terminated by a majority vote of all the judges whom the magistrate serves.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 81 (H.B. 442), § 1, effective August 31, 1987.

Sec. 54.656. Proceeding That May Be Referred.

(a) A judge may refer to a magistrate any criminal case or matter relating to a criminal case for proceedings involving:

- (1) a negotiated plea of guilty or no contest and sentencing before the court;
- (2) a bond forfeiture, remittitur, and related proceedings;
- (3) a pretrial motion;
- (4) a writ of habeas corpus;
- (5) an examining trial;
- (6) an occupational driver's license;
- (7) a petition for an order of expunction under Chapter 55, Code of Criminal Procedure;
- (8) an asset forfeiture hearing as provided by Chapter 59, Code of Criminal Procedure;
- (9) a petition for an order of nondisclosure of criminal history record information or an order of nondisclosure of criminal history record information that does not require a petition provided by Subchapter E-1, Chapter 411;
- (10) a motion to modify or revoke community supervision or to proceed with an adjudication of guilt;
- (11) setting conditions, modifying, revoking, and surrendering of bonds, including surety bonds;
- (12) specialty court proceedings;
- (13) a waiver of extradition; and
- (14) any other matter the judge considers necessary and proper.

(b) A judge may refer to a magistrate a civil case arising out of Chapter 59, Code of Criminal Procedure, for any purpose authorized by that chapter, including issuing orders, accepting agreed judgments, enforcing judgments, and presiding over a case on the merits if a party has not requested a jury trial.

(c) A magistrate may accept a plea of guilty from a defendant charged with misdemeanor, felony, or both misdemeanor and felony offenses.

(d) A magistrate may select a jury. A magistrate may not preside over a criminal trial on the merits, whether or not the trial is before a jury.

(e) A magistrate may not hear a jury trial on the merits of a bond forfeiture.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 81 (H.B. 442), § 1, effective August 31, 1987; am. Acts 1997, 75th Leg., ch. 1147 (H.B. 3588), § 2, effective September 1, 1997; am. Acts 2003, 78th Leg., ch. 910 (S.B. 922), § 2, effective September 1, 2003; am. Acts 2011, 82nd Leg., ch. 66 (S.B. 483), § 1, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 1279 (S.B. 1902), § 17, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 1045 (H.B. 1904), § 2, effective September 1, 2017.

Sec. 54.657. Order of Referral.

(a) To refer one or more cases to a magistrate, a judge must issue an order of referral specifying the magistrate's duties.

(b) An order of referral may:

- (1) limit the powers of the magistrate and direct the magistrate to report only on specific issues, do particular acts, or receive and report on evidence only;
- (2) set the time and place for the hearing;
- (3) prescribe a closing date for the hearing;
- (4) provide a date for filing the magistrate's findings;
- (5) designate proceedings for more than one case over which the magistrate shall preside;
- (6) direct the magistrate to call the court's docket; and
- (7) set forth general powers and limitations of authority of the magistrate applicable to any case referred.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 81 (H.B. 442), § 1, effective August 31, 1987.

Sec. 54.658. Powers.

(a) Except as limited by an order of referral, a magistrate to whom a case is referred may:

- (1) conduct hearings;
- (2) hear evidence;
- (3) compel production of relevant evidence;
- (4) rule on admissibility of evidence;
- (5) issue summons for the appearance of witnesses;
- (6) examine witnesses;
- (7) swear witnesses for hearings;
- (8) make findings of fact on evidence;
- (9) formulate conclusions of law;
- (10) rule on a pretrial motion;
- (11) recommend the rulings, orders, or judgment to be made in a case;
- (12) regulate proceedings in a hearing;
- (13) accept a plea of guilty from a defendant charged with misdemeanor, felony, or both misdemeanor and felony offenses;
- (14) select a jury;
- (15) accept a negotiated plea on a probation revocation;
- (16) conduct a contested probation revocation hearing;
- (17) sign a dismissal in a misdemeanor case;
- (18) in any case referred under Section 54.656(a)(1), accept a negotiated plea of guilty or no contest and:
 - (A) enter a finding of guilt and impose or suspend the sentence; or
 - (B) defer adjudication of guilt; and
- (19) do any act and take any measure necessary and proper for the efficient performance of the duties required by the order of referral.

(b) A magistrate may sign a motion to dismiss submitted by an attorney representing the state on cases referred to the magistrate, or on dockets called by the magistrate, and may consider unadjudicated cases at sentencing under Section 12.45, Penal Code.

(c) A magistrate has all of the powers of a magistrate under the laws of this state and may administer an oath for any purpose.

(d) A magistrate does not have authority under Article 18.01(c), Code of Criminal Procedure, to issue a subsequent search warrant under Article 18.02(a)(10), Code of Criminal Procedure.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 81 (H.B. 442), § 1, effective August 31, 1987; am. Acts 2003, 78th Leg., ch. 910 (S.B. 922), § 3, effective September 1, 2003; am. Acts 2011, 82nd Leg., ch. 66 (S.B. 483), § 2, effective September 1, 2011; am. Acts 2017, 85th Leg., ch. 1045 (H.B. 1904), § 3, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 8.001, effective September 1, 2019.

Sec. 54.659. Court Reporter.

At the request of a party in a felony case, the court shall provide a court reporter to record the proceedings before the magistrate.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 81 (H.B. 442), § 1, effective August 31, 1987; am. Acts 1997, 75th Leg., ch. 1147 (H.B. 3588), § 3, effective September 1, 1997.

Sec. 54.660. Witness.

(a) A witness who appears before a magistrate and is sworn is subject to the penalties for perjury provided by law.

(b) A referring court may issue attachment against and may fine or imprison a witness whose failure to appear after being summoned or whose refusal to answer questions has been certified to the court.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 81 (H.B. 442), § 1, effective August 31, 1987.

Sec. 54.661. Papers Transmitted to Judge.

At the conclusion of the proceedings, a magistrate shall transmit to the referring court any papers relating to the case, including the magistrate's findings, conclusions, orders, recommendations, or other action taken.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 81 (H.B. 442), § 1, effective August 31, 1987.

Sec. 54.662. Judicial Action.

(a) A referring court may modify, correct, reject, reverse, or recommit for further information any action taken by the magistrate.

(b) If the court does not modify, correct, reject, reverse, or recommit an action of the magistrate, the action becomes the decree of the court.

(c) At the conclusion of each term during which the services of a magistrate are used, the referring court shall enter a decree on the minutes adopting the actions of the magistrate of which the court approves.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 81 (H.B. 442), § 1, effective August 31, 1987.

Sec. 54.663. Costs of Magistrate. [Repealed effective January 1, 2020]

The court shall determine if the nonprevailing party is able to defray the costs of the magistrate. If the court determines that the nonprevailing party is able to pay those costs, the court shall tax the magistrate's fees as costs against the nonprevailing party.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 81 (H.B. 442), § 1, effective August 31, 1987; Repealed by Acts 2019, 86th Leg., ch. 1352 (S.B. 346), § 4.40(8), effective January 1, 2020.

Secs. 54.664 to 54.680. [Reserved for expansion].*Subchapter I**Juvenile Law Masters in Harris County
[Repealed]***Sec. 54.681. Appointment [Repealed].**

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(6), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.03, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(24), effective August 28, 1989 (renumbered from Sec. 54.501).

Sec. 54.682. Qualifications [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(6), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.03, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(24), effective August 28, 1989 (renumbered from Sec. 54.502).

Sec. 54.683. Order of Appointment [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(6), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.03, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(24), effective August 28, 1989 (renumbered from Sec. 54.503).

Sec. 54.684. Compensation [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(6), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.03, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(24), effective August 28, 1989 (renumbered from Sec. 54.504).

Sec. 54.685. Judicial Immunity [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(6), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.03, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(24), effective August 28, 1989 (renumbered from Sec. 54.505).

Sec. 54.686. Termination of Employment [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(6), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.03, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(24), effective August 28, 1989 (renumbered from Sec. 54.506).

Sec. 54.687. Withdrawal of Appointment for a Particular Court [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(6), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.03, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(24), effective August 28, 1989 (renumbered from Sec. 54.507).

Sec. 54.688. Cases That May Be Referred [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(6), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.03, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(24), effective August 28, 1989 (renumbered from Sec. 54.508); am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 7.34, effective September 1, 1997.

Sec. 54.689. Method of Referral [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(6), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.03, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(24), effective August 28, 1989 (renumbered from Sec. 54.509).

Sec. 54.690. Powers [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(6), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.03, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(24), effective August 28, 1989 (renumbered from Sec. 54.510).

Sec. 54.691. Effect on Temporary Restraining Order [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(6), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.03, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(24), effective August 28, 1989 (renumbered from Sec. 54.511).

Sec. 54.692. Jury [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(6), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.03, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(24), effective August 28, 1989 (renumbered from Sec. 54.512).

Sec. 54.693. Court Reporter [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(6), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.03, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(24), effective August 28, 1989 (renumbered from Sec. 54.513).

Sec. 54.694. Failure to Comply with Summons or Order [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(6), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.03, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(24), effective August 28, 1989 (renumbered from Sec. 54.514).

Sec. 54.695. Witnesses [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(6), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.03, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(24), effective August 28, 1989 (renumbered from Sec. 54.515).

Sec. 54.696. Return to Referring Court; Findings [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(6), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.03, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(24), effective August 28, 1989 (renumbered from Sec. 54.516).

Sec. 54.697. Court Action on Report [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(6), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.03, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(24), effective August 28, 1989 (renumbered from Sec. 54.517).

Sec. 54.698. Decree or Judgment [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(6), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.03, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(24), effective August 28, 1989 (renumbered from Sec. 54.518).

Sec. 54.699. Masters in Chancery [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(6), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.03, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(24), effective August 28, 1989 (renumbered from Sec. 54.519).

Sec. 54.700. Referees [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(6), effective January 1, 2012.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 674 (S.B. 687), § 3.03, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(24), effective August 28, 1989 (renumbered from Sec. 54.520).

Secs. 54.701 to 54.730. [Reserved for expansion].*Subchapter J**El Paso Criminal Law Magistrate Court***Sec. 54.731. Short Title.**

This subchapter may be cited as the El Paso Criminal Law Magistrates Act.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989.

Sec. 54.732. Creation.

The El Paso Criminal Law Magistrate Court is a court having the jurisdiction provided by this subchapter over offenses allegedly committed in El Paso County.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989; am. Acts 2015, 84th Leg., ch. 1182 (S.B. 1139), § 6.01(a), effective September 1, 2015.

Sec. 54.733. Jurisdiction.

(a) Except as provided by Subsection (b), the criminal law magistrate court has the criminal jurisdiction provided by the constitution and laws of this state for county courts.

(b) The criminal law magistrate court does not have jurisdiction to:

(1) hear a trial of a misdemeanor offense, other than a Class C misdemeanor, on the merits if a jury trial is demanded; or

(2) hear a trial of a misdemeanor, other than a Class C misdemeanor, on the merits if a defendant pleads not guilty.

(c) The criminal law magistrate court has the jurisdiction provided by the constitution and laws of this state for magistrates. A judge of the criminal law magistrate court is a magistrate as that term is defined by Section 2.09, Code of Criminal Procedure.

(d) Except as provided by Subsection (e), the criminal law magistrate court has the criminal jurisdiction provided by the constitution and laws of the state for a district court.

(e) The criminal law magistrate court does not have jurisdiction to:

(1) hear a trial of a felony offense on the merits if a jury trial is demanded;

(2) hear a trial of a felony offense on the merits if a defendant pleads not guilty;

(3) sentence in a felony case unless the judge in whose court the case is pending assigned the case to the criminal law magistrate court for a guilty plea and sentence; or

(4) hear any part of a capital murder case after indictment.

(f) A criminal law magistrate court may not issue writs of habeas corpus in felony cases but may hear and grant relief on a writ of habeas corpus that is issued by a district court and that is assigned by the district court to the criminal law magistrate court.

(g) A felony or misdemeanor indictment may not be filed in or transferred to the criminal law magistrate court.

(h) A felony or misdemeanor information may not be filed in or transferred to the criminal law magistrate court.

(i) A judge of the criminal law magistrate court shall exercise jurisdiction granted by this subchapter over felony and misdemeanor indictments and informations only as judge presiding for the court in which the indictment or information is pending and under the limitations set out in the assignment order by the assigning court or as provided by local administrative rules.

(j) The criminal law magistrate court has concurrent criminal jurisdiction with the justice courts located in El Paso County.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989; am. Acts 2015, 84th Leg., ch. 1182 (S.B. 1139), § 6.01(b), effective September 1, 2015.

Sec. 54.734. Term of Court.

The criminal law magistrate court has two terms of court beginning on the first Mondays in January and July.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989.

Sec. 54.735. Powers and Duties.

(a) The criminal law magistrate court or a judge of the criminal law magistrate court may issue writs of injunction and all other writs necessary for the enforcement of the jurisdiction of the court and may issue misdemeanor writs of habeas corpus in cases in which the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and the judge may punish for contempt as provided by law for district courts. A judge of the criminal law magistrate court has all other powers, duties, immunities, and privileges provided by law for:

(1) justices of the peace when acting in a Class C misdemeanor case;

(2) county court judges when acting in a Class A or Class B misdemeanor case; and

(3) district court judges when acting in a felony case.

(b) A judge of the criminal law magistrate court may hold an indigency hearing and a *capias pro fine* hearing. When acting as the judge who issued the *capias pro fine*, a judge of the criminal law magistrate court may make all findings of fact and conclusions of law required of the judge who issued the *capias pro fine*. In conducting a hearing under this subsection, the judge of the criminal law magistrate court is empowered to make all findings of fact and conclusions of law and to issue all orders necessary to properly dispose of the *capias pro fine* or indigency hearing in accordance with the provisions of the Code of Criminal Procedure applicable to a misdemeanor or felony case of the same type and level.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989; am. Acts 2015, 84th Leg., ch. 1182 (S.B. 1139), § 6.01(c), effective September 1, 2015.

Sec. 54.736. Council of Judges.

(a) The El Paso Council of Judges is composed of the judges of the district courts of El Paso County and the judges of the county courts at law of El Paso County.

(b) The council of judges shall ensure that the criminal law magistrate court gives preference to magistrate duties, as those duties apply to the county jail inmate population first and then to newly detained individuals,

until the commissioners court provides funds for more than one judge to sit on the criminal law magistrate court.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989; am. Acts 2015, 84th Leg., ch. 1182 (S.B. 1139), § 6.01(d), effective September 1, 2015.

Sec. 54.737. Administrative Rules.

(a) The El Paso Council of Judges by majority vote shall include in the local rules of administration adopted as provided by Subchapter D, Chapter 74, rules for the administration of the criminal law magistrate court.

(b) The rules may provide for:

(1) assignment and hearing of all criminal cases subject to the jurisdictional limitations of the criminal law magistrate court;

(2) designation of a particular judge of the criminal law magistrate court to be responsible for certain matters;

(3) fair and equitable division of caseloads of criminal cases of the judges of the council of judges and the criminal law magistrate court;

(4) limitations on the assignment of cases to the criminal law magistrate court;

(5) limitations on the powers of a judge of the criminal law magistrate court in regard to the exercise of jurisdiction when presiding for an assigning court;

(6) setting hours, days, and places for holding court by a judge of the criminal law magistrate court; and

(7) any other matter necessary to carry out this subchapter or to improve the administration and management of the court system and its auxiliary services.

(c) The rules must provide that

a criminal law magistrate judge may only release a defendant under Article 17.031, Code of Criminal Procedure, under guidelines established by the council of judges.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989; am. Acts 2015, 84th Leg., ch. 1182 (S.B. 1139), § 6.01(e), effective September 1, 2015.

Sec. 54.738. Transfer and Assignment of Cases.

(a) Except as provided by Subsection (b) or local administrative rules, the local administrative judge or a judge of the criminal law magistrate court may transfer between courts a case that is pending in the court of any magistrate in the criminal law magistrate court's jurisdiction if the case is:

(1) an undicted felony case;

(2) a Class A or Class B misdemeanor case if an information has not been filed; or

(3) a Class C misdemeanor case.

(b) A case may not be transferred from or to the magistrate docket of a judge on the El Paso Council of Judges without the consent of the judge of the court to which it is transferred.

(c) Except as provided by Subsection (d) or local administrative rules, the local administrative judge may assign a judge on the council of judges, a judge of the criminal law magistrate court, a retired judge, or any other magistrate to act as presiding judge in a case that is pending in the court of any magistrate in the criminal law magistrate court's jurisdiction if the case is:

- (1) an unindicted felony case;
- (2) a Class A or Class B misdemeanor case if an information has not been filed; or
- (3) a Class C misdemeanor case.

(d) A case may not be assigned to a judge on the council of judges without the assigned judge's consent.

(e) This section applies only to the district courts, county courts at law, justice courts, and municipal courts in the county.

(f) The local administrative judge may delegate or the local administrative rules may provide for the delegation of the power to transfer or assign cases to any other judge on the council of judges.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989; am. Acts 2015, 84th Leg., ch. 1182 (S.B. 1139), § 6.01(f), effective September 1, 2015.

Sec. 54.739. Order of Assignment.

(a) Cases may be assigned by local administrative rules, by a blanket written order, or on a case-by-case basis. Each district court and county court at law may use any of the methods to assign cases to the criminal law magistrate court.

(b) The local administrative rules, a blanket order of assignment, or a specific order of assignment may limit the powers of a criminal law magistrate court or a judge of that court.

(c) Unless limited as provided by Subsection (b), the criminal law magistrate court and a judge of that court may perform all acts and take all measures necessary and proper to exercise the jurisdiction granted in this subchapter in relation to a case assigned under this subchapter.

(d) A case assigned under this subchapter to the criminal law magistrate court from a district court, a county court at law, or a justice court remains on the docket of the assigning court and in the assigning court's jurisdiction.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989; am. Acts 2015, 84th Leg., ch. 1182 (S.B. 1139), § 6.01(g), effective September 1, 2015.

Sec. 54.740. Effect of Transfer.

When a case is transferred from one court to another as provided by this subchapter, all processes, writs, bonds, recognizances, or other obligations issued from the transferring court are returnable to the court to which the case is transferred as if originally issued by that court. The obligees in all bonds and recognizances taken in a case that is transferred and all witnesses summoned to appear in a court from which a case is transferred are required to appear before the court to which the case is transferred as if the processes or obligations were originally issued by the court to which the transfer is made.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989.

Sec. 54.741. Forfeitures.

Bail bonds and personal bonds may be forfeited by the criminal law magistrate court in the manner provided by Chapter 22, Code of Criminal Procedure, and those forfeitures shall be filed with:

- (1) the district clerk if associated with a felony case;

- (2) the county clerk if associated with a Class A or Class B misdemeanor case; or

- (3) the same justice court clerk associated with the Class C misdemeanor case in which the bond was originally filed.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989; am. Acts 2015, 84th Leg., ch. 1182 (S.B. 1139), § 6.01(h), effective September 1, 2015.

Sec. 54.742. Costs.

(a) When the district clerk is the clerk under this subchapter, the district clerk shall charge the same court costs for cases filed, transferred to, or assigned to the criminal law magistrate court that are charged in the district courts.

(b) When the county clerk is the clerk under this subchapter, the county clerk shall charge the same court costs for cases filed in, transferred to, or assigned to the criminal law magistrate court that are charged in the county courts.

(c) When a justice clerk is the clerk under this subchapter, the justice clerk shall charge the same court costs for cases filed in, transferred to, or assigned to the criminal law magistrate court that are charged in the justice courts.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989; am. Acts 2015, 84th Leg., ch. 1182 (S.B. 1139), § 6.01(i), effective September 1, 2015.

Sec. 54.743. Objection to Judge.

(a) If after indictment, the defendant or the state files a timely objection to the assignment of a first-degree felony to the criminal law magistrate court, the judge is disqualified to hear the case.

(b) If after indictment the defendant or the state files a timely objection to a particular judge on the criminal law magistrate court hearing a first-degree felony assigned to that court, that judge is disqualified to hear the case.

(c) An objection under this section must be filed before the first hearing or trial, including pretrial hearings, in which the assigned judge is to preside.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989.

Sec. 54.744. Judges on El Paso Council of Judges.

Unless the local rules of administration provide otherwise, the judges on the El Paso Council of Judges and the judges on the criminal law magistrate court may sit and act for any magistrate in El Paso County on any unindicted felony or Class A or B misdemeanor case if an information has not been filed or any Class C misdemeanor case filed in a justice court.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989; am. Acts 2015, 84th Leg., ch. 1182 (S.B. 1139), § 6.01(j), effective September 1, 2015.

Sec. 54.745. Pretrial Diversion. [Effective until January 1, 2020]

(a) As a condition for a defendant to enter any pretrial diversion program, including a behavioral modification program, a health care program, a specialty court program, or the functional equivalent that may be operated in

El Paso County by El Paso County, Emergence Health Network, the City of El Paso, the West Texas Regional Adult Probation Department, a community partner approved by the council of judges, or a county or district attorney of El Paso County, a defendant must file in the court in which the charges are pending a sworn waiver of speedy trial motion requesting the court to approve without a hearing defendant's waiver of his speedy trial rights under the constitution and other law. If the court approves the waiver, the defendant is eligible for consideration for acceptance into a pretrial diversion program or equivalent program.

(b) At the time the motion to waive speedy trial rights required by Subsection (a) is filed, the court clerk shall collect a \$100 filing fee unless the court for good cause waives the fee or any part of the fee under guidelines that may be set by the local administrative rules. The filing fee is nonrefundable.

(c) The fees collected by the court clerk under Subsection (b) shall be deposited in the general fund of the county treasury as provided by Chapter 113, Local Government Code.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989; am. Acts 2015, 84th Leg., ch. 1182 (S.B. 1139), § 6.01(k), effective September 1, 2015.

Sec. 54.745. Pretrial Diversion. [Effective January 1, 2020]

(a) As a condition for a defendant to enter any pretrial diversion program, including a behavioral modification program, a health care program, a specialty court program, or the functional equivalent that may be operated in El Paso County by El Paso County, Emergence Health Network, the City of El Paso, the West Texas Regional Adult Probation Department, a community partner approved by the council of judges, or a county or district attorney of El Paso County, a defendant must file in the court in which the charges are pending a sworn waiver of speedy trial motion requesting the court to approve without a hearing defendant's waiver of his speedy trial rights under the constitution and other law. If the court approves the waiver, the defendant is eligible for consideration for acceptance into a pretrial diversion program or equivalent program.

(b) [Repealed.]

(c) [Repealed.]

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989; am. Acts 2019, 86th Leg., ch. 1352 (S.B. 346), § 4.40(9), effective January 1, 2020.

Sec. 54.746. Jurisdiction of Judges on El Paso Council of Judges.

(a) In addition to jurisdiction conferred by other law, each district court and county court at law in El Paso County has the same jurisdiction given to the criminal law magistrate court by this subchapter.

(b) A misdemeanor information may not be filed in a district court under the grant of jurisdiction in Subsection (a).

(c) A felony indictment or information may not be filed in a county court at law under the grant of jurisdiction in Subsection (a).

(d) A judge of a county court at law in El Paso County shall exercise jurisdiction granted by Subsection (a) over felony indictments and felony informations and justice court cases only as a judge presiding for the court in which the felony or Class C misdemeanor is pending and only if the El Paso Council of Judges has so provided in the local administrative rules by a unanimous vote. The exercise of this jurisdiction outside El Paso County is as provided by Chapter 74 and other law.

(e) A judge of a district court in El Paso County shall exercise jurisdiction granted by Subsection (a) over misdemeanor information and justice court cases only as a judge presiding for the court in which the misdemeanor is pending and only if the council of judges has so provided in the local administrative rules by a unanimous vote. The exercise of this jurisdiction outside El Paso County is as provided by the Court Administration Act (Chapter 74) and other law.

(f) This subchapter does not grant jurisdiction over misdemeanors involving official misconduct to any court, and all those cases remain in the original jurisdiction of the district courts as provided by law.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989; am. Acts 2015, 84th Leg., ch. 1182 (S.B. 1139), § 6.01(l), effective September 1, 2015.

Sec. 54.747. Judge.

(a) The criminal law magistrate court is presided over by one or more judges appointed by a two-thirds vote of all the district court and county court at law judges. A criminal law magistrate court judge serves for a one-year term beginning on the date of appointment.

(b) To be eligible for appointment as a judge of the criminal law magistrate court, a person must meet all the requirements and qualifications to serve as a district court judge.

(c) If there is more than one criminal law magistrate court judge, the council of judges may appoint one of the judges to be the presiding criminal law magistrate court judge.

(d) The order appointing a judge of the criminal law magistrate court must be signed by two-thirds of the judges on the El Paso Council of Judges and shall be entered in the minutes of each district court and county court at law. The order must state the judge's name, state bar identification number, and the date the appointment takes effect.

(e) The council of judges may withdraw a judge's appointment to the criminal law magistrate court by a majority vote of all the judges on the council of judges. The order must be signed by the local administrative judge and shall be entered in the minutes of each district court and county court at law. The order must state the judge's name, state bar identification number, and the date the order of withdrawal takes effect.

(f) Any judge on the council of judges may withdraw that judge's consent for a judge or judges of the criminal law magistrate court to act for that judge under this subchapter. The order withdrawing consent to act must state the name of the judge who may not act, the judge's state bar identification number, and the date the withdrawal of consent takes effect.

(g) A judge of the criminal law magistrate court is entitled to the salary determined by the commissioners court. The salary may not be less than the salary authorized to be paid to a family law master appointed for El Paso County.

(h) Except as provided for in Subsection (i), the council of judges may only appoint the number of judges for which the commissioners court by order provides compensation in the county budget.

(i) The council of judges may appoint any number of judges who agree to serve on the criminal law magistrate court as part-time or as full-time judges without compensation.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989.

Sec. 54.748. Oath of Office.

The judges of the criminal law magistrate court must take the constitutional oath of office prescribed for appointed officers.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989.

Sec. 54.749. Judicial Immunity.

The judges of the criminal law magistrate court and the judges of the county courts at law have the same judicial immunity as a district judge.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989.

Sec. 54.750. Exchange of Benches.

(a) The judges of the criminal law magistrate court may exchange benches and may sit and act for each other in any proceeding pending in the criminal law magistrate court.

(b) Except as provided by Subsection (c), the judges of the criminal law magistrate court may exchange benches and may sit and act for each other in any proceeding assigned to them under this subchapter if a felony or misdemeanor indictment has been filed or a felony or misdemeanor information has been filed.

(c) Any court that assigns an indicted case or a case in which an information has been filed under this subchapter to the criminal law magistrate court may provide in the assignment order or the local administrative rules may provide that only the judge who is named in the assignment order may act on the case and that another judge of the criminal law magistrate court may not exchange benches with or sit for the judge named in the assignment order or local administrative rules.

(d) When conducting a *capias pro fine* hearing for any court, the criminal law magistrate court acts in the same capacity and with the same authority as the judge who issued the *capias pro fine*.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989; am. Acts 2015, 84th Leg., ch. 1182 (S.B. 1139), § 6.01(m), effective September 1, 2015.

Sec. 54.751. Special Judge.

(a) If a full-time compensated judge of the criminal law magistrate court is absent or is from any cause disabled or

disqualified from presiding, a special judge may be appointed in the manner provided by this subchapter for the appointment of a judge of the criminal law magistrate court.

(b) A special judge shall take the oath of office that is required by law for the regular judge and has all the power and jurisdiction of the court and of the regular judge for whom he is sitting. A special judge may sign orders, judgments, decrees, or other process of any kind as "Judge Presiding" when acting for the regular judge.

(c) A special judge is entitled to receive for the services actually performed the same amount of compensation that the regular judge is entitled to receive for the services. The compensation shall be paid out of county funds. None of the amount paid to a special judge for sitting for the regular judge may be deducted or paid out of the salary of the regular judge.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989.

Sec. 54.752. Prosecutor [Repealed].

Repealed by Acts 1993, 73rd Leg., ch. 493 (S.B. 477), § 3, effective October 1, 1993.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989.

Sec. 54.753. Clerk.

(a) The district clerk serves as clerk of the criminal law magistrate court, except that:

(1) after a Class A or Class B misdemeanor information is filed in the county court at law and assigned to the criminal law magistrate court, the county clerk serves as clerk for that misdemeanor case; and

(2) after a Class C misdemeanor is filed in a justice court and assigned to the criminal law magistrate court, the originating justice court clerk serves as clerk for that misdemeanor case.

(b) The district clerk shall establish a docket and keep the minutes for the cases filed in or transferred to the criminal law magistrate court. The district clerk shall perform any other duties that local administrative rules require in connection with the implementation of this subchapter. The local administrative judge shall ensure that the duties required under this subsection are performed. To facilitate the duties associated with serving as the clerk of the criminal law magistrate court, the district clerk and the deputies of the district clerk may serve as deputy justice clerks and deputy county clerks at the discretion of the district clerk.

(c) The clerk of the case shall include as part of the record on appeal a copy of the order and local administrative rule under which a criminal law magistrate court acted.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989; am. Acts 2015, 84th Leg., ch. 1182 (S.B. 1139), § 6.01(n), effective September 1, 2015.

Sec. 54.754. Sheriff.

(a) The county sheriff, either in person or by deputy, shall attend the criminal law magistrate court as required by a judge of that court.

(b) Unless the local administrative rules provide otherwise, the county sheriff, either in person or by deputy, shall attend court proceedings heard by El Paso family law masters as required by a family law master.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989.

Sec. 54.755. Court Reporter.

Each judge of the criminal law magistrate court shall appoint an official shorthand reporter to serve that judge. Those official shorthand reporters must be well skilled in their profession. Such a reporter is a sworn officer of the court who holds office at the pleasure of the court.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989.

Sec. 54.756. Family Law Master.

(a) An El Paso family law master may be appointed as a judge of the criminal law magistrate court and continue as a family law master.

(b) A family law master may not be appointed as a judge of the criminal law magistrate court unless the family law master agrees to the appointment.

(c) A family law master appointed to serve as a judge of the criminal law magistrate court is not entitled to receive additional compensation for serving as a judge of that court unless the commissioners court provides additional compensation.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989.

Sec. 54.757. Judge of Criminal Law Magistrate Court.

(a) A judge of the criminal law magistrate court may be appointed as a family law master and continue as a judge of the criminal law magistrate court.

(b) A judge of the criminal law magistrate court may not be appointed as a family law master unless the judge agrees to the appointment.

(c) A judge of the criminal law magistrate court appointed to serve as a family law master is not entitled to receive additional compensation for serving as a family law master unless the commissioners court provides additional compensation.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989.

Sec. 54.758. Magistrates May Be Appointed.

(a) Any magistrate in El Paso County may be appointed as a judge of the criminal law magistrate court or as a family law master, or both, and continue as a judge or justice of another court.

(b) A magistrate may not be appointed under Subsection (a) unless the magistrate agrees to the appointment.

(c) A magistrate appointed under Subsection (a) is not entitled to receive additional compensation unless the commissioners court provides additional compensation.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989.

Sec. 54.759. Location of Court.

(a) The criminal law magistrate court may be held at one or more locations provided by the local administrative rules or ordered by the local administrative judge.

(b) A defendant may be brought before the court in person or by means of an electronic broadcast system through which an image of the defendant is presented to the court. For purposes of this subsection, “electronic broadcast system” means a two-way electronic communication of image and sound between the defendant and the court.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989; am. Acts 2015, 84th Leg., ch. 1182 (S.B. 1139), § 6.01(o), effective September 1, 2015.

Sec. 54.760. Court Seal.

The seal of the criminal law magistrate court shall be the same as that provided by law for county courts, except that the seal must contain the words “El Paso Criminal Law Magistrate Court.” The seal shall be judicially noticed.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989.

Sec. 54.761. Inactive Court.

(a) If in the opinion of a majority of the judges of the El Paso Council of Judges the criminal law magistrate court should not continue in active operation after it is created, then by an order or orders signed by the local administrative judge all pending cases on the active docket of the criminal law magistrate court shall be transferred to the court or courts of other magistrates that have potential jurisdiction over the cases transferred.

(b) The local administrative judge shall select the courts to which the cases are transferred under Subsection (a).

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989.

Sec. 54.762. Jurisdiction Not Diminished.

This subchapter does not diminish the jurisdiction granted by the constitution and laws of this state to any court named in this subchapter.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989.

Sec. 54.763. Transfer Under Code of Criminal Procedure.

This subchapter does not prevent a district court from transferring misdemeanor indictments to an inferior court as provided by Chapter 21, Code of Criminal Procedure, notwithstanding the grant of misdemeanor jurisdiction to the district courts by this subchapter.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.32(a), effective August 28, 1989.

Secs. 54.764 to 54.800. [Reserved for expansion].

*Subchapter K**Juvenile Court Masters In Harris County***Sec. 54.801. Appointment.**

(a) A majority of the judges of the courts that are designated as juvenile courts in Harris County may determine that one or more full-time or part-time masters are needed to serve those courts.

(b) The judges shall issue an order reflecting that determination and specifying the number of masters needed.

(c) Subject to the determination of need and the approval of the commissioners court of Harris County, each judge may appoint one or more masters to serve the judge's court.

(d) Judges may act together to appoint a master to serve their courts.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.33(a), effective August 28, 1989.

Sec. 54.802. Qualifications.

A master must:

- (1) be a citizen and resident of this state; and
- (2) have been licensed to practice law in this state for at least four years.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.33(a), effective August 28, 1989.

Sec. 54.803. Order of Appointment.

The order appointing a master must be entered in the minutes of each court making the order and state:

- (1) the master's name and state bar identification number;
- (2) the name of each court the master will serve; and
- (3) the date the master's service is to begin.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.33(a), effective August 28, 1989.

Sec. 54.804. Compensation.

The commissioners court shall set the compensation for masters and determine the total amount the county will pay as compensation for masters.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.33(a), effective August 28, 1989.

Sec. 54.805. Judicial Immunity.

A master appointed under this subchapter has the same judicial immunity as a district judge.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.33(a), effective August 28, 1989.

Sec. 54.806. Termination of Employment.

(a) A master who serves a single court serves at the will of the judge of that court.

(b) The employment of a master who serves two courts may be terminated by either of the judges of those courts.

(c) The employment of a master who serves more than two courts may be terminated by a majority of the judges of those courts.

(d) To terminate a master's employment, the appropriate judges must sign a written order of termination. The order must state:

- (1) the master's name and state bar identification number;
- (2) each court ordering termination; and
- (3) the date the master's employment ends.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.33(a), effective August 28, 1989.

Sec. 54.807. Withdrawal of Appointment for a Particular Court.

The judge of a court for which a master has been appointed may withdraw the master's appointment to that court by written order. The order must state:

- (1) the master's name and state bar identification number;
- (2) the name of the court ordering the withdrawal; and
- (3) the date the master's services end as to that court.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.33(a), effective August 28, 1989.

Sec. 54.808. Cases That May Be Referred.

A judge may refer to a master any civil case or portion of a civil case brought:

- (1) under Title 1, 2, 3, 4, or 5, Family Code; or
- (2) in connection with Rule 308a, Texas Rules of Civil Procedure.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.33(a), effective August 28, 1989; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 7.35, effective September 1, 1997.

Sec. 54.809. Method of Referral.

A case may be referred as prescribed by published local rules or by written orders.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.33(a), effective August 28, 1989.

Sec. 54.810. Powers.

(a) An order of referral may limit the use or power of a master.

(b) Unless limited by published local rule, by written order, or by an order of referral, a master may perform all acts and take all measures necessary and proper to perform the tasks assigned in a referral.

- (c) A master may administer oaths.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.33(a), effective August 28, 1989.

Sec. 54.811. Effect on Temporary Restraining Order.

(a) The referral of a case or a portion of a case to a master does not affect a party's right to have a court grant or extend a temporary restraining order and does not prevent the expiration of a temporary restraining order.

(b) Until a judge signs an order concerning the findings and recommendations of a master, the findings and recommendations do not affect an existing temporary restraining order or the expiration or extension of that order.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.33(a), effective August 28, 1989.

Sec. 54.812. Jury.

(a) Except as provided by Subsection (b), if a jury trial is demanded in a case referred to a master, the master shall refer the case back to the referring court for a full hearing according to the usual rules applicable to the case.

(b) A jury demand does not affect the authority of a master to handle pretrial matters referred to the master.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.33(a), effective August 28, 1989.

Sec. 54.813. Court Reporter.

(a) A court reporter must be provided during a hearing conducted by a master.

(b) Notwithstanding Subsection (a), a referring judge may require a reporter at any hearing.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.33(a), effective August 28, 1989.

Sec. 54.814. Failure to Comply with Summons or Order.

If an attorney, party, witness, or any other person fails to comply with a summons or order, the master may certify that failure in writing to the referring court for appropriate action.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.33(a), effective August 28, 1989.

Sec. 54.815. Witnesses.

(a) A witness appearing before a master is subject to the penalties of perjury as provided by Chapter 37, Penal Code.

(b) A witness referred to the court under Section 54.814 is subject to the same penalties and orders that may be imposed on a witness appearing in a hearing before the court.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.33(a), effective August 28, 1989.

Sec. 54.816. Return to Referring Court; Findings.

After a hearing is concluded, the master shall send to the referring judge all papers relating to the case and the written findings of the master.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.33(a), effective August 28, 1989.

Sec. 54.817. Court Action on Report.

(a) After the court receives the master's report, the court may adopt, modify, correct, reject, or reverse the master's report or may recommit it for further information, as the court determines to be proper and necessary in each case.

(b) If a judgment has been recommended, the court may approve the recommendation and hear more evidence before making its judgment.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.33(a), effective August 28, 1989.

Sec. 54.818. Decree or Judgment.

The finding and recommendations become the decree or judgment of the court when adopted and approved by an order of the judge.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.33(a), effective August 28, 1989.

Sec. 54.819. Masters in Chancery.

This subchapter does not prohibit a court from appointing a master in chancery as provided by Rule 171, Texas Rules of Civil Procedure.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.33(a), effective August 28, 1989.

Sec. 54.820. Referees.

(a) A master appointed under this subchapter may serve as a referee as provided by Subsection (g) of Section 51.04 and Section 54.10, Family Code.

(b) A referee appointed under Subsection (g) of Section 51.04, Family Code, may be appointed to serve as a master under this subchapter.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.33(a), effective August 28, 1989.

Secs. 54.821 to 54.850. [Reserved for expansion].

Subchapter L

Criminal Law Hearing Officers In Certain Counties

Sec. 54.851. Application.

This subchapter applies only to counties with a population of 3.3 million or more.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 224 (H.B. 2113), § 1, effective August 30, 1993; am. Acts 2001, 77th Leg., ch. 669 (H.B. 2810), § 18, effective September 1, 2001.

Sec. 54.852. Appointment.

(a) A board composed of three judges of the district courts of Harris County trying criminal cases, three judges of the county criminal courts at law, and three justices of the peace in Harris County may appoint criminal law hearing officers, with the consent and approval of the commissioners court, to perform the duties authorized by this subchapter. A quorum is two-thirds of the members of the board.

(b) The board shall ensure that the criminal law hearing officers appointed under this subchapter are representative of the race, sex, national origin, and ethnicity of the population of Harris County.

(c) A criminal law hearing officer serves a one-year term and continues to serve until a successor is appointed.

(d) A criminal law hearing officer appointed under this subchapter may be terminated at any time in the same manner as appointed.

(e) A criminal law hearing officer may not engage in the private practice of law or serve as a mediator or arbitrator or otherwise participate as a neutral party in any alternate dispute resolution proceeding, with or without compensation.

(f) A criminal law hearing officer is subject to proceedings under Article V, Section 1-a, of the Texas Constitution.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 224 (H.B. 2113), § 1, effective August 30, 1993.

Sec. 54.853. Qualifications.

To be eligible for appointment as a criminal law hearing officer under this subchapter, a person must:

- (1) be a resident of this state and the county;
- (2) have been licensed to practice law in this state for at least four years;
- (3) not have been defeated for reelection to a judicial office;
- (4) not have been removed from office by impeachment, by the supreme court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct, or by the legislature's abolition of the judge's court; and
- (5) not have resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided in Section 33.022 and before the final disposition of the proceedings.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 224 (H.B. 2113), § 1, effective August 30, 1993.

Sec. 54.854. Compensation.

(a) Each criminal law hearing officer is entitled to a salary in the amount set by the commissioners court.

(b) The salary may not be less than the salary authorized to be paid to a master for family law cases appointed under Subchapter A.

(c) The salary is paid from the county fund available for payment of officers' salaries.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 224 (H.B. 2113), § 1, effective August 30, 1993.

Sec. 54.855. Oath.

A criminal law hearing officer must take the constitutional oath of office required of appointed officers of this state.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 224 (H.B. 2113), § 1, effective August 30, 1993.

Sec. 54.856. Criminal Jurisdiction.

(a) A criminal law hearing officer appointed under this subchapter has limited concurrent jurisdiction over criminal cases filed in the district courts and county criminal courts at law of the county and concurrent jurisdiction over criminal cases filed in the justice courts of the county. In criminal cases filed in the district courts and county criminal courts at law, the jurisdiction of the criminal law hearing officer is limited to:

- (1) determining probable cause for further detention of any person detained on a criminal complaint, information, or indictment filed in the district courts or county criminal courts at law;
- (2) committing the defendant to jail, discharging the defendant from custody, or admitting the defendant to bail, as the law and facts of the case require;

(3) issuing search warrants and arrest warrants as provided by law for magistrates; and

(4) enforcing judgments and orders of the county criminal courts at law in criminal cases.

(b) This section does not limit or impair the jurisdiction of the court in which the complaint, information, or indictment is filed to review or alter the decision of the criminal law hearing officer.

(c) In a felony or misdemeanor case punishable by incarceration in the county jail, a criminal law hearing officer may not dismiss the case, enter a judgment of acquittal or guilt, or pronounce sentence.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 224 (H.B. 2113), § 1, effective August 30, 1993; am. Acts 2001, 77th Leg., ch. 1206 (H.B. 3664), § 1, effective September 1, 2001; am. Acts 2007, 80th Leg., ch. 811 (S.B. 1404), § 1, effective September 1, 2007.

Sec. 54.857. Mental Health Jurisdiction.

The judges appointing a criminal law hearing officer may authorize the criminal law hearing officer to serve the statutory probate courts of Harris County as necessary to hear emergency mental health matters under Chapter 573, Health and Safety Code. A criminal law hearing officer has concurrent limited jurisdiction with the statutory probate courts of the county to hear emergency mental health matters under Chapter 573, Health and Safety Code. This section does not impair the jurisdiction of the statutory probate courts to review or alter the decision of the criminal law hearing officer.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 224 (H.B. 2113), § 1, effective August 30, 1993.

Sec. 54.858. Duties and Powers.

(a) A criminal law hearing officer shall inform the person arrested, in clear language, of the accusation against the person and of any affidavit filed with the accusation. A criminal law hearing officer shall inform the person arrested of the person's right to retain counsel, to remain silent, to have an attorney present during any interview with a peace officer or an attorney representing the state, to terminate the interview at any time, and to request the appointment of counsel if the person is indigent and cannot afford counsel. The criminal law hearing officer shall also inform the person arrested that the person is not required to make a statement and that any statement made by the person may be used against the person. The criminal law hearing officer must allow the person arrested reasonable time and opportunity to consult counsel and shall admit the person arrested to bail if allowed by law. In addition to the powers and duties specified by this section, a criminal law hearing officer has all other powers and duties of a magistrate specified by the Code of Criminal Procedure and other laws of this state.

(b) A criminal law hearing officer may determine the amount of bail and grant bail pursuant to Chapter 17, Code of Criminal Procedure, and as otherwise provided by law.

(c) A criminal law hearing officer may issue a magistrate's order for emergency apprehension and detention under Chapter 573, Health and Safety Code, if the crimi-

nal law hearing officer makes each finding required by Section 573.012(b), Health and Safety Code.

(d) The criminal law hearing officer shall be available, within 24 hours of a defendant's arrest, to determine probable cause for further detention, administer warnings, inform the accused of the pending charges, and determine all matters pertaining to bail. Criminal law hearing officers shall be available to review and issue search warrants and arrest warrants as provided by law.

(e) A criminal law hearing officer may dispose of criminal cases filed in the justice court as provided by law and collect fines and enforce the judgments and orders of the justice courts in criminal cases.

(f) A criminal law hearing officer may enforce judgments and orders of the county criminal courts at law in criminal cases.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 224 (H.B. 2113), § 1, effective August 30, 1993; am. Acts 2001, 77th Leg., ch. 1206 (H.B. 3664), § 2, effective September 1, 2001; am. Acts 2007, 80th Leg., ch. 811 (S.B. 1404), § 2, effective September 1, 2007.

Sec. 54.859. Judicial Immunity.

A criminal law hearing officer has the same judicial immunity as a district judge, statutory county court judge, and justice of the peace.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 224 (H.B. 2113), § 1, effective August 30, 1993.

Sec. 54.860. Sheriff.

On request of a criminal law hearing officer appointed under this subchapter, the sheriff, in person or by deputy, shall assist the criminal law hearing officer.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 224 (H.B. 2113), § 1, effective August 30, 1993.

Sec. 54.861. Clerk.

The district clerk shall perform the statutory duties necessary for the criminal law hearing officers appointed under this subchapter in cases filed in a district court or county criminal court. A person designated to serve as clerk of a justice court shall perform the statutory duties necessary for cases filed in a justice court.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 224 (H.B. 2113), § 1, effective August 30, 1993.

Secs. 54.862 to 54.870. [Reserved for expansion].

Subchapter M

Magistrates In Lubbock County

Sec. 54.871. Appointment.

(a) The judges of the district courts of Lubbock County, with the consent and approval of the Commissioners Court of Lubbock County, shall jointly appoint the number of magistrates set by the commissioners court to perform the duties authorized by this subchapter.

(b) Each magistrate's appointment must be made with the unanimous approval of all the judges described in Subsection (a).

(c) If the number of magistrates is less than the number of district judges, each magistrate shall serve equally in the courts of those judges.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 25 (S.B. 577), § 1, effective August 28, 1989.

Sec. 54.872. Qualifications.

To be eligible for appointment as a magistrate, a person must:

- (1) be a resident of this state; and
- (2) have been licensed to practice law in this state for at least four years.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 25 (S.B. 577), § 1, effective August 28, 1989.

Sec. 54.873. Compensation.

(a) A magistrate is entitled to the salary determined by the Commissioners Court of Lubbock County.

(b) The salary may not be less than the salary authorized to be paid to an associate judge for Title IV-D cases appointed under Subchapter B, Chapter 201, Family Code.

(c) The magistrate's salary is paid from the county fund available for payment of officers' salaries.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 25 (S.B. 577), § 1, effective August 28, 1989; am. Acts 1999, 76th Leg., ch. 602 (S.B. 760), § 2, effective June 18, 1999; am. Acts 2003, 78th Leg., ch. 1258 (H.B. 823), § 26, effective September 1, 2003.

Sec. 54.874. Judicial Immunity.

A magistrate has the same judicial immunity as a district judge.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 25 (S.B. 577), § 1, effective August 28, 1989.

Sec. 54.875. Termination of Services.

(a) A magistrate who serves a single court serves at the will of the judge.

(b) The services of a magistrate who serves more than one court may be terminated by a majority vote of all the judges whom the magistrate serves.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 25 (S.B. 577), § 1, effective August 28, 1989.

Sec. 54.876. Proceeding That May Be Referred.

(a) A district judge or a county court at law judge may refer to a magistrate any criminal case for proceedings involving:

- (1) a negotiated plea of guilty before the court;
- (2) a bond forfeiture;
- (3) a pretrial motion;
- (4) a postconviction writ of habeas corpus;
- (5) an examining trial; and
- (6) any other matter the judge considers necessary and proper.

(b) A magistrate may accept a plea of guilty for a misdemeanor or felony.

(c) A magistrate may not preside over a trial on the merits, whether or not the trial is before a jury.

(d) A judge of a court designated a juvenile court may refer to a magistrate any proceeding over which a juvenile

court has exclusive original jurisdiction under Title 3, Family Code, including any matter ancillary to the proceeding.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 25 (S.B. 577), § 1, effective August 28, 1989; am. Acts 1999, 76th Leg., ch. 602 (S.B. 760), § 3, effective June 18, 1999.

Sec. 54.877. Order of Referral.

(a) To refer one or more cases to a magistrate, a judge must issue an order of referral specifying the magistrate's duties.

(b) An order of referral may:

- (1) limit the powers of the magistrate and direct the magistrate to report only on specific issues, do particular acts, or receive and report on evidence only;
- (2) set the time and place for the hearing;
- (3) prescribe a closing date for the hearing;
- (4) provide a date for filing the magistrate's findings;
- (5) designate proceedings for more than one case over which the magistrate shall preside;
- (6) direct the magistrate to call the court's docket; and
- (7) set forth general powers and limitations of authority of the magistrate applicable to any case referred.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 25 (S.B. 577), § 1, effective August 28, 1989.

Sec. 54.878. Powers.

(a) Except as limited by an order of referral, a magistrate to whom a case is referred may:

- (1) conduct hearings;
- (2) hear evidence;
- (3) compel production of relevant evidence;
- (4) rule on admissibility of evidence;
- (5) issue summons for the appearance of witnesses;
- (6) examine witnesses;
- (7) swear witnesses for hearings;
- (8) make findings of fact on evidence;
- (9) formulate conclusions of law;
- (10) rule on a pretrial motion;
- (11) recommend the rulings, orders, or judgment to be made in a case;
- (12) regulate proceedings in a hearing;
- (13) accept a plea of guilty for a misdemeanor or felony or a plea of true from a defendant or juvenile, regardless of the classification of the offense charged or the conduct alleged; and
- (14) do any act and take any measure necessary and proper for the efficient performance of the duties required by the order of referral.

(b) A magistrate may not enter a ruling on any issue of law or fact if that ruling could result in dismissal or require dismissal of a pending criminal prosecution, but the magistrate may make findings, conclusions, and recommendations on those issues.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 25 (S.B. 577), § 1, effective August 28, 1989; am. Acts 1999, 76th Leg., ch. 602 (S.B. 760), § 4, effective June 18, 1999.

Sec. 54.879. Court Reporter.

At the request of a party, the court shall provide a court reporter to record the proceedings before the magistrate.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 25 (S.B. 577), § 1, effective August 28, 1989.

Sec. 54.880. Witness.

(a) A witness who appears before a magistrate and is sworn is subject to the penalties for perjury provided by law.

(b) A referring court may issue attachment against and may fine or imprison a witness whose failure to appear after being summoned or whose refusal to answer questions has been certified to the court.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 25 (S.B. 577), § 1, effective August 28, 1989.

Sec. 54.881. Papers Transmitted to Judge.

At the conclusion of the proceedings, a magistrate shall transmit to the referring court any papers relating to the case, including the magistrate's findings, conclusions, orders, recommendations, or other action taken.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 25 (S.B. 577), § 1, effective August 28, 1989.

Sec. 54.882. Judicial Action.

(a) A referring court may modify, correct, reject, reverse, or recommit for further information any action taken by the magistrate.

(b) If the court does not modify, correct, reject, reverse, or recommit an action of the magistrate, the action becomes the decree of the court.

(c) At the conclusion of each term during which the services of a magistrate are used, the referring court shall enter a decree on the minutes adopting the actions of the magistrate of which the court approves.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 25 (S.B. 577), § 1, effective August 28, 1989.

Sec. 54.883. Costs of Magistrate. [Repealed effective January 1, 2020]

The court shall determine if the nonprevailing party is able to defray the costs of the magistrate. If the court determines that the nonprevailing party is able to pay those costs, the court shall tax the magistrate's fees as costs against the nonprevailing party.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 25 (S.B. 577), § 1, effective August 28, 1989; Repealed by Acts 2019, 86th Leg., ch. 1352 (S.B. 346), § 4.40(10), effective January 1, 2020.

Sec. 54.884. Magistrates.

(a) If a magistrate appointed under this subchapter is absent or unable to serve, the judge referring the case may appoint another magistrate to serve for the absent magistrate.

(b) A magistrate serving for another magistrate under this section has the powers and shall perform the duties of the magistrate for whom he is serving.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 25 (S.B. 577), § 1, effective August 28, 1989; am. Acts 1999, 76th Leg., ch. 602 (S.B. 760), § 5, effective June 18, 1999.

Sec. 54.885. Clerk.

The clerk of a district court or county court at law that refers a proceeding to a magistrate under this subchapter

shall perform the statutory duties necessary for the magistrate to perform the duties authorized by this subchapter.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 602 (S.B. 760), § 6, effective June 18, 1999.

Secs. 54.886 to 54.900. [Reserved for expansion].

Subchapter N

Criminal Law Magistrates In Bexar County

Sec. 54.901. Appointment.

(a) The judges of the district courts of Bexar County that give preference to criminal cases, with the consent and approval of the Commissioners Court of Bexar County, shall jointly appoint the number of magistrates set by the commissioners court to perform the duties authorized by this subchapter.

(b) Each magistrate's appointment must be made with the approval of a majority of the judges described in Subsection (a).

(c) If the number of magistrates is less than the number of the appointing judges, each magistrate shall serve equally in the courts of those judges.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1068 (S.B. 264), § 1, effective August 28, 1989.

Sec. 54.902. Qualifications.

To be eligible for appointment as a magistrate, a person must:

- (1) be a resident of this state; and
- (2) have been licensed to practice law in this state for at least four years.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1068 (S.B. 264), § 1, effective August 28, 1989.

Sec. 54.903. Compensation.

(a) A magistrate is entitled to the salary determined by the Commissioners Court of Bexar County.

(b) The magistrate's salary is paid from the county fund available for payment of officers' salaries.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1068 (S.B. 264), § 1, effective August 28, 1989.

Sec. 54.904. Judicial Immunity.

A magistrate has the same judicial immunity as a district judge.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1068 (S.B. 264), § 1, effective August 28, 1989.

Sec. 54.905. Termination of Services.

(a) A magistrate who serves a single court serves at the will of the judge.

(b) The services of a magistrate who serves more than one court may be terminated by a majority vote of the appointing judges.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1068 (S.B. 264), § 1, effective August 28, 1989.

Sec. 54.906. Proceeding That May Be Referred.

(a) A judge may refer to a magistrate any criminal case for proceedings involving:

- (1) a bond forfeiture;
- (2) a pretrial motion;
- (3) a postconviction writ of habeas corpus;
- (4) an examining trial;
- (5) the issuance of search warrants, including a search warrant under Article 18.02(a)(10), Code of Criminal Procedure, notwithstanding Article 18.01(c), Code of Criminal Procedure;
- (6) the setting of bonds;
- (7) the arraignment of defendants; and
- (8) any other matter the judge considers necessary and proper, including a plea of guilty or nolo contendere from a defendant charged with:
 - (A) a felony offense;
 - (B) a misdemeanor offense when charged with both a misdemeanor offense and a felony offense; or
 - (C) a misdemeanor offense.

(b) A magistrate may not preside over a trial on the merits, whether or not the trial is before a jury.

(c) Subsection (a)(5) does not apply to the issuance of a subsequent search warrant under Article 18.02(a)(10), Code of Criminal Procedure.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1068 (S.B. 264), § 1, effective August 28, 1989; am. Acts 2009, 81st Leg., ch. 909 (H.B. 1722), § 1, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 126 (H.B. 994), § 1, effective May 27, 2011; am. Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 8.002, effective September 1, 2019.

Sec. 54.907. Order of Referral.

(a) To refer one or more cases to a magistrate, a judge must issue an order of referral specifying the magistrate's duties. The judge may issue a written order of referral or may read the order of referral into the minutes of the court.

(b) An order of referral may:

- (1) limit the powers of the magistrate and direct the magistrate to report only on specific issues, do particular acts, or receive and report on evidence only;
- (2) set the time and place for the hearing;
- (3) prescribe a closing date for the hearing;
- (4) provide a date for filing the magistrate's findings;
- (5) designate proceedings for more than one case over which the magistrate shall preside;
- (6) direct the magistrate to call the court's docket; and
- (7) set forth general powers and limitations of authority of the magistrate applicable to any case referred.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1068 (S.B. 264), § 1, effective August 28, 1989; am. Acts 1999, 76th Leg., ch. 59 (S.B. 952), § 1, effective May 10, 1999.

Sec. 54.908. Powers.

(a) Except as limited by an order of referral, a magistrate to whom a case is referred may:

- (1) conduct hearings;
- (2) hear evidence;
- (3) compel production of relevant evidence;
- (4) rule on admissibility of evidence;
- (5) issue summons for the appearance of witnesses;

- (6) examine witnesses;
- (7) swear witnesses for hearings;
- (8) make findings of fact on evidence;
- (9) formulate conclusions of law;
- (10) rule on a pretrial motion;
- (11) recommend the rulings, orders, or judgment to be made in a case;
- (12) regulate proceedings in a hearing;
- (13) accept a plea of guilty or nolo contendere from a defendant charged with:
 - (A) a felony offense;
 - (B) a misdemeanor offense when charged with both a misdemeanor offense and a felony offense; or
 - (C) a misdemeanor offense;
- (14) notwithstanding Article 18.01(c), Code of Criminal Procedure, issue a search warrant under Article 18.02(a)(10), Code of Criminal Procedure; and
- (15) do any act and take any measure necessary and proper for the efficient performance of the duties required by the order of referral.

(b) A magistrate does not have authority under Subsection (a)(14) to issue a subsequent search warrant under Article 18.02(a)(10), Code of Criminal Procedure.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1068 (S.B. 264), § 1, effective August 28, 1989; am. Acts 2001, 77th Leg., ch. 680 (H.B. 3000), § 1, effective September 1, 2001; am. Acts 2009, 81st Leg., ch. 909 (H.B. 1722), § 2, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 126 (H.B. 994), § 2, effective May 27, 2011; am. Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 8.003, effective September 1, 2019.

Sec. 54.909. Court Reporter.

At the request of a party, the court shall provide a court reporter to record the proceedings before the magistrate.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1068 (S.B. 264), § 1, effective August 28, 1989.

Sec. 54.910. Witness.

(a) A witness who appears before a magistrate and is sworn is subject to the penalties for perjury provided by law.

(b) A referring court may issue attachment against and may fine or imprison a witness whose failure to appear after being summoned or whose refusal to answer questions has been certified to the court.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1068 (S.B. 264), § 1, effective August 28, 1989.

Sec. 54.911. Papers Transmitted to Judge.

At the conclusion of the proceedings, a magistrate shall transmit to the referring court any papers relating to the case, including the magistrate's findings, conclusions, orders, recommendations, or other action taken.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1068 (S.B. 264), § 1, effective August 28, 1989.

Sec. 54.912. Judicial Action.

(a) A referring court may modify, correct, reject, reverse, or recommit for further information any action taken by the magistrate.

(b) If the court does not modify, correct, reject, reverse, or recommit an action of the magistrate, the action becomes the decree of the court.

(c) At the conclusion of each term during which the services of a magistrate are used, the referring court shall enter a decree on the minutes adopting the actions of the magistrate of which the court approves.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1068 (S.B. 264), § 1, effective August 28, 1989.

Sec. 54.913. Costs of Magistrate. [Repealed effective January 1, 2020]

The court shall determine if the nonprevailing party is able to defray the costs of the magistrate. If the court determines that the nonprevailing party is able to pay those costs, the court shall tax the magistrate's fees as costs against the nonprevailing party.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1068 (S.B. 264), § 1, effective August 28, 1989; Repealed by Acts 2019, 86th Leg., ch. 1352 (S.B. 346), § 4.40(11), effective January 1, 2020.

Secs. 54.914 to 54.920. [Reserved for expansion].

Subchapter O

Part-Time Juvenile Law Masters in Bexar County [Repealed]

Sec. 54.921. Appointment [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(7), effective January 1, 2012.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 686 (S.B. 1287), § 1, effective September 1, 1989.

Sec. 54.922. Qualifications [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(7), effective January 1, 2012.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 686 (S.B. 1287), § 1, effective September 1, 1989.

Sec. 54.923. Order of Appointment [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(7), effective January 1, 2012.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 686 (S.B. 1287), § 1, effective September 1, 1989.

Sec. 54.924. Compensation [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(7), effective January 1, 2012.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 686 (S.B. 1287), § 1, effective September 1, 1989.

Sec. 54.925. Judicial Immunity [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(7), effective January 1, 2012.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 686 (S.B. 1287), § 1, effective September 1, 1989.

Sec. 54.926. Termination of Employment [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(7), effective January 1, 2012.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 686 (S.B. 1287), § 1, effective September 1, 1989.

Sec. 54.927. Cases That May Be Referred [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(7), effective January 1, 2012.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 686 (S.B. 1287), § 1, effective September 28, 1989; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 7.36, effective September 1, 1997.

Sec. 54.928. Method of Referral [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(7), effective January 1, 2012.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 686 (S.B. 1287), § 1, effective September 1, 1989.

Sec. 54.929. Powers [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(7), effective January 1, 2012.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 686 (S.B. 1287), § 1, effective September 1, 1989.

Sec. 54.930. Effect of Temporary Restraining Order [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(7), effective January 1, 2012.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 686 (S.B. 1287), § 1, effective September 1, 1989.

Sec. 54.931. Jury [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(7), effective January 1, 2012.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 686 (S.B. 1287), § 1, effective September 1, 1989.

Sec. 54.932. Court Reporter [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(7), effective January 1, 2012.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 686 (S.B. 1287), § 1, effective September 1, 1989.

Sec. 54.933. Failure to Comply with Summons or Order [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(7), effective January 1, 2012.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 686 (S.B. 1287), § 1, effective September 1, 1989.

Sec. 54.934. Witnesses [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(7), effective January 1, 2012.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 686 (S.B. 1287), § 1, effective September 1, 1989.

Sec. 54.935. Return to Referring Court; Findings [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(7), effective January 1, 2012.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 686 (S.B. 1287), § 1, effective September 1, 1989.

Sec. 54.936. Court Action on Report [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(7), effective January 1, 2012.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 686 (S.B. 1287), § 1, effective September 1, 1989.

Sec. 54.937. Decree or Judgment [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(7), effective January 1, 2012.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 686 (S.B. 1287), § 1, effective September 1, 1989.

Sec. 54.938. Masters in Chancery [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(7), effective January 1, 2012.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 686 (S.B. 1287), § 1, effective September 1, 1989.

Sec. 54.939. Referees [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(7), effective January 1, 2012.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 686 (S.B. 1287), § 1, effective September 1, 1989.

Secs. 54.940 to 54.950. [Reserved for expansion].

Subchapter P

*Williamson County Criminal Magistrates
[Repealed]*

Sec. 54.951. Appointment [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 586 (S.B. 611), § 1, effective June 18, 1999.

Sec. 54.952. Jurisdiction [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 586 (S.B. 611), § 1, effective June 18, 1999.

Sec. 54.953. Powers and Duties [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 586 (S.B. 611), § 1, effective June 18, 1999.

Sec. 54.954. Masters in Criminal Cases [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 586 (S.B. 611), § 1, effective June 18, 1999.

Sec. 54.955. Judicial Immunity [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 586 (S.B. 611), § 1, effective June 18, 1999.

Sec. 54.956. Witnesses [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 586 (S.B. 611), § 1, effective June 18, 1999.

Sec. 54.957. Court Reporter [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 586 (S.B. 611), § 1, effective June 18, 1999.

Sec. 54.958. Costs of Magistrate [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 586 (S.B. 611), § 1, effective June 18, 1999.

Sec. 54.959. Sheriff [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 586 (S.B. 611), § 1, effective June 18, 1999.

Sec. 54.960. Clerk [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 586 (S.B. 611), § 1, effective June 18, 1999.

Sec. 54.961. Staff [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 586 (S.B. 611), § 1, effective June 18, 1999.

Secs. 54.962 to 54.969. [Reserved for expansion].

Subchapter Q

Criminal Law Magistrates In Travis County

Sec. 54.970. Application.

This subchapter applies to the district courts and the county courts at law that give preference to criminal cases in Travis County.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 979 (S.B. 1794), § 2, effective September 1, 2003.

Sec. 54.971. Appointment.

(a) The Commissioners Court of Travis County shall set the number of magistrates needed to perform the duties authorized by this subchapter.

(b) The judges of the district courts subject to this subchapter shall, with the consent and approval of the Commissioners Court of Travis County, jointly appoint the magistrates that will assist the district courts. Each magistrate's appointment under this subsection must be

made with the unanimous approval of the judges of the district courts subject to this subchapter.

(c) Except as provided by Subsection (e), if the number of magistrates is less than the number of the appointing judges, each magistrate shall serve equally in the courts of those judges.

(d) The judges of the county courts at law subject to this subchapter shall, with the consent and approval of the Commissioners Court of Travis County, jointly appoint the magistrates that will assist the county courts at law. Each magistrate's appointment under this subsection must be made with the unanimous approval of the judges of the county courts at law subject to this subchapter.

(e) In addition to the requirements of Subsection (b) or (d), a magistrate appointed to assist only one court must be approved by the judge of that court.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 849 (S.B. 1314), § 1, effective August 26, 1991; am. Acts 2003, 78th Leg., ch. 979 (S.B. 1794), § 3, effective September 1, 2003.

Sec. 54.972. Qualifications.

A magistrate must:

- (1) be a resident of this state and of Travis County; and
- (2) have been licensed to practice law in this state for at least four years.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 849 (S.B. 1314), § 1, effective August 26, 1991.

Sec. 54.973. Compensation.

(a) A magistrate is entitled to the salary determined by the Commissioners Court of Travis County.

(b) The salary may not be less than the salary authorized to be paid to a master for family law cases appointed under Subchapter A, Chapter 201, Family Code, unless a lesser salary is recommended by the judges described by Section 54.971 and approved by the commissioners court.

(c) The magistrate's salary is paid from the county fund available for payment of officers' salaries.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 849 (S.B. 1314), § 1, effective August 26, 1991; am. Acts 1999, 76th Leg., ch. 861 (H.B. 1896), § 1, effective September 1, 1999.

Sec. 54.974. Judicial Immunity.

A magistrate has the same judicial immunity as a district judge or a judge of a county court at law, as applicable.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 849 (S.B. 1314), § 1, effective August 26, 1991; am. Acts 2003, 78th Leg., ch. 979 (S.B. 1794), § 3, effective September 1, 2003.

Sec. 54.975. Termination of Services.

(a) A magistrate who serves a single court serves at the will of the judge.

(b) The services of a magistrate who serves more than one court may be terminated by a majority vote of the appointing judges.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 849 (S.B. 1314), § 1, effective August 26, 1991.

Sec. 54.976. Proceedings That May Be Referred.

(a) A judge may refer to a magistrate any criminal case

or matter relating to a criminal case for proceedings involving:

- (1) a negotiated plea of guilty or no contest and sentencing;
 - (2) a pretrial motion;
 - (3) an examining trial;
 - (4) a writ of habeas corpus;
 - (5) a bond forfeiture suit;
 - (6) issuance of search warrants;
 - (7) setting, setting conditions, modifying, revoking, and surrendering of bonds, including surety bonds;
 - (8) arraignment of defendants;
 - (9) a motion to increase or decrease a bond;
 - (10) a motion to revoke community supervision or to proceed to an adjudication;
 - (11) an issue of competency or a civil commitment under Chapter 46, 46B, or 46C, Code of Criminal Procedure, with or without a jury;
 - (12) a motion to modify community supervision;
 - (13) specialty court proceedings, including drug court proceedings, veterans treatment court proceedings, and driving while intoxicated court proceedings;
 - (14) an expunction or a petition for nondisclosure;
 - (15) an occupational driver's license;
 - (16) a waiver of extradition;
 - (17) the issuance of subpoenas and orders requiring the production of medical records, including records relating to mental health or substance abuse treatment; and
 - (18) any other matter the judge considers necessary and proper.
- (b) A magistrate may select a jury. A magistrate may not preside over a contested criminal trial on the merits, regardless of whether the trial is before a jury.
- (c) A judge may refer to a magistrate any proceeding involving an application for a protective order under Title 4, Family Code, or Section 17.292, Code of Criminal Procedure.
- (d) A judge may refer to a magistrate proceedings involving a grand jury, including issuance of grand jury subpoenas, receipt of grand jury reports on behalf of a district judge, the granting of a grand jury request to recess, motions to compel testimony, and discharge of a grand jury at the end of a term. A magistrate may not impanel a grand jury.

HISTORY: Amended by Acts 1993, 73rd Leg., ch. 413, Sec. 3, eff. Sept. 1, 1993; Enacted by Acts 1991, 72nd Leg., ch. 849 (S.B. 1314), § 1, effective August 26, 1991; am. Acts 2003, 78th Leg., ch. 979 (S.B. 1794), § 3, effective September 1, 2003; am. Acts 2011, 82nd Leg., ch. 864 (H.B. 3856), § 1, effective June 17, 2011; am. Acts 2015, 84th Leg., ch. 1205 (S.B. 1474), § 9, effective September 1, 2015.

Sec. 54.977. Order of Referral.

- (a) To refer one or more cases or matters to a magistrate, a judge must issue an order of referral specifying the magistrate's duties.
- (b) An order of referral may:
- (1) limit the powers of the magistrate and direct the magistrate to report only specific issues, do particular acts, or receive and report on evidence only;
 - (2) set the time and place for the hearing;
 - (3) prescribe a closing date for the hearing;

- (4) provide a date for filing the magistrate's findings;
 - (5) designate proceedings for more than one case over which the magistrate shall preside;
 - (6) direct the magistrate to call the court's docket; and
 - (7) set forth general powers and limitations of authority of the magistrate applicable to any case referred.
- (c) A judge may issue a general order of referral authorizing the magistrate to act on certain types of matters without requiring an order for each referral. Items that may be in the general order of referral include:
- (1) waivers of extradition;
 - (2) search warrants;
 - (3) bench warrants;
 - (4) grand jury subpoenas;
 - (5) subpoenas and orders requiring the production of medical records, including records relating to mental health and substance abuse treatment; and
 - (6) records and other matters relating to the grand jury.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 849 (S.B. 1314), § 1, effective August 26, 1991; am. Acts 2011, 82nd Leg., ch. 864 (H.B. 3856), § 2, effective June 17, 2011.

Sec. 54.978. Powers.

- (a) Except as limited by an order of referral, a magistrate to whom a case or matter related to a criminal case is referred may:
- (1) conduct hearings;
 - (2) hear evidence;
 - (3) compel production of relevant evidence;
 - (4) rule on admissibility of evidence;
 - (5) issue summons for the appearance of witnesses;
 - (6) examine witnesses;
 - (7) swear witnesses for hearings;
 - (8) make findings of fact on evidence;
 - (9) formulate conclusions of law;
 - (10) rule on pretrial motions;
 - (11) recommend the rulings, orders, or judgment to be made in a case;
 - (12) regulate proceedings in a hearing;
 - (13) in any case referred under Section 54.976(a)(1):
 - (A) accept a negotiated plea of guilty;
 - (B) enter a finding of guilt and impose or suspend sentence; or
 - (C) defer adjudication of guilty;
 - (14) notwithstanding Article 18.01(c), Code of Criminal Procedure, issue a search warrant under Article 18.02(a)(10), Code of Criminal Procedure;
 - (15) notwithstanding Article 18.01(h), Code of Criminal Procedure, issue a search warrant under Article 18.02(a)(12), Code of Criminal Procedure; and
 - (16) do any act and take any measure necessary and proper for the efficient performance of the duties required by the order of referral.
- (b) A magistrate may not enter a ruling on any issue of law or fact if that ruling could result in dismissal or require dismissal of a pending criminal prosecution, but the magistrate may make findings, conclusions, and recommendations on those issues. A magistrate may sign a motion to dismiss submitted by an attorney representing the state on cases referred to the magistrate or on dockets

called by the magistrate, and may consider unadjudicated cases at sentencing under Section 12.45, Penal Code.

(c) A magistrate has all of the powers of a magistrate under the laws of this state and may administer an oath for any purpose.

(d) A magistrate does not have authority under Subsection (a)(14) to issue a subsequent search warrant under Article 18.02(a)(10), Code of Criminal Procedure.

(e) In this subsection, “ESN reader,” “pen register,” and trap and trace device” have the meanings assigned by Article 18B.001, Code of Criminal Procedure, and “mobile tracking device has the meaning assigned by Article 18B.201, Code of Criminal Procedure. A magistrate may:

(1) notwithstanding Article 18B.051 or 18B.052, Code of Criminal Procedure, issue an order under Subchapter C, Chapter 18B, Code of Criminal Procedure, for the installation and use of:

- (A) a pen register;
- (B) an ESN reader;
- (C) a trap and trace device; or
- (D) equipment that combines the function of a pen register and a trap and trace device;

(2) issue an order to obtain access to stored communications under Article 18B.352, Code of Criminal Procedure; and

(3) notwithstanding Article 18B.203(a), Code of Criminal Procedure, issue an order for the installation and use of a mobile tracking device under Subchapter E, Chapter 18B, Code of Criminal Procedure.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 849 (S.B. 1314), § 1, effective August 26, 1991; am. Acts 2011, 82nd Leg., ch. 864 (H.B. 3856), § 3, effective June 17, 2011; am. Acts 2017, 85th Leg., ch. 1058 (H.B. 2931), § 3.08, effective January 1, 2019; am. Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 8.004, effective September 1, 2019.

Sec. 54.979. Record of Proceedings.

At the request of a party the court shall provide that the proceedings before the magistrate be recorded.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 849 (S.B. 1314), § 1, effective August 26, 1991.

Sec. 54.980. Witness.

(a) A witness who appears before a magistrate and is sworn is subject to the penalties for perjury provided by law.

(b) A referring court may issue attachment against and may fine or imprison a witness whose failure to appear after being summoned or whose refusal to answer questions has been certified to the court.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 849 (S.B. 1314), § 1, effective August 26, 1991.

Sec. 54.981. Papers Transmitted to the Judge.

(a) At the conclusion of the proceedings, a magistrate shall transmit to the referring court any papers relating to the case, including the magistrate’s findings, conclusions, orders, recommendations, or other action taken.

(b) A party has seven days after the date of the magistrate’s ruling to tender to the referring court any objections to the magistrate’s ruling on pretrial matters. The

referring court shall consider any objections before taking final action.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 849 (S.B. 1314), § 1, effective August 26, 1991.

Sec. 54.982. Judicial Action.

(a) A referring court may modify, correct, reject, reverse, or recommit for further information any action taken by the magistrate.

(b) If the court does not modify, correct, reject, reverse, or recommit an action of the magistrate, the action becomes the decree of the court.

(c) At the conclusion of each term during which the services of a magistrate are used, the referring court shall enter a decree on the minutes adopting the actions of the magistrate of which the court approves.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 849 (S.B. 1314), § 1, effective August 26, 1991.

Sec. 54.983. Costs of Magistrate. [Repealed effective January 1, 2020]

The court shall determine if the nonprevailing party is able to defray the costs of the magistrate. If the court determines that the nonprevailing party is able to pay those costs, the court shall tax the magistrate’s fees as cost against the nonprevailing party.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 849 (S.B. 1314), § 1, effective August 26, 1991; Repealed by Acts 2019, 86th Leg., ch. 1352 (S.B. 346), § 4.40(12), effective January 1, 2020.

Sec. 54.984. Criminal Law Magistrates.

(a) If a criminal law magistrate appointed under this subchapter is absent or unable to serve, the judge referring the case may appoint another criminal law magistrate to serve for the absent magistrate.

(b) A criminal law magistrate serving for another magistrate under this section has the powers and shall perform the duties of the magistrate for whom he is serving.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 849 (S.B. 1314), § 1, effective August 26, 1991.

Secs. 54.985 to 54.990. [Reserved for expansion].

Subchapter R

Criminal Law Magistrates In Webb County

Sec. 54.991. Appointment.

(a) The judges of the district courts in Webb County shall jointly appoint the number of criminal law magistrates set by the commissioners court.

(b) Each magistrate’s appointment must be unanimously approved by the judges.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 577 (H.B. 965), § 1, effective August 30, 1993.

Sec. 54.992. Qualifications.

A magistrate must be a resident of this state and Webb County.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 577 (H.B. 965), § 1, effective August 30, 1993.

Sec. 54.993. Compensation.

A magistrate is entitled to the salary determined by the commissioners court.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 577 (H.B. 965), § 1, effective August 30, 1993.

Sec. 54.994. Judicial Immunity.

A magistrate has the same judicial immunity as a district judge.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 577 (H.B. 965), § 1, effective August 30, 1993.

Sec. 54.995. Order of Referral.

(a) To refer one or more criminal cases to a magistrate, a judge must issue an order specifying the magistrate's duties.

(b) An order of referral may set forth general powers and limitations of authority of the magistrate that apply to any case referred.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 577 (H.B. 965), § 1, effective August 30, 1993.

Sec. 54.996. Powers.

(a) A judge may refer to a magistrate any criminal case for proceedings involving:

- (1) issuance of search warrants;
- (2) setting of bonds;
- (3) arraignment of defendants; and

(4) any other matter that is subject to the review of the judge.

(b) A magistrate may not preside over a contested trial on the merits, regardless of whether the trial is before a jury.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 577 (H.B. 965), § 1, effective August 30, 1993.

Sec. 54.997. Return to Referring Court; Findings.

After a hearing is concluded, the magistrate shall send to the referring court any papers related to the case, including the magistrate's findings, conclusions, orders, recommendations, or other action taken.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 577 (H.B. 965), § 1, effective August 30, 1993.

Sec. 54.998. Judicial Action.

(a) A referring court may modify, correct, reject, reverse, or recommit for further information any action taken by the magistrate.

(b) If the court does not modify, correct, reject, reverse, or recommit an action of the magistrate, the action becomes the decree of the court.

(c) At the conclusion of each term during which the services of a magistrate are used, the referring court shall enter a decree on the minutes adopting the actions of the magistrate of which the court approves.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 577 (H.B. 965), § 1, effective August 30, 1993.

Secs. 54.999 to 54.1000. [Reserved for expansion].*Subchapter S**Civil, Juvenile, and Criminal Law Associate
Judges In Fort Bend County
[Repealed]***Sec. 54.1001. Appointment [Repealed].**

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 42 (S.B. 415), § 1, effective May 7, 1997.

Sec. 54.1002. Qualifications [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 42 (S.B. 415), § 1, effective May 7, 1997.

Sec. 54.1003. Order of Appointment [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 42 (S.B. 415), § 1, effective May 7, 1997.

Sec. 54.1004. Compensation [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 42 (S.B. 415), § 1, effective May 7, 1997.

Sec. 54.1005. Judicial Immunity [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 42 (S.B. 415), § 1, effective May 7, 1997.

Sec. 54.1006. Termination of Employment [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 42 (S.B. 415), § 1, effective May 7, 1997.

Sec. 54.1007. Withdrawal of Appointment for Particular Court [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 42 (S.B. 415), § 1, effective May 7, 1997.

Sec. 54.1008. Proceedings That May Be Referred [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 42 (S.B. 415), § 1, effective May 7, 1997.

Sec. 54.1009. Cases That May Be Referred [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 42 (S.B. 415), § 1, effective May 7, 1997.

Sec. 54.1010. Method of Referral [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 42 (S.B. 415), § 1, effective May 7, 1997.

Sec. 54.1011. Duties and Powers [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 42 (S.B. 415), § 1, effective May 7, 1997.

Sec. 54.1012. Jury [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 42 (S.B. 415), § 1, effective May 7, 1997.

Sec. 54.1013. Court Reporter [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 42 (S.B. 415), § 1, effective May 7, 1997.

Sec. 54.1014. Failure to Comply with Summons or Oath [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 42 (S.B. 415), § 1, effective May 7, 1997.

Sec. 54.1015. Perjury [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 42 (S.B. 415), § 1, effective May 7, 1997.

Sec. 54.1016. Return to Referring Court; Findings [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 42 (S.B. 415), § 1, effective May 7, 1997.

Sec. 54.1017. Notice of Right to Appeal [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 42 (S.B. 415), § 1, effective May 7, 1997.

Sec. 54.1018. Appeal to Referring Court [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 42 (S.B. 415), § 1, effective May 7, 1997.

Sec. 54.1019. Court Action on Report [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 42 (S.B. 415), § 1, effective May 7, 1997.

Sec. 54.1020. Decree or Judgment [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 42 (S.B. 415), § 1, effective May 7, 1997.

Sec. 54.1021. Master in Chancery [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 42 (S.B. 415), § 1, effective May 7, 1997.

Sec. 54.1022. Referees [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(8), effective January 1, 2012.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 42 (S.B. 415), § 1, effective May 7, 1997.

Secs. 54.1023 to 54.1040. [Reserved for expansion].

Subchapter T

*Civil Law Associate Judges in Bexar County
[Repealed]*

Sec. 54.1041. Appointment [Renumbered].

Renumbered to Tex. Gov't Code § 54.1101 by Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003.

Sec. 54.1042. Qualifications [Renumbered].

Renumbered to Tex. Gov't Code § 54.1102 by Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003.

Sec. 54.1043. Compensation [Renumbered].

Renumbered to Tex. Gov't Code § 54.1103 by Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003.

Sec. 54.1044. Judicial Immunity [Renumbered].

Renumbered to Tex. Gov't Code § 54.1104 by Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003.

Sec. 54.1045. Termination of Employment [Renumbered].

Renumbered to Tex. Gov't Code § 54.1105 by Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003.

Sec. 54.1046. Proceedings That May Be Referred [Renumbered].

Renumbered to Tex. Gov't Code § 54.1106 by Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003.

Sec. 54.1047. Order of Referral [Renumbered].

Renumbered to Tex. Gov't Code § 54.1107 by Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003.

Sec. 54.1048. Powers [Renumbered].

Renumbered to Tex. Gov't Code § 54.1108 by Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003.

Sec. 54.1049. Notice of Hearing [Renumbered].

Renumbered to Tex. Gov't Code § 54.1109 by Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003.

Sec. 54.1050. Witnesses [Renumbered].

Renumbered to Tex. Gov't Code § 54.1110 by Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003.

Sec. 54.1051. Appointment [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(10), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 570 (H.B. 3192), § 1, effective September 1, 2001.

Sec. 54.1052. Qualifications [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(10), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 570 (H.B. 3192), § 1, effective September 1, 2001.

Sec. 54.1053. Order of Appointment [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(10), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 570 (H.B. 3192), § 1, effective September 1, 2001.

Sec. 54.1054. Compensation [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(10), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 570 (H.B. 3192), § 1, effective September 1, 2001.

Sec. 54.1055. Judicial Immunity [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(10), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 570 (H.B. 3192), § 1, effective September 1, 2001.

Sec. 54.1056. Termination of Employment [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(10), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 570 (H.B. 3192), § 1, effective September 1, 2001.

Sec. 54.1057. Cases That May Be Referred [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(10), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 570 (H.B. 3192), § 1, effective September 1, 2001.

Sec. 54.1058. Objection to Appointment [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(10), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 570 (H.B. 3192), § 1, effective September 1, 2001.

Sec. 54.1059. Method of Referral [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(10), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 570 (H.B. 3192), § 1, effective September 1, 2001.

Sec. 54.1060. Duties and Powers [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(10), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 570 (H.B. 3192), § 1, effective September 1, 2001.

Sec. 54.1061. Jury [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(10), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 570 (H.B. 3192), § 1, effective September 1, 2001.

Sec. 54.1062. Court Reporter [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(10), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 570 (H.B. 3192), § 1, effective September 1, 2001.

Sec. 54.1063. Failure to Comply with Summons or Oath [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(10), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 570 (H.B. 3192), § 1, effective September 1, 2001.

Sec. 54.1064. Perjury [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(10), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 570 (H.B. 3192), § 1, effective September 1, 2001.

Sec. 54.1065. Report [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(10), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 570 (H.B. 3192), § 1, effective September 1, 2001.

Sec. 54.1066. Notice of Right to Appeal [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(10), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 570 (H.B. 3192), § 1, effective September 1, 2001.

Sec. 54.1067. Order of Court [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(10), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 570 (H.B. 3192), § 1, effective September 1, 2001.

Sec. 54.1068. Appeal to Referring Court [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(10), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 570 (H.B. 3192), § 1, effective September 1, 2001.

Sec. 54.1069. Appellate Review [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(10), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 570 (H.B. 3192), § 1, effective September 1, 2001.

Sec. 54.1070. Judicial Action on Associate Judge's Report [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(10), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 570 (H.B. 3192), § 1, effective September 1, 2001.

Sec. 54.1071. Referees [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(10), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 570 (H.B. 3192), § 1, effective September 1, 2001.

Secs. 54.1072 to 54.1100. [Reserved for expansion].*Subchapter U**Magistrates in Brazos County
[Repealed]***Sec. 54.1101. Appointment [Repealed].**

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(11), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 954 (S.B. 1434), § 1, effective June 14, 2001; am. Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003 (renumbered from Sec. 54.1041).

Sec. 54.1102. Qualifications [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(11), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 954 (S.B. 1434), § 1, effective June 14, 2001; am. Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003 (renumbered from Sec. 54.1042).

Sec. 54.1103. Compensation [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(11), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 954 (S.B. 1434), § 1, effective June 14, 2001; am. Acts 2003, 78th Leg., ch. 1275

(H.B. 3506), § 2(56), effective September 1, 2003 (renumbered from Sec. 54.1043).

Sec. 54.1104. Judicial Immunity [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(11), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 954 (S.B. 1434), § 1, effective June 14, 2001; am. Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003 (renumbered from Sec. 54.1044).

Sec. 54.1105. Termination of Employment [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(11), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 954 (S.B. 1434), § 1, effective June 14, 2001; am. Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003 (renumbered from Sec. 54.1045).

Sec. 54.1106. Proceedings That May Be Referred [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(11), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 954 (S.B. 1434), § 1, effective June 14, 2001; am. Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003 (renumbered from Sec. 54.1046); am. Acts 2005, 79th Leg., ch. 1331 (H.B. 3541), § 2, effective September 1, 2005.

Sec. 54.1107. Order of Referral [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(11), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 954 (S.B. 1434), § 1, effective June 14, 2001; am. Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003 (renumbered from Sec. 54.1047).

Sec. 54.1108. Powers [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(11), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 954 (S.B. 1434), § 1, effective June 14, 2001; am. Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003 (renumbered from Sec. 54.1048).

Sec. 54.1109. Notice of Hearing [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(11), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 954 (S.B. 1434), § 1, effective June 14, 2001; am. Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003 (renumbered from Sec. 54.1049).

Sec. 54.1110. Witnesses [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(11), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 954 (S.B. 1434), § 1, effective June 14, 2001; am. Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003 (renumbered from Sec. 54.1050).

Sec. 54.1111. Record of Evidence [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(11), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 954 (S.B. 1434), § 1, effective June 14, 2001; am. Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003 (renumbered from Sec. 54.1051).

Sec. 54.1112. Report and Papers Transmitted to Judge [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(11), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 954 (S.B. 1434), § 1, effective June 14, 2001; am. Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003 (renumbered from Sec. 54.1052).

Sec. 54.1113. Hearing Before Judge [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(11), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 954 (S.B. 1434), § 1, effective June 14, 2001; am. Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003 (renumbered from Sec. 54.1053); am. Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 3(26), effective September 1, 2003.

Sec. 54.1114. Effect of Magistrate's Report Pending Appeal [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(11), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 954 (S.B. 1434), § 1, effective June 14, 2001; am. Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003 (renumbered from Sec. 54.1054).

Sec. 54.1115. Judicial Action [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(11), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 954 (S.B. 1434), § 1, effective June 14, 2001; am. Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003 (renumbered from Sec. 54.1055).

Sec. 54.1116. Costs of Magistrate [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(11), effective January 1, 2012.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 954 (S.B. 1434), § 1, effective June 14, 2001; am. Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(56), effective September 1, 2003 (renumbered from Sec. 54.1056).

Secs. 54.1117 to 54.1130. [Reserved for expansion].*Subchapter V**Associate Judges in Duval County
[Repealed]***Sec. 54.1131. Appointment [Repealed].**

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(12), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1150 (H.B. 3304), § 1, effective September 1, 2003.

Sec. 54.1132. Qualifications [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(12), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1150 (H.B. 3304), § 1, effective September 1, 2003.

Sec. 54.1133. Compensation [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(12), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1150 (H.B. 3304), § 1, effective September 1, 2003.

Sec. 54.1134. Private Practice [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(12), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1150 (H.B. 3304), § 1, effective September 1, 2003.

Sec. 54.1135. Termination of Services [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(12), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1150 (H.B. 3304), § 1, effective September 1, 2003.

Sec. 54.1136. Referral of Case [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(12), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1150 (H.B. 3304), § 1, effective September 1, 2003.

Sec. 54.1137. Order of Referral [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(12), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1150 (H.B. 3304), § 1, effective September 1, 2003.

Sec. 54.1138. Powers [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(12), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1150 (H.B. 3304), § 1, effective September 1, 2003.

Sec. 54.1139. Attendance of Bailiff [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(12), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1150 (H.B. 3304), § 1, effective September 1, 2003.

Sec. 54.1140. Witness [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(12), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1150 (H.B. 3304), § 1, effective September 1, 2003.

Sec. 54.1141. Report Transmitted to Court; Notice [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(12), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1150 (H.B. 3304), § 1, effective September 1, 2003.

Sec. 54.1142. Notice of Right to Appeal [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(12), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1150 (H.B. 3304), § 1, effective September 1, 2003.

Sec. 54.1143. Effect of Associate Judge's Report Pending Appeal [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(12), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1150 (H.B. 3304), § 1, effective September 1, 2003.

Sec. 54.1144. Judicial Action on Associate Judge's Report [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(12), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1150 (H.B. 3304), § 1, effective September 1, 2003.

Sec. 54.1145. Decree or Order of Court [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(12), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1150 (H.B. 3304), § 1, effective September 1, 2003.

Sec. 54.1146. Appeal to Referring Court [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(12), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1150 (H.B. 3304), § 1, effective September 1, 2003.

Sec. 54.1147. Appellate Review [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(12), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1150 (H.B. 3304), § 1, effective September 1, 2003.

Sec. 54.1148. Jury Trial Demanded [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(12), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1150 (H.B. 3304), § 1, effective September 1, 2003.

Sec. 54.1149. Inapplicability of Subchapter to Masters Appointed Under Rule 171 [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(12), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1150 (H.B. 3304), § 1, effective September 1, 2003.

Sec. 54.1150. Immunity [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(12), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1150 (H.B. 3304), § 1, effective September 1, 2003.

Sec. 54.1151. Court Reporter [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(12), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1150 (H.B. 3304), § 1, effective September 1, 2003.

Sec. 54.1152. Qualifications; Oath of Office [Renumbered].

Renumbered to Tex. Gov't Code § 54.1232 by Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(28), effective September 1, 2005.

Sec. 54.1153. Compensation [Renumbered].

Renumbered to Tex. Gov't Code § 54.1233 by Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(28), effective September 1, 2005.

Sec. 54.1154. Judicial Immunity [Renumbered].

Renumbered to Tex. Gov't Code § 54.1234 by Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(28), effective September 1, 2005.

Sec. 54.1155. Termination of Employment [Renumbered].

Renumbered to Tex. Gov't Code § 54.1235 by Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(28), effective September 1, 2005.

Sec. 54.1156. Jurisdiction; Responsibility; Powers [Renumbered].

Renumbered to Tex. Gov't Code § 54.1236 by Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(28), effective September 1, 2005.

Sec. 54.1157. Personnel, Equipment, and Office Space [Renumbered].

Renumbered to Tex. Gov't Code § 54.1237 by Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(28), effective September 1, 2005.

Secs. 54.1158 to 54.1170. [Reserved for expansion].

Subchapter W

Magistrates in Certain County Courts

Sec. 54.1171. Application of Subchapter.

This subchapter applies to a constitutional county court in a county with a population of 1.75 million or more.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 137 (S.B. 358), § 2, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(27), effective September 1, 2005 (renumbered from Sec. 54.1151); am. Acts 2011, 82nd Leg., ch. 148 (H.B. 734), § 5, effective September 1, 2011.

Sec. 54.1172. Appointment.

(a) The county judge may appoint one or more part-time or full-time magistrates to hear a matter alleging a violation of Section 25.093, Education Code, or alleging truant conduct under Section 65.003(a), Family Code.

(b) An appointment under Subsection (a) is subject to the approval of the commissioners court.

(c) A magistrate serves at the pleasure of the county judge.

(d) A magistrate appointed under Subsection (a) must complete every two years at least eight hours of continuing education conducted by the Texas Association of Counties, the State Bar of Texas, or the Texas Justice Court Training Center.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 137 (S.B. 358), § 2, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(27), effective September 1, 2005 (renumbered from Sec. 54.1152); am. Acts 2007, 80th Leg., ch. 667 (H.B. 1346), § 1, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 272 (S.B. 407), § 1, effective May 30, 2009; am. Acts 2015, 84th Leg., ch. 935 (H.B. 2398), § 32, effective September 1, 2015.

Sec. 54.1173. Qualifications.

A magistrate must:

- (1) be a citizen of this state;
- (2) be at least 25 years of age; and
- (3) have been licensed to practice law in this state for at least four years preceding the date of appointment.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 137 (S.B. 358), § 2, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(27), effective September 1, 2005 (renumbered from Sec. 54.1153).

Sec. 54.1174. Compensation.

A magistrate is entitled to the compensation set by the commissioners court. The compensation shall be paid from the general fund of the county.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 137 (S.B. 358), § 2, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(27), effective September 1, 2005 (renumbered from Sec. 54.1154).

Sec. 54.1175. Powers.

Except as limited by an order of the county judge, a magistrate appointed under this subchapter may:

- (1) conduct hearings and trials, including jury trials;
- (2) hear evidence;
- (3) compel production of relevant evidence, including books, papers, vouchers, documents, and other writings;
- (4) rule on admissibility of evidence;
- (5) issue summons and attachments for the appearance of witnesses;
- (6) examine witnesses;
- (7) swear witnesses for hearings and trials; and
- (8) perform any act and take any measure necessary and proper for the efficient performance of the duties assigned by the county judge.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 137 (S.B. 358), § 2, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(27), effective September 1, 2005 (renumbered from Sec. 54.1155).

Sec. 54.1176. Papers Transmitted to Judge.

(a) At the conclusion of a hearing, the magistrate shall transmit to the judge any papers relating to the case, including:

- (1) the magistrate's findings and recommendations; and

(2) a statement that notice of the findings and recommendations and of the right to a hearing before the judge has been given to all parties.

(b) The judge shall adopt, modify, or reject the magistrate's recommendations not later than the third working day after the date the judge receives the recommendations. If the judge does not take action in the time provided by this subsection, the recommendations of the magistrate are adopted by the judge.

(c) The judge shall send written notice of any modification or rejection of the magistrate's recommendations to each party to the case.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 137 (S.B. 358), § 2, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(27), effective September 1, 2005 (renumbered from Sec. 54.1156); am. Acts 2011, 82nd Leg., ch. 187 (S.B. 1242), § 1, effective September 1, 2011.

Sec. 54.1177. Judicial Immunity.

A magistrate appointed under this subchapter has the same judicial immunity as a district judge.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 187 (S.B. 1242), § 2, effective September 1, 2011.

Secs. 54.1178 to 54.1200. [Reserved for expansion].

Subchapter X

Criminal Law Magistrates in Harris County

[Repealed]

Sec. 54.1201. Definitions [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(13), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 954 (S.B. 1465), § 1, effective September 1, 2003.

Sec. 54.1202. Appointment [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(13), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 954 (S.B. 1465), § 1, effective September 1, 2003.

Sec. 54.1203. Qualifications [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(13), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 954 (S.B. 1465), § 1, effective September 1, 2003.

Sec. 54.1204. Compensation [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(13), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 954 (S.B. 1465), § 1, effective September 1, 2003.

Sec. 54.1205. Judicial Immunity [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(13), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 954 (S.B. 1465), § 1, effective September 1, 2003.

Sec. 54.1206. Termination of Services [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(13), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 954 (S.B. 1465), § 1, effective September 1, 2003.

Sec. 54.1207. Proceedings That May Be Referred [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(13), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 954 (S.B. 1465), § 1, effective September 1, 2003.

Sec. 54.1208. Order of Referral [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(13), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 954 (S.B. 1465), § 1, effective September 1, 2003.

Sec. 54.1209. Powers [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(13), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 954 (S.B. 1465), § 1, effective September 1, 2003.

Sec. 54.1210. Record of Proceedings [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(13), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 954 (S.B. 1465), § 1, effective September 1, 2003.

Sec. 54.1211. Witness [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(13), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 954 (S.B. 1465), § 1, effective September 1, 2003.

Sec. 54.1212. Papers Transmitted to the Judge [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(13), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 954 (S.B. 1465), § 1, effective September 1, 2003.

Sec. 54.1213. Judicial Action [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(13), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 954 (S.B. 1465), § 1, effective September 1, 2003.

Sec. 54.1214. Criminal Law Magistrates [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(13), effective January 1, 2012.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 954 (S.B. 1465), § 1, effective September 1, 2003.

Secs. 54.1215 to 54.1230. [Reserved for expansion].*Subchapter Y**Magistrates In Comal County***Sec. 54.1231. Authorization; Appointment; Elimination.**

(a) The Commissioners Court of Comal County may authorize the judges of the district and statutory county courts in Comal County to appoint one or more part-time or full-time magistrates to perform the duties authorized by this subchapter.

(b) The judges of the district and statutory county courts in Comal County by a unanimous vote may appoint magistrates as authorized by the Commissioners Court of Comal County.

(c) An order appointing a magistrate must be signed by the local presiding judge of the district courts serving Comal County, and the order must state:

- (1) the magistrate's name; and
- (2) the date the magistrate's employment is to begin.

(d) An authorized magistrate's position may be eliminated on a majority vote of the Commissioners Court of Comal County.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 42 (H.B. 935), § 1, effective May 15, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(28), effective September 1, 2005 (renumbered from Sec. 54.1151).

Sec. 54.1232. Qualifications; Oath of Office.

(a) To be eligible for appointment as a magistrate, a person must:

- (1) be a citizen of the United States;
- (2) have resided in Comal County for at least the two years preceding the person's appointment; and
- (3) be at least 30 years of age.

(b) A magistrate appointed under Section 54.1231 must take the constitutional oath of office required of appointed officers of this state.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 42 (H.B. 935), § 1, effective May 15, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(28), effective September 1, 2005 (renumbered from Sec. 54.1152); am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.002(5), effective September 1, 2005.

Sec. 54.1233. Compensation.

(a) A magistrate is entitled to the salary determined by the Commissioners Court of Comal County.

(b) A full-time magistrate's salary may not be less than that of a justice of the peace of Comal County as established by the annual budget of Comal County.

(c) A part-time magistrate's salary is equal to the per-hour salary of a justice of the peace. The per-hour salary is determined by dividing the annual salary by a 2000 work-hour year. The local administrative judge of the district courts serving Comal County shall approve the number of hours to be paid a part-time magistrate.

(d) The magistrate's salary is paid from the county fund available for payment of officers' salaries.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 42 (H.B. 935), § 1, effective May 15, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(28), effective September 1, 2005 (renumbered from Sec. 54.1153).

Sec. 54.1234. Judicial Immunity.

A magistrate has the same judicial immunity as a district judge.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 42 (H.B. 935), § 1, effective May 15, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(28), effective September 1, 2005 (renumbered from Sec. 54.1154).

Sec. 54.1235. Termination of Employment.

(a) A magistrate may be terminated by a majority vote of all the judges of the district and statutory county courts of Comal County.

(b) To terminate a magistrate's employment, the local administrative judge of the district courts serving Comal County must sign a written order of termination. The order must state:

- (1) the magistrate's name; and
- (2) the final date of the magistrate's employment.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 42 (H.B. 935), § 1, effective May 15, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(28), effective September 1, 2005 (renumbered from Sec. 54.1155).

Sec. 54.1236. Jurisdiction; Responsibility; Powers.

(a) The judges of the district or statutory county courts shall establish standing orders to be followed by a magistrate or parties appearing before a magistrate, as applicable.

(b) To the extent authorized by this subchapter and the standing orders, a magistrate has jurisdiction to exercise the authority granted by the judges of the district or statutory county courts.

(c) A magistrate has all of the powers of a magistrate under the laws of this state and may administer an oath for any purpose.

(d) A magistrate shall give preference to performing the duties of a magistrate under Article 15.17, Code of Criminal Procedure.

(e) A magistrate is authorized to:

- (1) set, adjust, and revoke bonds before the filing of an information or the return of an indictment;
- (2) conduct examining trials;
- (3) determine whether a defendant is indigent and appoint counsel for an indigent defendant;
- (4) issue search and arrest warrants;
- (5) issue emergency protective orders;
- (6) order emergency mental commitments; and
- (7) conduct initial juvenile detention hearings if approved by the Juvenile Board of Comal County.

(f) With the express authorization of a justice of the peace, a magistrate may exercise concurrent criminal jurisdiction with the justice of the peace to dispose as provided by law of cases filed in the precinct of the authorizing justice of the peace, except for a trial on the merits following a plea of not guilty.

(g) A magistrate may:

- (1) issue notices of the setting of a case for a hearing;
- (2) conduct hearings;
- (3) compel production of evidence;
- (4) hear evidence;
- (5) issue summons for the appearance of witnesses;
- (6) swear witnesses for hearings;

(7) regulate proceedings in a hearing; and

(8) perform any act and take any measure necessary and proper for the efficient performance of the duties required by the magistrate's jurisdiction and authority.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 42 (H.B. 935), § 1, effective May 15, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(28), effective September 1, 2005 (renumbered from Sec. 54.1156).

Sec. 54.1237. Personnel, Equipment, and Office Space.

The Commissioners Court of Comal County shall provide:

- (1) personnel for the legal or clerical functions necessary to perform the magistrate's duties authorized by this chapter; and
- (2) sufficient equipment and office space for the magistrate and personnel to perform the magistrate's essential functions.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 42 (H.B. 935), § 1, effective May 15, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(28), effective September 1, 2005 (renumbered from Sec. 54.1157).

Secs. 54.1238 to 54.1350. [Reserved for expansion].*Subchapter BB**Criminal Law Hearing Officers in Cameron County***Sec. 54.1351. Application of Subchapter.**

This subchapter applies to Cameron County.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 767 (H.B. 3485), § 1, effective September 1, 2005.

Sec. 54.1352. Appointment.

(a) A majority of the members of a board composed of the judges of the district courts and statutory county courts of Cameron County may appoint not more than two criminal law hearing officers to perform the duties authorized by this subchapter.

(b) A criminal law hearing officer appointed under this subchapter serves at the pleasure of the board and may be terminated at any time in the same manner as appointed.

(c) A criminal law hearing officer is subject to proceedings under Section 1-a, Article V, Texas Constitution.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 767 (H.B. 3485), § 1, effective September 1, 2005.

Sec. 54.1353. Qualifications.

To be eligible for appointment as a criminal law hearing officer under this subchapter, a person must:

- (1) be a resident of Cameron County;
- (2) be eligible to vote in this state and in Cameron County;
- (3) be at least 30 years of age;
- (4) be a licensed attorney with at least four years' experience; and
- (5) have the other qualifications required by the board.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 767 (H.B. 3485), § 1, effective September 1, 2005.

Sec. 54.1354. Compensation.

(a) A criminal law hearing officer is entitled to a salary in the amount set by the commissioners court.

(b) The salary is paid from the county fund available for payment of officers' salaries.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 767 (H.B. 3485), § 1, effective September 1, 2005.

Sec. 54.1355. Oath.

A criminal law hearing officer must take the constitutional oath of office required of appointed officers of this state.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 767 (H.B. 3485), § 1, effective September 1, 2005.

Sec. 54.1356. Criminal Jurisdiction.

(a) A criminal law hearing officer appointed under this subchapter has limited concurrent jurisdiction over criminal cases filed in the district courts, statutory county courts, and justice courts of the county. The jurisdiction of the criminal law hearing officer is limited to:

(1) determining probable cause for further detention of any person detained on a criminal complaint, information, or indictment filed in the district courts, statutory county courts, or justice courts of the county;

(2) committing the defendant to jail, discharging the defendant from custody, or admitting the defendant to bail, as the law and facts of the case require;

(3) issuing search warrants and arrest warrants as provided by law for magistrates;

(4) as to criminal cases filed in justice courts, disposing of cases as provided by law, other than by trial, and collecting fines and enforcing judgments and orders of the justice courts in criminal cases;

(5) hearing, considering, and ruling on writs of habeas corpus filed under Article 17.151, Code of Criminal Procedure;

(6) on motion of the district attorney:

(A) dismissing a criminal case when the arresting agency has not timely filed the offense report with the district attorney; and

(B) reducing the amount of bond on prisoners held at the county jail whose cases have not been filed in a district court or a statutory county court; and

(7) presiding over an extradition proceeding under Article 51.13, Code of Criminal Procedure.

(b) This section does not limit or impair the jurisdiction of the court in which the complaint, information, or indictment is filed to review or alter the decision of the criminal law hearing officer.

(c) In a felony or misdemeanor case punishable by incarceration in the county jail, a criminal law hearing officer may not dismiss the case, enter a judgment of acquittal or guilt, or pronounce sentence.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 767 (H.B. 3485), § 1, effective September 1, 2005; am. Acts 2009, 81st Leg., ch. 953 (H.B. 3417), § 1, effective September 1, 2009; am. Acts 2015, 84th Leg., ch. 743 (H.B. 1774), § 1, effective September 1, 2015; am. Acts 2015, 84th Leg., ch. 1182 (S.B. 1139), § 6.02(a), effective September 1, 2015.

Sec. 54.1357. Mental Health Jurisdiction.

The judges of the statutory county courts of Cameron County may authorize a criminal law hearing officer to

serve the probate courts of Cameron County as necessary to hear emergency mental health matters under Chapter 573, Health and Safety Code. A criminal law hearing officer has concurrent limited jurisdiction with the probate courts of the county to hear emergency mental health matters under Chapter 573, Health and Safety Code. This section does not impair the jurisdiction of the probate courts to review or alter the decision of the criminal law hearing officer.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 767 (H.B. 3485), § 1, effective September 1, 2005.

Sec. 54.1358. Duties and Powers.

(a) A criminal law hearing officer shall inform a person arrested of the warnings described by Article 15.17, Code of Criminal Procedure.

(b) A criminal law hearing officer may determine the amount of bail and grant bail under Chapter 17, Code of Criminal Procedure, and as otherwise provided by law.

(c) A criminal law hearing officer may issue a magistrate's order for emergency apprehension and detention under Chapter 573, Health and Safety Code, if authorized by the judges of the statutory county courts of Cameron County and if the criminal law hearing officer makes each finding required by Section 573.012(b), Health and Safety Code.

(d) The criminal law hearing officer shall be available, within the time provided by law following a defendant's arrest, to determine probable cause for further detention, administer warnings, inform the accused of the pending charges, and determine all matters pertaining to bail. Criminal law hearing officers shall be available to review and issue search warrants and arrest warrants as provided by law.

(e) A criminal law hearing officer may dispose of criminal cases filed in the justice courts as provided by law, other than by trial, and collect fines and enforce the judgments and orders of the justice courts in criminal cases.

(f) In accordance with Article 26.13, Code of Criminal Procedure, a criminal law hearing officer may accept a plea of guilty or nolo contendere.

(g) A criminal law hearing officer may determine whether a defendant is indigent and appoint counsel for an indigent defendant.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 767 (H.B. 3485), § 1, effective September 1, 2005; am. Acts 2015, 84th Leg., ch. 743 (H.B. 1774), § 2, effective September 1, 2015; am. Acts 2015, 84th Leg., ch. 1182 (S.B. 1139), § 6.02(b), effective September 1, 2015.

Sec. 54.1359. Judicial Immunity.

A criminal law hearing officer has the same judicial immunity as a district judge, statutory county court judge, and justice of the peace.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 767 (H.B. 3485), § 1, effective September 1, 2005.

Sec. 54.1360. Sheriff.

On request of a criminal law hearing officer appointed under this subchapter, the sheriff, in person or by deputy, shall assist the criminal law hearing officer.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 767 (H.B. 3485), § 1, effective September 1, 2005.

Sec. 54.1361. Clerk.

The district clerk shall perform the statutory duties necessary for the criminal law hearing officers appointed under this subchapter in cases filed in a district court or a statutory county court. A person designated to serve as a clerk of a justice court shall perform the statutory duties necessary for cases filed in a justice court.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 767 (H.B. 3485), § 1, effective September 1, 2005.

Sec. 54.1362. Proceedings That May Be Referred.

A district judge or a county court at law judge may refer to a criminal law hearing officer any criminal case for proceedings involving:

- (1) a bond forfeiture;
- (2) the arraignment of defendants;
- (3) the determination of whether a defendant is indigent and the appointment of counsel for an indigent defendant; and
- (4) a negotiated plea of guilty or nolo contendere before the court, in accordance with Article 26.13, Code of Criminal Procedure.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 743 (H.B. 1774), § 3, effective September 1, 2015; Enacted by Acts 2015, 84th Leg., ch. 1182 (S.B. 1139), § 6.02(c), effective September 1, 2015.

Secs. 54.1363 to 54.1500. [Reserved for expansion].

Subchapter CC

*Magistrates in McLennan County
[Repealed]*

Sec. 54.1511. Appointment [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(14), effective January 1, 2012.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 955 (H.B. 4039), § 1, effective June 15, 2007.

Sec. 54.1512. Qualification [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(14), effective January 1, 2012.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 955 (H.B. 4039), § 1, effective June 15, 2007.

Sec. 54.1513. Compensation [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(14), effective January 1, 2012.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 955 (H.B. 4039), § 1, effective June 15, 2007.

Sec. 54.1514. Judicial Immunity [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(14), effective January 1, 2012.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 955 (H.B. 4039), § 1, effective June 15, 2007.

Sec. 54.1515. Powers [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(14), effective January 1, 2012.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 955 (H.B. 4039), § 1, effective June 15, 2007.

Secs. 54.1516 to 54.1700. [Reserved for expansion].

Subchapter DD

Burnet County Criminal Magistrates

Sec. 54.1501. Appointment.

(a) The Commissioners Court of Burnet County may select magistrates to serve the courts of Burnet County having jurisdiction in criminal matters.

(b) The commissioners court shall establish the minimum qualifications, salary, benefits, and other compensation of each magistrate position and shall determine whether the position is full-time or part-time. The qualifications must require the magistrate to:

- (1) have served as a justice of the peace or municipal court judge; or
- (2) be an attorney licensed in this state.

(c) A magistrate appointed under this section serves at the pleasure of the commissioners court.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 863 (H.B. 3844), § 1, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 22.001(19), effective September 1, 2013 (renumbered from Sec. 54.1951).

Sec. 54.1502. Jurisdiction.

A magistrate has concurrent criminal jurisdiction with the judges of the justice of the peace courts of Burnet County.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 863 (H.B. 3844), § 1, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 22.001(19), effective September 1, 2013 (renumbered from Sec. 54.1952).

Sec. 54.1503. Powers and Duties.

(a) The Commissioners Court of Burnet County shall establish the powers and duties of a magistrate appointed under this subchapter. Except as otherwise provided by the commissioners court, a magistrate has the powers of a magistrate under the Code of Criminal Procedure and other laws of this state and may administer an oath for any purpose.

(b) A magistrate shall give preference to performing the duties of a magistrate under Article 15.17, Code of Criminal Procedure.

(c) The commissioners court may designate one or more magistrates to hold regular hearings to:

- (1) give admonishments;
- (2) set and review bail and conditions of release;
- (3) appoint legal counsel; and
- (4) determine other routine matters relating to pre-indictment or pending cases within those courts' jurisdiction.

(d) In the hearings provided under Subsection (c), a magistrate shall give preference to the case of an individual held in county jail.

(e) A magistrate may inquire into a defendant's intended plea to the charge and set the case for an appropriate hearing before a judge or master.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 863 (H.B. 3844), § 1, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 22.001(19), effective September 1, 2013 (renumbered from Sec. 54.1953).

Sec. 54.1504. Judicial Immunity.

A magistrate has the same judicial immunity as a district judge.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 863 (H.B. 3844), § 1, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 22.001(19), effective September 1, 2013 (renumbered from Sec. 54.1954).

Sec. 54.1505. Witnesses.

(a) A witness who is sworn and who appears before a magistrate is subject to the penalties for perjury and aggravated perjury provided by law.

(b) A referring court may fine or imprison a witness or other court participant for failure to appear after being summoned, refusal to answer questions, or other acts of direct contempt before a magistrate.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 863 (H.B. 3844), § 1, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 22.001(19), effective September 1, 2013 (renumbered from Sec. 54.1955).

Secs. 54.1506 to 54.1510. [Reserved for expansion].

Subchapter FF

*Criminal Law Magistrates in Nueces County
[Repealed]*

Sec. 54.1701. Authorization; Appointment; Elimination [Renumbered].

Renumbered to Tex. Gov't Code § 54.101 by Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(25), effective September 1, 2007.

Sec. 54.1702. Qualifications [Renumbered].

Renumbered to Tex. Gov't Code § 54.102 by Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(25), effective September 1, 2007.

Sec. 54.1703. Compensation [Renumbered].

Renumbered to Tex. Gov't Code § 54.103 by Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(25), effective September 1, 2007.

Sec. 54.1704. Judicial Immunity [Renumbered].

Renumbered to Tex. Gov't Code § 54.104 by Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(25), effective September 1, 2007.

Sec. 54.1705. Jurisdiction; Responsibility; Powers [Renumbered].

Renumbered to Tex. Gov't Code § 54.105 by Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(25), effective September 1, 2007.

Secs. 54.1706 to 54.1780. [Reserved for expansion].

Sec. 54.1781. Application [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(15), effective January 1, 2012.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1141 (H.B. 4107), § 2, effective September 1, 2007.

Sec. 54.1782. Appointment; Compensation [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(15), effective January 1, 2012.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1141 (H.B. 4107), § 2, effective September 1, 2007.

Sec. 54.1783. Eligibility for Appointment [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(15), effective January 1, 2012.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1141 (H.B. 4107), § 2, effective September 1, 2007.

Sec. 54.1784. Judicial Immunity [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(15), effective January 1, 2012.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1141 (H.B. 4107), § 2, effective September 1, 2007.

Sec. 54.1785. Staff for Magistrate [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(15), effective January 1, 2012.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1141 (H.B. 4107), § 2, effective September 1, 2007.

Sec. 54.1786. Proceedings That May Be Referred [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(15), effective January 1, 2012.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1141 (H.B. 4107), § 2, effective September 1, 2007.

Sec. 54.1787. Powers [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(15), effective January 1, 2012.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1141 (H.B. 4107), § 2, effective September 1, 2007.

Sec. 54.1788. Dismissal [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(15), effective January 1, 2012.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1141 (H.B. 4107), § 2, effective September 1, 2007.

Sec. 54.1789. Termination of Services [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(15), effective January 1, 2012.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1141 (H.B. 4107), § 2, effective September 1, 2007.

Sec. 54.1790. Absence of Magistrate [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(15), effective January 1, 2012.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1141 (H.B. 4107), § 2, effective September 1, 2007.

Sec. 54.1791. Record of Proceedings [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(15), effective January 1, 2012.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1141 (H.B. 4107), § 2, effective September 1, 2007.

Sec. 54.1792. Papers Transmitted to Judge [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(15), effective January 1, 2012.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1141 (H.B. 4107), § 2, effective September 1, 2007.

Sec. 54.1793. Judicial Action [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(15), effective January 1, 2012.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1141 (H.B. 4107), § 2, effective September 1, 2007.

Sec. 54.1794. Pretrial Diversion [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(15), effective January 1, 2012.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1141 (H.B. 4107), § 2, effective September 1, 2007.

Secs. 54.1795 to 54.1800. [Reserved for expansion].*Subchapter GG**Magistrates for Drug Court Programs***Sec. 54.1801. Definition.**

In this subchapter, “drug court” or “drug court program” has the meaning assigned by Section 123.001.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 625 (H.B. 530), § 9, effective June 15, 2007; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 2.05, effective September 1, 2013.

Sec. 54.1802. Applicability of Subchapter.

This subchapter applies to each district court and statutory county court with criminal jurisdiction in this state. If a provision of this subchapter conflicts with a specific provision for a particular district court or statutory county court, the specific provision controls.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 625 (H.B. 530), § 9, effective June 15, 2007.

Sec. 54.1803. Appointment.

(a) The judges of the district courts of a county hearing criminal cases and the judges of the statutory county courts with criminal jurisdiction in a county, with the consent and approval of the commissioners court of the county, may appoint the number of magistrates set by the commissioners court to perform the duties associated with

the administration of drug courts as authorized by this subchapter.

(b) Each magistrate’s appointment must be made with the approval of the majority of the district court or statutory county court judges described in Subsection (a), as applicable.

(c) A magistrate appointed under this section serves at the will of a majority of the appointing judges.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 625 (H.B. 530), § 9, effective June 15, 2007.

Sec. 54.1804. Qualifications.

A magistrate must:

(1) be a resident of this state and of the county in which the magistrate is appointed to serve under this subchapter; and

(2) have been licensed to practice law in this state for at least four years.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 625 (H.B. 530), § 9, effective June 15, 2007.

Sec. 54.1805. Compensation.

A magistrate is entitled to the salary determined by the county commissioners court.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 625 (H.B. 530), § 9, effective June 15, 2007.

Sec. 54.1806. Judicial Immunity.

A magistrate has the same judicial immunity as a judge of a district court or statutory county court appointing the magistrate.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 625 (H.B. 530), § 9, effective June 15, 2007.

Sec. 54.1807. Proceedings That May Be Referred.

(a) A district judge or judge of a statutory county court with criminal jurisdiction may refer to a magistrate a criminal case for drug court proceedings.

(b) A magistrate may not preside over a contested trial on the merits, regardless of whether the trial is before a jury.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 625 (H.B. 530), § 9, effective June 15, 2007.

Sec. 54.1808. Order of Referral.

(a) To refer one or more cases to a drug court magistrate, a district judge or judge of a statutory county court with criminal jurisdiction must issue an order of referral specifying the magistrate’s duties.

(b) An order of referral may:

(1) limit the powers of the magistrate and direct the magistrate to report on specific issues and perform particular acts;

(2) set the time and place for the hearing;

(3) provide a date for filing the magistrate’s findings;

(4) designate proceedings for more than one case over which the magistrate shall preside; and

(5) set forth general powers and limitations of authority of the magistrate applicable to any case referred.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 625 (H.B. 530), § 9, effective June 15, 2007.

Sec. 54.1809. Powers.

Except as limited by an order of referral, a magistrate to whom a drug court case is referred may perform any act and take any measure necessary and proper for the efficient performance of the duties assigned by the district or statutory county court judge.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 625 (H.B. 530), § 9, effective June 15, 2007.

Secs. 54.1810 to 54.1850. [Reserved for expansion].

Subchapter HH

Brazoria County Criminal Magistrates

Sec. 54.1851. Appointment.

(a) The Commissioners Court of Brazoria County may select magistrates to serve the courts of Brazoria County having jurisdiction in criminal matters.

(b) The commissioners court shall establish the minimum qualifications, salary, benefits, and other compensation of each magistrate position and shall determine whether the position is full-time or part-time. The qualifications must require the magistrate to have served as a justice of the peace or be an attorney licensed in this state.

(c) A magistrate appointed under this section serves at the pleasure of the commissioners court.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 646 (H.B. 1750), § 1, effective June 19, 2009.

Sec. 54.1852. Jurisdiction.

A magistrate has concurrent criminal jurisdiction with the judges of the justice of the peace courts of Brazoria County.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 646 (H.B. 1750), § 1, effective June 19, 2009.

Sec. 54.1853. Powers and Duties.

(a) The Commissioners Court of Brazoria County shall establish the powers and duties of a magistrate appointed under this subchapter. Except as otherwise provided by the commissioners court, a magistrate has the powers of a magistrate under the Code of Criminal Procedure and other laws of this state and may administer an oath for any purpose.

(b) A magistrate shall give preference to performing the duties of a magistrate under Article 15.17, Code of Criminal Procedure.

(c) The commissioners court may designate one or more magistrates to hold regular hearings to:

- (1) give admonishments;
- (2) set and review bail and conditions of release;
- (3) appoint legal counsel; and
- (4) determine other routine matters relating to pre-indictment or pending cases within those courts' jurisdiction.

(d) In the hearings provided under Subsection (c), a magistrate shall give preference to the case of an individual held in county jail.

(e) A magistrate may inquire into a defendant's intended plea to the charge and set the case for an appropriate hearing before a judge or master.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 646 (H.B. 1750), § 1, effective June 19, 2009.

Sec. 54.1854. Judicial Immunity.

A magistrate has the same judicial immunity as a district judge.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 646 (H.B. 1750), § 1, effective June 19, 2009.

Sec. 54.1855. Witnesses.

(a) A witness who is sworn and who appears before a magistrate is subject to the penalties for perjury and aggravated perjury provided by law.

(b) A referring court may fine or imprison a witness or other court participant for failure to appear after being summoned, refusal to answer questions, or other acts of direct contempt before a magistrate.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 646 (H.B. 1750), § 1, effective June 19, 2009.

Secs. 54.1856 to 54.1900. [Reserved for expansion].

Subchapter II

*Associate Judges in Brazoria County
[Repealed]*

Sec. 54.1901. Application [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(16), effective January 1, 2012.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 964 (H.B. 3554), § 1, effective June 19, 2009.

Sec. 54.1902. Appointment [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(16), effective January 1, 2012.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 964 (H.B. 3554), § 1, effective June 19, 2009.

Sec. 54.1903. Powers [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(16), effective January 1, 2012.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 964 (H.B. 3554), § 1, effective June 19, 2009.

Sec. 54.1904. Proceedings That May Be Referred [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(16), effective January 1, 2012.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 964 (H.B. 3554), § 1, effective June 19, 2009.

Sec. 54.1905. Judicial Immunity [Repealed].

Repealed by Acts 2011, 82nd Leg., 1st. C.S., ch. 3 (H.B. 79), § 6.11(16), effective January 1, 2012.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 964 (H.B. 3554), § 1, effective June 19, 2009.

*Subchapter JJ**Magistrates in Certain Counties***Sec. 54.1951. Application of Subchapter.**

This subchapter applies to a constitutional county court in a county that:

- (1) has a population of more than 585,000; and
- (2) is contiguous to a county with a population of at least four million.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 995 (H.B. 2132), § 1, effective June 17, 2011.

Sec. 54.1952. Appointment.

(a) The county judge may appoint one or more part-time or full-time magistrates to hear a matter alleging a violation of Section 25.093, Education Code, or alleging truant conduct under Section 65.003(a), Family Code, referred to the magistrate by a court having jurisdiction over the matter.

(b) An appointment under Subsection (a) is subject to the approval of the commissioners court.

(c) A magistrate serves at the pleasure of the county judge.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 995 (H.B. 2132), § 1, effective June 17, 2011; am. Acts 2015, 84th Leg., ch. 935 (H.B. 2398), § 33, effective September 1, 2015.

Sec. 54.1953. Qualifications.

A magistrate must:

- (1) be a citizen of this state;
- (2) have resided in the county for at least six months before the date of the appointment; and
- (3) have:
 - (A) served as a justice of the peace for at least four years before the date of appointment; or
 - (B) been licensed to practice law in this state for at least four years before the date of appointment.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 995 (H.B. 2132), § 1, effective June 17, 2011.

Sec. 54.1954. Compensation.

A magistrate is entitled to the compensation set by the commissioners court. The compensation shall be paid from the general fund of the county.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 995 (H.B. 2132), § 1, effective June 17, 2011.

Sec. 54.1955. Powers.

(a) Except as limited by an order of the county judge, a magistrate appointed under this subchapter may:

- (1) conduct hearings;
- (2) hear evidence;
- (3) issue summons for the appearance of witnesses;
- (4) examine witnesses;
- (5) swear witnesses for hearings;
- (6) recommend rulings or orders or a judgment in a case;
- (7) regulate proceedings in a hearing;
- (8) accept a plea of guilty or nolo contendere in a case alleging a violation of Section 25.093, Education Code,

and assess a fine or court costs or order community service in satisfaction of a fine or costs in accordance with Article 45.049, Code of Criminal Procedure;

(9) for a violation of Section 25.093, Education Code, enter an order suspending a sentence or deferring a final disposition that includes at least one of the requirements listed in Article 45.051, Code of Criminal Procedure;

(10) for an uncontested adjudication of truant conduct under Section 65.003, Family Code, accept a plea to the petition or a stipulation of evidence, and take any other action authorized under Chapter 65, Family Code; and

(11) perform any act and take any measure necessary and proper for the efficient performance of the duties required by the referral order, including the entry of an order that includes at least one of the remedial options in Section 65.103, Family Code.

(b) With respect to an issue of law or fact the ruling on which could result in the dismissal of a prosecution under Section 25.093, Education Code, or a case of truant conduct under Section 65.003, Family Code, a magistrate may not rule on the issue but may make findings, conclusions, and recommendations on the issue.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 995 (H.B. 2132), § 1, effective June 17, 2011; am. Acts 2015, 84th Leg., ch. 935 (H.B. 2398), § 34, effective September 1, 2015.

Sec. 54.1956. Not Guilty Plea Entered or Denial of Alleged Conduct.

(a) On entry of a not guilty plea for a violation of Section 25.093, Education Code, the magistrate shall refer the case back to the referring court for all further pretrial proceedings and a full trial on the merits before the court or a jury.

(b) On denial by a child of truant conduct, as defined by Section 65.003(a), Family Code, the magistrate shall refer the case to the appropriate truancy court for adjudication.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 995 (H.B. 2132), § 1, effective June 17, 2011; am. Acts 2015, 84th Leg., ch. 935 (H.B. 2398), § 35, effective September 1, 2015.

Sec. 54.1957. Papers Transmitted to Judge.

(a) At the conclusion of a hearing, the magistrate shall transmit to the judge any papers relating to the case, including:

- (1) the magistrate's findings and recommendations;
- (2) a statement that notice of the findings and recommendations and of the right to a hearing before the judge has been given to all parties; and
- (3) all other documents requested by the referring judge.

(b) Unless the judge adopts, modifies, or rejects the magistrate's findings or recommendations not later than the fifth working day after the date the judge receives the findings or recommendations, a magistrate's finding or recommendation is final for appeal purposes.

(c) The judge shall send written notice of any modification or rejection of the magistrate's findings or recommendations to each party to the case and the attorney representing the state not later than the fifth day after the date of the modification or rejection.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 995 (H.B. 2132), § 1, effective June 17, 2011.

Subchapter KK

Magistrates in Guadalupe County

Sec. 54.2001. Authorization; Appointment; Elimination.

(a) The Commissioners Court of Guadalupe County may authorize the judges of the district and statutory county courts in Guadalupe County to appoint one or more part-time or full-time magistrates to perform the duties authorized by this subchapter.

(b) The judges of the district and statutory county courts in Guadalupe County by a unanimous vote may appoint magistrates as authorized by the Commissioners Court of Guadalupe County.

(c) An order appointing a magistrate must be signed by the local presiding judge of the district courts serving Guadalupe County, and the order must state:

- (1) the magistrate's name; and
- (2) the date the magistrate's employment is to begin.

(d) An authorized magistrate's position may be eliminated on a majority vote of the Commissioners Court of Guadalupe County.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1059 (H.B. 3153), § 3.01, effective September 1, 2013.

Sec. 54.2002. Qualifications; Oath of Office.

(a) To be eligible for appointment as a magistrate, a person must:

- (1) be a citizen of the United States;
- (2) have resided in Guadalupe County for at least the two years preceding the person's appointment; and
- (3) be at least 30 years of age.

(b) A magistrate appointed under Section 54.2001 must take the constitutional oath of office required of appointed officers of this state.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1059 (H.B. 3153), § 3.01, effective September 1, 2013.

Sec. 54.2003. Compensation.

(a) A magistrate is entitled to the salary determined by the Commissioners Court of Guadalupe County.

(b) A full-time magistrate's salary may not be less than that of a justice of the peace of Guadalupe County as established by the annual budget of Guadalupe County.

(c) A part-time magistrate's salary is equal to the per-hour salary of a justice of the peace. The per-hour salary is determined by dividing the annual salary by a 2,000 work-hour year. The local administrative judge of the district courts serving Guadalupe County shall approve the number of hours for which a part-time magistrate is to be paid.

(d) The magistrate's salary is paid from the county fund available for payment of officers' salaries.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1059 (H.B. 3153), § 3.01, effective September 1, 2013.

Sec. 54.2004. Judicial Immunity.

A magistrate has the same judicial immunity as a district judge.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1059 (H.B. 3153), § 3.01, effective September 1, 2013.

Sec. 54.2005. Termination of Employment.

(a) A magistrate may be terminated by a majority vote of all the judges of the district and statutory county courts of Guadalupe County.

(b) To terminate a magistrate's employment, the local administrative judge of the district courts serving Guadalupe County must sign a written order of termination. The order must state:

- (1) the magistrate's name; and
- (2) the final date of the magistrate's employment.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1059 (H.B. 3153), § 3.01, effective September 1, 2013.

Sec. 54.2006. Jurisdiction; Responsibility; Powers.

(a) The judges of the district or statutory county courts shall establish standing orders to be followed by a magistrate or parties appearing before a magistrate, as applicable.

(b) To the extent authorized by this subchapter and the standing orders, a magistrate has jurisdiction to exercise the authority granted by the judges of the district or statutory county courts.

(c) A magistrate has all of the powers of a magistrate under the laws of this state and may administer an oath for any purpose.

(d) A magistrate shall give preference to performing the duties of a magistrate under Article 15.17, Code of Criminal Procedure.

(e) A magistrate is authorized to:

- (1) set, adjust, and revoke bonds before the filing of an information or the return of an indictment;
- (2) conduct examining trials;
- (3) determine whether a defendant is indigent and appoint counsel for an indigent defendant;
- (4) issue search and arrest warrants;
- (5) issue emergency protective orders;
- (6) order emergency mental commitments; and
- (7) conduct initial juvenile detention hearings if approved by the Guadalupe County Juvenile Board.

(f) With the express authorization of a justice of the peace, a magistrate may exercise concurrent criminal jurisdiction with the justice of the peace to dispose as provided by law of cases filed in the precinct of the authorizing justice of the peace, except for a trial on the merits following a plea of not guilty.

(g) A magistrate may:

- (1) issue notices of the setting of a case for a hearing;
- (2) conduct hearings;
- (3) compel production of evidence;
- (4) hear evidence;
- (5) issue summons for the appearance of witnesses;
- (6) swear witnesses for hearings;
- (7) regulate proceedings in a hearing; and
- (8) perform any act and take any measure necessary and proper for the efficient performance of the duties required by the magistrate's jurisdiction and authority.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1059 (H.B. 3153), § 3.01, effective September 1, 2013.

Sec. 54.2007. Personnel, Equipment, and Office Space.

The Commissioners Court of Guadalupe County shall provide:

- (1) personnel for the legal or clerical functions necessary to perform the magistrate's duties authorized by this chapter; and
- (2) sufficient equipment and office space for the magistrate and personnel to perform the magistrate's essential functions.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1059 (H.B. 3153), § 3.01, effective September 1, 2013.

*Subchapter MM.**Magistrates in Collin County***Sec. 54.2201. Authorization; Appointment; Termination; Elimination.**

(a) The Commissioners Court of Collin County by majority vote may appoint one or more part-time or full-time magistrates to perform the duties authorized by this subchapter.

(b) An order appointing a magistrate must be signed by the county judge of Collin County, and the order must state:

- (1) the magistrate's name; and
- (2) the date the magistrate's employment begins.

(c) A magistrate may be terminated by a majority vote of the Commissioners Court of Collin County.

(d) An authorized magistrate's position may be eliminated on a majority vote of the Commissioners Court of Collin County.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.04, effective September 1, 2019.

Sec. 54.2202. Qualifications; Oath of Office.

(a) To be eligible for appointment as a magistrate, a person must:

- (1) be a citizen of the United States;
- (2) have resided in Collin County for at least the four years preceding the person's appointment; and
- (3) have been licensed to practice law in this state for at least four years.

(b) A magistrate appointed under Section 54.2201 must take the constitutional oath of office required of appointed officers of this state.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.04, effective September 1, 2019.

Sec. 54.2203. Compensation.

A magistrate is entitled to the compensation set by the Commissioners Court of Collin County. The compensation shall be paid from the general fund of the county.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.04, effective September 1, 2019.

Sec. 54.2204. Judicial Immunity.

A magistrate has the same judicial immunity as a district judge.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.04, effective September 1, 2019.

Sec. 54.2205. Proceeding That May Be Referred.

(a) The judge of a district court or county court at law or a justice of the peace may refer to a magistrate any case or matter relating to a case for proceedings involving:

- (1) a negotiated plea of guilty or no contest and sentencing before the court;
- (2) a bond forfeiture, remittitur, and related proceedings;
- (3) a pretrial motion;
- (4) a writ of habeas corpus;
- (5) an examining trial;
- (6) an occupational driver's license;
- (7) a petition for an order of expunction under Chapter 55, Code of Criminal Procedure;
- (8) an asset forfeiture hearing as provided by Chapter 59, Code of Criminal Procedure;
- (9) a petition for an order of nondisclosure of criminal history record information or an order of nondisclosure of criminal history record information that does not require a petition provided by Subchapter E-1, Chapter 411;
- (10) a motion to modify or revoke community supervision or to proceed with an adjudication of guilt;
- (11) setting conditions, modifying, revoking, and surrendering of bonds, including surety bonds;
- (12) specialty court proceedings;
- (13) a waiver of extradition;
- (14) selection of a jury; and
- (15) any other matter the judge or justice of the peace considers necessary and proper.

(b) A judge may refer to a magistrate a civil case arising out of Chapter 59, Code of Criminal Procedure, for any purpose authorized by that chapter, including issuing orders, accepting agreed judgments, enforcing judgments, and presiding over a case on the merits if a party has not requested a jury trial.

(c) A magistrate may accept a plea of guilty from a defendant charged with misdemeanor, felony, or both misdemeanor and felony offenses.

(d) If the magistrate is acting as an associate judge under Section 54.2216, the magistrate may hear any case referred under Section 54A.106.

(e) A magistrate may not preside over a criminal trial on the merits, regardless of whether the trial is before a jury.

(f) A magistrate may not hear any jury trial on the merits.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.04, effective September 1, 2019.

Sec. 54.2206. Order of Referral.

(a) To refer one or more cases to a magistrate, a judge or justice of the peace must issue an order of referral specifying the magistrate's duties.

(b) An order of referral may:

- (1) limit the powers of the magistrate and direct the magistrate to report only on specific issues, perform particular acts, or receive and report on evidence only;
- (2) set the time and place for the hearing;

- (3) prescribe a closing date for the hearing;
- (4) provide a date for filing the magistrate's findings;
- (5) designate proceedings for more than one case over which the magistrate shall preside;
- (6) direct the magistrate to call the court's docket; and
- (7) set forth general powers and limitations of authority of the magistrate applicable to any case referred.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.04, effective September 1, 2019.

Sec. 54.2207. Powers.

(a) Except as limited by an order of referral, a magistrate to whom a case is referred may:

- (1) conduct hearings;
- (2) hear evidence;
- (3) compel production of relevant evidence in civil or criminal matters;
- (4) rule on disputes regarding civil discovery;
- (5) rule on admissibility of evidence;
- (6) issue summons for the appearance of witnesses;
- (7) examine witnesses;
- (8) swear witnesses for hearings;
- (9) make findings of fact on evidence;
- (10) formulate conclusions of law;
- (11) rule on a pretrial motion;
- (12) recommend the rulings, orders, or judgment to be made in a case;
- (13) regulate proceedings in a hearing;
- (14) accept a plea of guilty from a defendant charged with misdemeanor, felony, or both misdemeanor and felony offenses;
- (15) select a jury;
- (16) accept a negotiated plea on a probation revocation;
- (17) conduct a contested probation revocation hearing;
- (18) sign a dismissal in a misdemeanor case;
- (19) enter an order of dismissal or non-suit on agreement of the parties in a civil case;
- (20) in any case referred under Section 54.2205(a)(1), accept a negotiated plea of guilty or no contest and:
 - (A) enter a finding of guilt and impose or suspend the sentence; or
 - (B) defer adjudication of guilt;
- (21) conduct initial juvenile detention hearings if approved by the juvenile board of Collin County; and
- (22) perform any act and take any measure necessary and proper for the efficient performance of the duties required by the order of referral.

(b) A magistrate may sign a motion to dismiss submitted by an attorney representing the state on cases referred to the magistrate, or on dockets called by the magistrate, and may consider unadjudicated cases at sentencing under Section 12.45, Penal Code.

(c) Except as provided by Sections 54.2205(e) and (f), a magistrate has all of the powers of a magistrate under the laws of this state and may administer an oath for any purpose.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.04, effective September 1, 2019.

Sec. 54.2208. Forfeitures.

Bail bonds and personal bonds may be forfeited by the magistrate court in the manner provided by Chapter 22, Code of Criminal Procedure, and those forfeitures shall be filed with:

- (1) the district clerk if associated with a felony case;
- (2) the county clerk if associated with a Class A or Class B misdemeanor case; or
- (3) the same justice court clerk associated with the Class C misdemeanor case in which the bond was originally filed.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.04, effective September 1, 2019.

Sec. 54.2209. Costs.

(a) When the district clerk is the clerk under this subchapter, the district clerk shall charge the same court costs for cases filed in, transferred to, or assigned to the magistrate court that are charged in the district courts.

(b) When the county clerk is the clerk under this subchapter, the county clerk shall charge the same court costs for cases filed in, transferred to, or assigned to the magistrate court that are charged in the county courts.

(c) When a justice clerk is the clerk under this subchapter, the justice clerk shall charge the same court costs for cases filed in, transferred to, or assigned to the magistrate court that are charged in the justice courts.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.04, effective September 1, 2019.

Sec. 54.2210. Clerk.

(a) The district clerk serves as clerk of the magistrate court, except that:

- (1) after a Class A or Class B misdemeanor is filed in the county court at law and assigned to the magistrate court, the county clerk serves as clerk for that misdemeanor case; and
- (2) after a Class C misdemeanor is filed in a justice court and assigned to the magistrate court, the originating justice court clerk serves as clerk for that misdemeanor case.

(b) The district clerk shall establish a docket and keep the minutes for the cases filed in or transferred to the magistrate court. The district clerk shall perform any other duties that local administrative rules require in connection with the implementation of this subchapter. The local administrative judge shall ensure that the duties required under this subsection are performed. To facilitate the duties associated with serving as the clerk of the magistrate court, the district clerk and the deputies of the district clerk may serve as deputy justice clerks and deputy county clerks at the discretion of the district clerk.

(c) The clerk of the case shall include as part of the record on appeal a copy of the order and local administrative rule under which a magistrate court acted.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.04, effective September 1, 2019.

Sec. 54.2211. Court Reporter.

At the request of a party, the court shall provide a court reporter to record the proceedings before the magistrate.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.04, effective September 1, 2019.

Sec. 54.2212. Witness.

(a) A witness who appears before a magistrate and is sworn is subject to the penalties for perjury provided by law.

(b) A referring court may issue attachment against and may fine or imprison a witness whose failure to appear after being summoned or whose refusal to answer questions has been certified to the court.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.04, effective September 1, 2019.

Sec. 54.2213. Papers Transmitted to Judge.

At the conclusion of the proceedings, a magistrate shall transmit to the referring court any papers relating to the case, including the magistrate's findings, conclusions, orders, recommendations, or other action taken.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.04, effective September 1, 2019.

Sec. 54.2214. Costs of Magistrate.

The court shall determine if the nonprevailing party is able to defray the costs of the magistrate. If the court determines the nonprevailing party is able to pay those costs, the court shall assess the magistrate's costs against the nonprevailing party.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.04, effective September 1, 2019.

Sec. 54.2215. Judicial Action.

(a) A referring court may modify, correct, reject, reverse, or recommit for further information any action taken by the magistrate.

(b) If the court does not modify, correct, reject, reverse, or recommit an action of the magistrate, the action becomes the decree of the court.

(c) At the conclusion of each term during which the services of a magistrate are used, the referring court shall enter a decree on the minutes adopting the actions of the magistrate of which the court approves.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.04, effective September 1, 2019.

Sec. 54.2216. Magistrate As Associate Judge.

A magistrate appointed under this subchapter may act as a civil associate judge under Subchapter B, Chapter 54A. To the extent of any conflict with this subchapter, a magistrate acting as an associate judge shall comply with provisions regarding the appointment, termination, referral of cases, powers, duties, and immunities of associate judges under Subchapter B, Chapter 54A.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.04, effective September 1, 2019.

Subchapter NN

Magistrates in Kerr County

Sec. 54.2301. Authorization; Appointment; Elimination.

(a) The Commissioners Court of Kerr County may au-

thorize the judges of the district and statutory county courts in Kerr County to appoint one or more part-time or full-time magistrates to perform the duties authorized by this subchapter.

(b) The judges of the district and statutory county courts in Kerr County by a unanimous vote may appoint magistrates as authorized by the Commissioners Court of Kerr County.

(c) An order appointing a magistrate must be signed by the local presiding judge of the district courts serving Kerr County, and the order must state:

(1) the magistrate's name; and

(2) the date the magistrate's employment is to begin.

(d) An authorized magistrate's position may be eliminated on a majority vote of the Commissioners Court of Kerr County.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.05, effective September 1, 2019.

Sec. 54.2302. Qualifications; Oath of Office.

(a) To be eligible for appointment as a magistrate, a person must:

(1) be a citizen of the United States;

(2) have resided in Kerr County for at least the two years preceding the person's appointment; and

(3) be at least 30 years of age.

(b) A magistrate appointed under Section 54.2301 must take the constitutional oath of office required of appointed officers of this state.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.05, effective September 1, 2019.

Sec. 54.2303. Compensation.

(a) A magistrate is entitled to the salary determined by the Commissioners Court of Kerr County.

(b) A full-time magistrate's salary may not be less than that of a justice of the peace of Kerr County as established by the annual budget of Kerr County.

(c) A part-time magistrate's salary is equal to the per-hour salary of a justice of the peace. The per-hour salary is determined by dividing the annual salary by a 2,000 work-hour year. The local administrative judge of the district courts serving Kerr County shall approve the number of hours for which a part-time magistrate is to be paid.

(d) The magistrate's salary is paid from the county fund available for payment of officers' salaries.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.05, effective September 1, 2019.

Sec. 54.2304. Judicial Immunity.

A magistrate has the same judicial immunity as a district judge.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.05, effective September 1, 2019.

Sec. 54.2305. Termination of Employment.

(a) A magistrate may be terminated by a majority vote of all the judges of the district and statutory county courts of Kerr County.

(b) To terminate a magistrate's employment, the local administrative judge of the district courts serving Kerr County must sign a written order of termination. The order must state:

- (1) the magistrate's name; and
- (2) the final date of the magistrate's employment.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.05, effective September 1, 2019.

Sec. 54.2306. Jurisdiction; Responsibility; Powers.

(a) The judges of the district or statutory county courts shall establish standing orders to be followed by a magistrate or parties appearing before a magistrate, as applicable.

(b) To the extent authorized by this subchapter and the standing orders, a magistrate has jurisdiction to exercise the authority granted by the judges of the district or statutory county courts.

(c) A magistrate has all of the powers of a magistrate under the laws of this state and may administer an oath for any purpose.

(d) A magistrate shall give preference to performing the duties of a magistrate under Article 15.17, Code of Criminal Procedure.

(e) A magistrate is authorized to:

- (1) set, adjust, and revoke bonds before the filing of an information or the return of an indictment;
- (2) conduct examining trials;
- (3) determine whether a defendant is indigent and appoint counsel for an indigent defendant;
- (4) issue search and arrest warrants;
- (5) issue emergency protective orders;
- (6) order emergency mental commitments; and
- (7) conduct initial juvenile detention hearings if approved by the Kerr County Juvenile Board.

(f) With the express authorization of a justice of the peace, a magistrate may exercise concurrent criminal jurisdiction with the justice of the peace to dispose as provided by law of cases filed in the precinct of the authorizing justice of the peace, except for a trial on the merits following a plea of not guilty.

(g) A magistrate may:

- (1) issue notices of the setting of a case for a hearing;
- (2) conduct hearings;
- (3) compel production of evidence;
- (4) hear evidence;
- (5) issue summons for the appearance of witnesses;
- (6) swear witnesses for hearings;
- (7) regulate proceedings in a hearing; and
- (8) perform any act and take any measure necessary and proper for the efficient performance of the duties required by the magistrate's jurisdiction and authority.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.05, effective September 1, 2019.

Sec. 54.2307. Personnel, Equipment, and Office Space.

The Commissioners Court of Kerr County shall provide:

- (1) personnel for the legal or clerical functions necessary to perform the magistrate's duties authorized by this chapter; and

(2) sufficient equipment and office space for the magistrate and personnel to perform the magistrate's essential functions.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.05, effective September 1, 2019.

Subchapter OO

Magistrates in Fort Bend County

Sec. 54.2401. Authorization; Appointment; Elimination.

(a) The Commissioners Court of Fort Bend County may authorize the judges of the district and statutory county courts in Fort Bend County to appoint one or more part-time or full-time magistrates to perform the duties authorized by this subchapter.

(b) The judges of the district and statutory county courts in Fort Bend County by a unanimous vote may appoint magistrates as authorized by the Commissioners Court of Fort Bend County.

(c) An order appointing a magistrate must be signed by the local administrative judge and must state:

- (1) the magistrate's name; and
- (2) the date the magistrate's employment is to begin.

(d) An authorized magistrate's position may be eliminated on a majority vote of the Commissioners Court of Fort Bend County.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.06, effective September 1, 2019.

Sec. 54.2402. Qualifications; Oath of Office.

(a) To be eligible for appointment as a magistrate, a person must:

- (1) be a citizen of the United States;
- (2) have resided in Fort Bend County for at least the four years preceding the person's appointment; and
- (3) have been licensed to practice law in this state for at least four years.

(b) A magistrate appointed under Section 54.2401 must take the constitutional oath of office required of appointed officers of this state.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.06, effective September 1, 2019.

Sec. 54.2403. Compensation.

A magistrate is entitled to the compensation set by the Commissioners Court of Fort Bend County. The compensation shall be paid from the general fund of the county.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.06, effective September 1, 2019.

Sec. 54.2404. Judicial Immunity.

A magistrate has the same judicial immunity as a district judge.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.06, effective September 1, 2019.

Sec. 54.2405. Proceeding That May Be Referred.

(a) The judge of a district court or county court at law or a justice of the peace may refer to a magistrate any case or matter relating to a case for proceedings involving:

(1) a negotiated plea of guilty or no contest and sentencing before the court;

(2) a bond forfeiture, remittitur, and related proceedings;

(3) a pretrial motion;

(4) a writ of habeas corpus;

(5) an examining trial;

(6) an occupational driver's license;

(7) a petition for an order of expunction under Chapter 55, Code of Criminal Procedure;

(8) an asset forfeiture hearing as provided by Chapter 59, Code of Criminal Procedure;

(9) a petition for an order of nondisclosure of criminal history record information or an order of nondisclosure of criminal history record information that does not require a petition provided by Subchapter E-1, Chapter 411;

(10) a motion to modify or revoke community supervision or to proceed with an adjudication of guilt;

(11) setting conditions, modifying, revoking, and surrendering of bonds, including surety bonds;

(12) specialty court proceedings;

(13) a waiver of extradition;

(14) selection of a jury; and

(15) any other matter the judge or justice of the peace considers necessary and proper.

(b) A judge may refer to a magistrate a civil case arising out of Chapter 59, Code of Criminal Procedure, for any purpose authorized by that chapter, including issuing orders, accepting agreed judgments, enforcing judgments, and presiding over a case on the merits if a party has not requested a jury trial.

(c) A magistrate may accept a plea of guilty from a defendant charged with misdemeanor, felony, or both misdemeanor and felony offenses.

(d) If the magistrate is acting as an associate judge under Section 54.2416, the magistrate may hear any case referred under Section 54A.106.

(e) A magistrate may not preside over a criminal trial on the merits, regardless of whether the trial is before a jury.

(f) A magistrate may not hear any jury trial on the merits.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.06, effective September 1, 2019.

Sec. 54.2406. Order of Referral.

(a) To refer one or more cases to a magistrate, a judge or justice of the peace must issue an order of referral specifying the magistrate's duties.

(b) An order of referral may:

(1) limit the powers of the magistrate and direct the magistrate to report only on specific issues, perform particular acts, or receive and report on evidence only;

(2) set the time and place for the hearing;

(3) prescribe a closing date for the hearing;

(4) provide a date for filing the magistrate's findings;

(5) designate proceedings for more than one case over which the magistrate shall preside;

(6) direct the magistrate to call the court's docket; and

(7) set forth general powers and limitations of authority of the magistrate applicable to any case referred.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.06, effective September 1, 2019.

Sec. 54.2407. Powers.

(a) Except as limited by an order of referral, a magistrate to whom a case is referred may:

(1) conduct hearings;

(2) hear evidence;

(3) compel production of relevant evidence in civil or criminal matters;

(4) rule on disputes regarding civil discovery;

(5) rule on admissibility of evidence;

(6) issue summons for the appearance of witnesses;

(7) examine witnesses;

(8) swear witnesses for hearings;

(9) make findings of fact on evidence;

(10) formulate conclusions of law;

(11) rule on a pretrial motion;

(12) recommend the rulings, orders, or judgment to be made in a case;

(13) regulate proceedings in a hearing;

(14) accept a plea of guilty from a defendant charged with misdemeanor, felony, or both misdemeanor and felony offenses;

(15) select a jury;

(16) accept a negotiated plea on a probation revocation;

(17) conduct a contested probation revocation hearing;

(18) sign a dismissal in a misdemeanor case;

(19) enter an order of dismissal or nonsuit on agreement of the parties in a civil case;

(20) in any case referred under Section 54.2405(a)(1), accept a negotiated plea of guilty or no contest and:

(A) enter a finding of guilt and impose or suspend the sentence; or

(B) defer adjudication of guilt;

(21) conduct initial juvenile detention hearings if approved by the juvenile board of Fort Bend County; and

(22) perform any act and take any measure necessary and proper for the efficient performance of the duties required by the order of referral.

(b) A magistrate may sign a motion to dismiss submitted by an attorney representing the state on cases referred to the magistrate, or on dockets called by the magistrate, and may consider unadjudicated cases at sentencing under Section 12.45, Penal Code.

(c) Except as provided by Sections 54.2405(e) and (f), a magistrate has all of the powers of a magistrate under the laws of this state and may administer an oath for any purpose.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.06, effective September 1, 2019.

Sec. 54.2408. Forfeitures.

Bail bonds and personal bonds may be forfeited by the magistrate court in the manner provided by Chapter 22, Code of Criminal Procedure, and those forfeitures shall be filed with:

- (1) the district clerk if associated with a felony case;
- (2) the county clerk if associated with a Class A or Class B misdemeanor case; or
- (3) the same justice court clerk associated with the Class C misdemeanor case in which the bond was originally filed.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.06, effective September 1, 2019.

Sec. 54.2409. Costs.

(a) When the district clerk is the clerk under this subchapter, the district clerk shall charge the same court costs for cases filed in, transferred to, or assigned to the magistrate court that are charged in the district courts.

(b) When the county clerk is the clerk under this subchapter, the county clerk shall charge the same court costs for cases filed in, transferred to, or assigned to the magistrate court that are charged in the county courts.

(c) When a justice clerk is the clerk under this subchapter, the justice clerk shall charge the same court costs for cases filed in, transferred to, or assigned to the magistrate court that are charged in the justice courts.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.06, effective September 1, 2019.

Sec. 54.2410. Clerk.

(a) The district clerk serves as clerk of the magistrate court, except that:

- (1) after a Class A or Class B misdemeanor is filed in the county court at law and assigned to the magistrate court, the county clerk serves as clerk for that misdemeanor case; and
- (2) after a Class C misdemeanor is filed in a justice court and assigned to the magistrate court, the originating justice court clerk serves as clerk for that misdemeanor case.

(b) The district clerk shall establish a docket and keep the minutes for the cases filed in or transferred to the magistrate court. The district clerk shall perform any other duties that local administrative rules require in connection with the implementation of this subchapter. The local administrative judge shall ensure that the duties required under this subsection are performed. To facilitate the duties associated with serving as the clerk of the magistrate court, the district clerk and the deputies of the district clerk may serve as deputy justice clerks and deputy county clerks at the discretion of the district clerk.

(c) The clerk of the case shall include as part of the record on appeal a copy of the order and local administrative rule under which a magistrate court acted.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.06, effective September 1, 2019.

Sec. 54.2411. Court Reporter.

At the request of a party, the court shall provide a court reporter to record the proceedings before the magistrate.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.06, effective September 1, 2019.

Sec. 54.2412. Witness.

(a) A witness who appears before a magistrate and is sworn is subject to the penalties for perjury provided by law.

(b) A referring court may issue attachment against and may fine or imprison a witness whose failure to appear after being summoned or whose refusal to answer questions has been certified to the court.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.06, effective September 1, 2019.

Sec. 54.2413. Papers Transmitted to Judge.

At the conclusion of the proceedings, a magistrate shall transmit to the referring court any papers relating to the case, including the magistrate's findings, conclusions, orders, recommendations, or other action taken.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.06, effective September 1, 2019.

Sec. 54.2414. Costs of Magistrate.

The court shall determine if the nonprevailing party is able to defray the costs of the magistrate. If the court determines the nonprevailing party is able to pay those costs, the court shall assess the magistrate's costs against the nonprevailing party.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.06, effective September 1, 2019.

Sec. 54.2415. Judicial Action.

(a) A referring court may modify, correct, reject, reverse, or recommit for further information any action taken by the magistrate.

(b) If the court does not modify, correct, reject, reverse, or recommit an action of the magistrate, the action becomes the decree of the court.

(c) At the conclusion of each term during which the services of a magistrate are used, the referring court shall enter a decree on the minutes adopting the actions of the magistrate of which the court approves.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.06, effective September 1, 2019.

Sec. 54.2416. Magistrate As Associate Judge.

A magistrate appointed under this subchapter may act as a civil associate judge under Subchapter B, Chapter 54A. To the extent of any conflict with this subchapter, a magistrate acting as an associate judge shall comply with provisions regarding the appointment, termination, referral of cases, powers, duties, and immunities of associate judges under Subchapter B, Chapter 54A.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.06, effective September 1, 2019.

CHAPTER 54A

Associate Judges

Subchapter C

Statutory Probate Court Associate Judges

Section	Definition.
54A.201.	Applicability.
54A.202.	Powers of Associate Judge.
54A.209.	

Sec. 54A.201. Definition.

In this subchapter, “statutory probate court” has the meaning assigned by Chapter 22, Estates Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1503 (S.B. 294), § 1, effective September 1, 1999; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012 (renumbered from Sec. 54.601); am. Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 22.030, effective September 1, 2017.

Sec. 54A.202. Applicability.

This subchapter applies to a statutory probate court.

HISTORY: Enacted by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012.

Sec. 54A.209. Powers of Associate Judge.

(a) Except as limited by an order of referral, an associate judge may:

- (1) conduct a hearing;
- (2) hear evidence;
- (3) compel production of relevant evidence;
- (4) rule on the admissibility of evidence;
- (5) issue a summons for the appearance of witnesses;
- (6) examine a witness;
- (7) swear a witness for a hearing;
- (8) make findings of fact on evidence;
- (9) formulate conclusions of law;
- (10) rule on pretrial motions;
- (11) recommend the rulings, orders, or judgment to be made in a case;
- (12) regulate all proceedings in a hearing before the associate judge;
- (13) take action as necessary and proper for the efficient performance of the duties required by the order of referral;
- (14) order the attachment of a witness or party who fails to obey a subpoena;
- (15) order the detention of a witness or party found guilty of contempt, pending approval by the referring court as provided by Section 54A.214;
- (16) without prejudice to the right to a de novo hearing under Section 54A.216, render and sign:
 - (A) a final order agreed to in writing as to both form and substance by all parties;
 - (B) a final default order;
 - (C) a temporary order;
 - (D) a final order in a case in which a party files an unrevoked waiver made in accordance with Rule 119, Texas Rules of Civil Procedure, that waives notice to the party of the final hearing or waives the party’s appearance at the final hearing;
 - (E) an order specifying that the court clerk shall issue:
 - (i) letters testamentary or of administration; or
 - (ii) letters of guardianship; or
 - (F) an order for inpatient or outpatient mental health, mental retardation, or chemical dependency services or an order authorizing psychoactive medications; and
- (17) sign a final order that includes a waiver of the right to a de novo hearing in accordance with Section 54A.216.

(b) An associate judge may, in the interest of justice, refer a case back to the referring court regardless of whether a timely objection to the associate judge hearing the trial on the merits or presiding at a jury trial has been made by any party.

(c) An order described by Subsection (a)(16) that is rendered and signed by an associate judge constitutes an order of the referring court. The judge of the referring court shall sign the order not later than the 30th day after the date the associate judge signs the order.

(d) An answer filed by or on behalf of a party who previously filed a waiver described in Subsection (a)(16)(D) revokes that waiver.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1503 (S.B. 294), § 1, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 1066 (H.B. 1539), § 3, effective September 1, 2003; am. Acts 2009, 81st Leg., ch. 1206 (S.B. 683), § 5, effective September 1, 2009; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012 (renumbered from Sec. 54.610).

CHAPTER 56**Judicial and Court Personnel Training Fund**

Section	
56.001.	Judicial and Court Personnel Training Fund.
56.003.	Use of Funds.

Sec. 56.001. Judicial and Court Personnel Training Fund.

(a) The judicial and court personnel training fund is an account in the general revenue fund. Money in the judicial and court personnel training fund may be appropriated only to the court of criminal appeals for the uses authorized in Section 56.003.

(b) On requisition of the court of criminal appeals, the comptroller shall draw a warrant on the fund for the amount specified in the requisition for a use authorized in Section 56.003. A warrant may not exceed the amount appropriated for any one fiscal year.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.78(a), effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 347 (S.B. 1085), § 5, effective October 1, 1989; am. Acts 1993, 73rd Leg., ch. 896 (S.B. 947), §§ 1, 2, effective September 1, 1993; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 30.187, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 390 (S.B. 1187), § 2, effective August 31, 1999; am. Acts 2003, 78th Leg., ch. 209 (H.B. 2424), § 85(a)(10), effective January 1, 2004; am. Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), § 6.01, effective September 28, 2011.

Sec. 56.003. Use of Funds.

(a) Unless the legislature specifically appropriates or provides additional money for purposes of this subsection, the court of criminal appeals may not use more than three percent of the money appropriated in any one fiscal year to hire staff and provide for the proper administration of this chapter.

(b) No more than one-third of the funds appropriated for any fiscal year shall be used for the continuing legal education of judges of appellate courts, district courts, county courts at law, county courts performing judicial functions, full-time associate judges and masters appointed pursuant to Chapter 201, Family Code, and full-

time and part-time masters, magistrates, referees, and associate judges appointed pursuant to Chapter 54 or 54A as required by the court of criminal appeals under Section 74.025 and of their court personnel.

(c) No more than one-third of the funds appropriated for any fiscal year shall be used for the continuing legal education of judges of justice courts as required by the court of criminal appeals under Section 74.025 and of their court personnel.

(d) No more than one-third of the funds appropriated for any fiscal year shall be used for the continuing legal education of judges of municipal courts as required by the court of criminal appeals under Section 74.025 and of their court personnel.

(e) The court of criminal appeals shall grant legal funds to statewide professional associations of judges and other entities whose purposes include providing continuing legal education courses, programs, and projects for judges and court personnel. The grantees of those funds must ensure that sufficient funds are available for each judge to meet the minimum educational requirements set by the court of criminal appeals under Section 74.025 before any funds are awarded to a judge for education that exceeds those requirements.

(f) The court of criminal appeals shall grant legal funds to statewide professional associations of prosecuting attorneys, criminal defense attorneys who regularly represent indigent defendants in criminal matters, and justices of the peace, and other entities. The association's or entity's purposes must include providing continuing legal education, technical assistance, and other support programs.

(g) The court of criminal appeals shall grant legal funds to statewide professional associations and other entities that provide innocence training programs related to defendants' claims of factual innocence following conviction to law enforcement officers, law students, and other participants.

(h) The court of criminal appeals shall grant legal funds to statewide professional associations and other entities that provide training to individuals responsible for providing court security.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.78(a), effective September 1, 1987; am. Acts 1993, 73rd Leg., ch. 896 (S.B. 947), § 3, effective September 1, 1993; am. Acts 1999, 76th Leg., ch. 390 (S.B. 1187), § 3, effective August 31, 1999; am. Acts 2003, 78th Leg., ch. 654 (H.B. 2157), § 1, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 149 (S.B. 496), § 1, effective September 1, 2007; am. Acts 2017, 85th Leg., ch. 190 (S.B. 42), § 6, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 162 (H.B. 598), § 1, effective September 1, 2019.

SUBTITLE F

COURT ADMINISTRATION

Chapter	
72.	Office of Court Administration
76.	Community Supervision and Corrections Departments
79.	Texas Indigent Defense Commission

CHAPTER 72

Office of Court Administration

Subchapter B. Administrative Provisions

Section	
72.011.	Office of Court Administration.

Subchapter C. Powers and Duties

Section	
72.032.	Study to Repeal Certain Court Fees and Costs. [Expired]

Subchapter B

Administrative Provisions

Sec. 72.011. Office of Court Administration.

(a) The office of court administration is an agency of the state and operates under the direction and supervision of the supreme court and the chief justice of the supreme court.

(b) The office shall exercise the powers and perform the duties or functions imposed on the office by this chapter or the supreme court.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.85(a), effective September 1, 1987.

Subchapter C

Powers and Duties

72.032 Study to Repeal Certain Court Fees and Costs. [Expired]

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1249 (S.B. 1908), § 1, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 21.001(20), effective September 1, 2015 (renumbered from Sec. 72.031), effective September 1, 2015.

CHAPTER 76

Community Supervision and Corrections Departments

Section	
76.002.	Establishment of Departments.
76.003.	Community Justice Council.
76.011.	Operation of Certain Services and Programs.

Sec. 76.002. Establishment of Departments.

(a) The district judge or district judges trying criminal cases in each judicial district and the statutory county court judges trying criminal cases in the county or counties served by the judicial district shall:

(1) establish a community supervision and corrections department; and

(2) approve the department's budget and strategic plan.

(b) [Repealed by Acts 2005, 79th Leg., ch. 255 (H.B. 1326), § 12, effective May 30, 2005.]

(c) Except as provided by Subsection (d), one department serves all courts and counties in a judicial district if:

- (1) two or more judicial districts serve a county; or
- (2) a district includes more than one county.

(d) The board may adopt rules to allow more than one department to serve a judicial district that includes more than one county if providing more than one department will promote administrative convenience or economy or improve services.

(e) The board shall adopt rules allowing departments to contract with one another for services or facilities or to contract as provided by Subsection (f).

(f) In lieu of establishing a department as required by Subsection (a), programs and services may be provided under this chapter in a judicial district through a contract with a department established for another judicial district.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 7.11, effective September 1, 1995; am. Acts 2005, 79th Leg., ch. 255 (H.B. 1326), §§ 1, 12, effective May 30, 2005; am. Acts 2011, 82nd Leg., ch. 1045 (H.B. 3691), § 1, effective June 17, 2011; am. Acts 2015, 84th Leg., ch. 1051 (H.B. 1930), § 1, effective September 1, 2015.

Sec. 76.003. Community Justice Council.

(a) A community justice council may be established by the commissioners court of a county, unless a board or council that was in existence on September 1, 1991, is performing duties substantially similar to those imposed on a community justice council under this section. The council shall provide continuing policy guidance and direction for criminal justice planning, programs, and initiatives.

(b) A council may consist of the following persons or their designees:

(1) a sheriff of a county served by the department, chosen by the sheriffs of the counties to be served by the department;

(2) a county commissioner or a county judge from a county served by the department, chosen by the county commissioners and county judges of the counties served by the department;

(3) a city council member of the most populous municipality in a county served by the department, chosen by the members of the city councils of cities served by the department;

(4) not more than two state legislators elected from a county served by the department, or in a county with a population of one million or more to be served by the department, not more than one state senator and one state representative elected from the county, chosen by the state legislators elected from the county or counties served by the department;

(5) the presiding judge from a judicial district served by the department, chosen by the district judges from the judicial districts served by the department;

(6) a judge of a statutory county court exercising criminal jurisdiction in a county served by the department, chosen by the judges of statutory county courts with criminal jurisdiction in the counties served by the department;

(7) a county attorney with criminal jurisdiction from a county served by the department, chosen by the county attorneys with criminal jurisdiction from the counties served by the department;

(8) a district attorney or criminal district attorney from a judicial district served by the department, chosen by the district attorneys or criminal district attorneys from the judicial districts served by the department;

(9) an elected member of the board of trustees of an independent school district in a county served by the

department, chosen by the members of the boards of trustees of independent school districts located in counties served by the department; and

(10) the department director.

(c) The community justice council shall appoint a community justice task force to provide support staff for the development of a community justice plan. The task force may consist of any number of members, but should include:

(1) the county or regional director of the Texas Department of Human Services with responsibility for the area served by the department;

(2) the chief of police of the most populous municipality served by the department;

(3) the chief juvenile probation officer of the juvenile probation office serving the most populous area served by the department;

(4) the superintendent of the most populous school district served by the department;

(5) the supervisor of the Department of Public Safety region closest to the department, or the supervisor's designee;

(6) the county or regional director of the Texas Department of Mental Health and Mental Retardation with responsibility for the area served by the department;

(7) a substance abuse treatment professional appointed by the Council of Governments serving the area served by the department;

(8) the department director;

(9) the local or regional representative of the parole division of the Texas Department of Criminal Justice with responsibility for the area served by the department;

(10) the representative of the Texas Workforce Commission with responsibility for the area served by the department;

(11) the representative of the Department of Assistive and Rehabilitative Services with responsibility for the area served by the department;

(12) a licensed attorney who practices in the area served by the department and whose practice consists primarily of criminal law;

(13) a court administrator, if one serves the area served by the department;

(14) a representative of a community service organization that provides adult treatment, educational, or vocational services to the area served by the department;

(15) a representative of an organization in the area served by the department that is actively involved in issues relating to defendants' rights, chosen by the county commissioners and county judges of the counties served by the department; and

(16) an advocate for rights of victims of crime and awareness of issues affecting victims.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 7.11, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), §§ 9.02(a), 9.03(a), effective September 1, 1997; am. Acts 2005, 79th Leg., ch. 255 (H.B. 1326), § 2, effective May 30, 2005; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.064, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 1045 (H.B. 3691), § 2, effective June 17, 2011; am. Acts 2011, 82nd

Leg., ch. 1074 (S.B. 1055), § 1, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 1051 (H.B. 1930), § 2, effective September 1, 2015.

Sec. 76.011. Operation of Certain Services and Programs.

(a) The department may operate programs for:

- (1) the supervision and rehabilitation of persons in pretrial intervention programs;
- (2) the supervision of persons released on bail under:
 - (A) Chapter 11, Code of Criminal Procedure;
 - (B) Chapter 17, Code of Criminal Procedure;
 - (C) Article 44.04, Code of Criminal Procedure; or
 - (D) any other law;

(3) the supervision of a person subject to, or the verification of compliance with, a court order issued under:

(A) Article 17.441, Code of Criminal Procedure, requiring a person to install a deep-lung breath analysis mechanism on each vehicle owned or operated by the person;

(B) Chapter 123 of this code or former law, issuing an occupational driver's license;

(C) Section 49.09(h), Penal Code, requiring a person to install a deep-lung breath analysis mechanism on each vehicle owned or operated by the person; or

(D) Subchapter L, Chapter 521, Transportation Code, granting a person an occupational driver's license; and

(4) the supervision of a person not otherwise described by Subdivision (1), (2), or (3), if a court orders the person to submit to the supervision of, or to receive services from, the department.

(b) Except as otherwise provided by this subsection, programs operated by the department under Subsection (a) may include reasonable conditions related to the purpose of the program, including testing for controlled substances. If this subsection conflicts with a more specific provision of another law, the other law prevails.

(c) A person in a pretrial intervention program operated by the department under Subsection (a) may be supervised for a period not to exceed two years.

(d) The department may use money deposited in the special fund of the county treasury for the department under Article 103.004(d), Code of Criminal Procedure, only for the same purposes for which state aid may be used under this chapter.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 7.11, effective September 1, 1995; am. Acts 2005, 79th Leg., ch. 91 (S.B. 1006), § 1, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 11.001, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 419 (S.B. 880), § 1, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.03, effective September 1, 2013.

CHAPTER 79

Texas Indigent Defense Commission

Subchapter A. General Provisions

Section
79.001.

Definitions.

Subchapter C. General Powers and Duties of Commission

Section
79.034.

Policies and Standards.

Subchapter A

General Provisions

Sec. 79.001. Definitions.

In this chapter:

(1) "Assigned counsel program" means a system under which private attorneys, acting as independent contractors and compensated with public funds, are individually appointed to provide legal representation and services to a particular indigent defendant accused of a crime or juvenile offense.

(2) "Board" means the governing board of the Texas Indigent Defense Commission.

(3) "Commission" means the permanent standing committee of the council known as the Texas Indigent Defense Commission.

(4) "Contract defender program" means a system under which private attorneys, acting as independent contractors and compensated with public funds, are engaged to provide legal representation and services to a group of unspecified indigent defendants who appear before a particular court or group of courts.

(5) "Council" means the Texas Judicial Council.

(6) "Crime" means:

- (A) a misdemeanor punishable by confinement; or
- (B) a felony.

(7) "Defendant" means a person accused of a crime or a juvenile offense.

(8) "Executive director" means the executive director of the Texas Indigent Defense Commission.

(9) "Indigent defense support services" means criminal defense services that:

(A) are provided by licensed investigators, experts, or other similar specialists, including forensic experts and mental health experts; and

(B) are reasonable and necessary for appointed counsel to provide adequate representation to indigent defendants.

(10) "Juvenile offense" means conduct committed by a person while younger than 17 years of age that constitutes:

- (A) a misdemeanor punishable by confinement; or
- (B) a felony.

(11) "Managed assigned counsel program" has the meaning assigned by Article 26.047, Code of Criminal Procedure.

(12) "Office of capital and forensic writs" means the office of capital and forensic writs established under Subchapter B, Chapter 78.

(13) "Public defender's office" has the meaning assigned by Article 26.044(a), Code of Criminal Procedure.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 984 (H.B. 1754), § 1, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 1215 (S.B. 1743), § 21, effective September 1, 2015.

Subchapter C

General Powers and Duties of Commission

Sec. 79.034. Policies and Standards.

(a) The commission shall develop policies and standards for providing legal representation and other defense services to indigent defendants at trial, on appeal, and in postconviction proceedings. The policies and standards may include:

(1) performance standards for counsel appointed to represent indigent defendants;

(2) qualification standards under which attorneys may qualify for appointment to represent indigent defendants, including:

(A) qualifications commensurate with the seriousness of the nature of the proceeding;

(B) qualifications appropriate for representation of mentally ill defendants and noncitizen defendants;

(C) successful completion of relevant continuing legal education programs approved by the council; and

(D) testing and certification standards;

(3) standards for ensuring appropriate appointed caseloads for counsel appointed to represent indigent defendants;

(4) standards for determining whether a person accused of a crime or juvenile offense is indigent;

(5) policies and standards governing the organization and operation of an assigned counsel program;

(6) policies and standards governing the organization and operation of a public defender's office consistent with recognized national policies and standards;

(7) standards for providing indigent defense services under a contract defender program consistent with recognized national policies and standards;

(8) standards governing the reasonable compensation of counsel appointed to represent indigent defendants;

(9) standards governing the availability and reasonable compensation of providers of indigent defense support services for counsel appointed to represent indigent defendants;

(10) standards governing the operation of a legal clinic or program that provides legal services to indigent defendants and is sponsored by a law school approved by the supreme court;

(11) policies and standards governing the appointment of attorneys to represent children in proceedings under Title 3, Family Code;

(12) policies and standards governing the organization and operation of a managed assigned counsel program consistent with nationally recognized policies and standards; and

(13) other policies and standards for providing indigent defense services as determined by the commission to be appropriate.

(b) The commission shall submit its proposed policies and standards developed under Subsection (a) to the board for adoption. The board shall adopt the proposed policies and standards as appropriate.

(c) Any qualification standards adopted by the board under Subsection (b) that relate to the appointment of

counsel in a death penalty case must be consistent with the standards specified under Article 26.052(d), Code of Criminal Procedure. An attorney who is identified by the commission as not satisfying performance or qualification standards adopted by the board under Subsection (b) may not accept an appointment in a capital case.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 984 (H.B. 1754), § 1, effective September 1, 2011.

SUBTITLE I

COURT FEES AND COSTS

CHAPTER 101

Filing Fees and Other Fees and Costs In Civil Proceedings

Subchapter E. Statutory County Courts

Section 101.0812.	Statutory County Court Fees and Costs: Health and Safety Code.
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Subchapter F. Statutory Probate Courts

101.1012.	Statutory Probate Court Fees and Costs: Health and Safety Code.
101.1013.	Statutory Probate Court Fees and Costs: Local Government Code.

Subchapter G. County Courts

101.1213.	County Court Fees and Costs: Health and Safety Code.
101.1214.	County Court Fees and Costs: Local Government Code.

Subchapter E

Statutory County Courts

Sec. 101.0812. Statutory County Court Fees and Costs: Health and Safety Code.

The clerk of a statutory county court shall collect fees and costs under the Health and Safety Code as follows:

(1) for filing an application for registration of death (Sec. 193.007, Health and Safety Code)... \$1;

(2) fee for judge's services on an application for court-ordered mental health services (Sec. 574.031, Health and Safety Code)... not to exceed \$50;

(3) fee for prosecutor's services on an application for court-ordered mental health services (Sec. 574.031, Health and Safety Code)... not to exceed \$50;

(4) for a hearing or proceeding under the Texas Mental Health Code (Subtitle C, Title 7, Health and Safety Code) as costs (Secs. 571.017 and 571.018, Health and Safety Code)... reasonable compensation to the following persons appointed under the Texas Mental Health Code:

- (A) attorneys;
- (B) physicians;
- (C) language interpreters;
- (D) sign interpreters; and
- (E) associate judges;

(5) for a hearing or proceeding under the Texas Mental Health Code (Subtitle C, Title 7, Health and Safety Code) as costs (Sec. 571.018, Health and Safety Code):

- (A) attorney's fees;
- (B) physician examination fees;
- (C) expense of transportation to a mental health facility or to a federal agency not to exceed \$50 if transporting within the same county and not to exceed the reasonable cost of transportation if transporting between counties;
- (D) costs and salary supplements authorized under Section 574.031, Health and Safety Code; and
- (E) prosecutors' fees authorized under Section 574.031, Health and Safety Code;
- (6) expenses of transporting certain patients from the county of treatment to a hearing in the county in which the proceedings originated (Sec. 574.008, Health and Safety Code)... actual expenses unless certain arrangements are made to hold the hearing in the county in which the patient is receiving services;
- (7) expenses for expert witness testimony for an indigent patient (Sec. 574.010, Health and Safety Code)... if authorized by the court as reimbursement to the attorney ad litem, court-approved expenses;
- (8) fee for judge's services for holding a hearing on an application for court-ordered mental health services (Sec. 574.031, Health and Safety Code)... as assessed by the judge, not to exceed \$50;
- (9) expenses to reimburse judge for holding a hearing in a hospital or location other than the county courthouse (Sec. 574.031, Health and Safety Code)... reasonable and necessary expenses as certified; and
- (10) fee for services of a prosecuting attorney, including costs incurred for preparation of documents related to a hearing on an application for court-ordered mental health services (Sec. 574.031, Health and Safety Code)... as assessed by the judge, not to exceed \$50.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1278 (S.B. 1180), § 1, effective June 21, 2003; am. Acts 2005, 79th Leg., ch. 296 (S.B. 291), § 2, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 7.104(a), effective September 1, 2007 (renumbered from Sec. 101.081(8)—(10) and (32)—(38); am. Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 11.103, effective September 1, 2011.

Subchapter F

Statutory Probate Courts

Sec. 101.1012. Statutory Probate Court Fees and Costs: Health and Safety Code.

The clerk of a statutory probate court shall collect fees and costs under the Health and Safety Code as follows:

- (1) for filing an application for registration of death (Sec. 193.007, Health and Safety Code)... \$1;
- (2) fee for judge's services on an application for court-ordered mental health services (Sec. 574.031, Health and Safety Code)... not to exceed \$50;
- (3) fee for prosecutor's services on an application for court-ordered mental health services (Sec. 574.031, Health and Safety Code)... not to exceed \$50;
- (4) for a hearing or proceeding under the Texas Mental Health Code (Subtitle C, Title 7, Health and Safety Code) as costs (Secs. 571.017 and 571.018, Health and Safety Code)... reasonable compensation to the following persons appointed under the Texas Mental Health Code:

- (A) attorneys;
- (B) physicians;
- (C) language interpreters;
- (D) sign interpreters; and
- (E) associate judges;
- (5) for a hearing or proceeding under the Texas Mental Health Code (Subtitle C, Title 7, Health and Safety Code) as costs (Sec. 571.018, Health and Safety Code):
 - (A) attorney's fees;
 - (B) physician examination fees;
 - (C) expense of transportation to a mental health facility or to a federal agency not to exceed \$50 if transporting within the same county and not to exceed the reasonable cost of transportation if transporting between counties;
 - (D) costs and salary supplements authorized under Section 574.031, Health and Safety Code; and
 - (E) prosecutors' fees authorized under Section 574.031, Health and Safety Code;
- (6) expenses of transporting certain patients from the county of treatment to a hearing in the county in which the proceedings originated (Sec. 574.008, Health and Safety Code)... actual expenses unless certain arrangements are made to hold the hearing in the county in which the patient is receiving services;
- (7) expenses for expert witness testimony for an indigent patient (Sec. 574.010, Health and Safety Code)... if authorized by the court as reimbursement to the attorney ad litem, court-approved expenses;
- (8) fee for judge's services for holding a hearing on an application for court-ordered mental health services (Sec. 574.031, Health and Safety Code)... as assessed by the judge, not to exceed \$50;
- (9) expenses to reimburse judge for holding a hearing in a hospital or location other than the county courthouse (Sec. 574.031, Health and Safety Code)... reasonable and necessary expenses as certified; and
- (10) fee for services of a prosecuting attorney, including costs incurred for preparation of documents related to a hearing on an application for court-ordered mental health services (Sec. 574.031, Health and Safety Code)... as assessed by the judge, not to exceed \$50.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1278, (S.B. 1180), § 1, effective June 21, 2003; am. Acts 2005, 79th Leg., ch. 296 (S.B. 291), § 3, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 7.105, effective September 1, 2007 (renumbered from Sec. 101.101(4)—(6) and (17)—(23); am. Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 11.106, effective September 1, 2011.

Sec. 101.1013. Statutory Probate Court Fees and Costs: Local Government Code.

The clerk of a statutory probate court shall collect fees and costs under the Local Government Code as follows:

- (1) additional filing fee for filing any civil action or proceeding requiring a filing fee, including an appeal, and on the filing of any counterclaim, cross-action, intervention, interpleader, or third-party action requiring a filing fee to fund civil legal services for the indigent (Sec. 133.153, Local Government Code)... \$10;
- (2) additional filing fee to fund contingency fund for liability insurance, if authorized by the county commis-

sioners court (Sec. 82.003, Local Government Code)... not to exceed \$5;

(3) probate court actions (Sec. 118.052, Local Government Code):

(A) probate original action (Secs. 118.052 and 118.055, Local Government Code):

(i) probate of a will with independent executor, administration with will attached, administration of an estate, guardianship or receivership of an estate, or muniment of title (Sec. 118.052, Local Government Code)... \$40;

(ii) community survivors (Sec. 118.052, Local Government Code)... \$40;

(iii) small estates (Sec. 118.052, Local Government Code)... \$40;

(iv) declarations of heirship (Sec. 118.052, Local Government Code)... \$40;

(v) mental health or chemical dependency services (Sec. 118.052, Local Government Code)... \$40; and

(vi) additional, special fee (Secs. 118.052 and 118.064, Local Government Code)... \$5;

(B) services in pending probate action (Secs. 118.052 and 118.056, Local Government Code):

(i) filing an inventory and appraisal (Secs. 118.052 and 118.056(d), Local Government Code)... \$25;

(ii) approving and recording bond (Sec. 118.052, Local Government Code)... \$3;

(iii) administering oath (Sec. 118.052, Local Government Code)... \$2;

(iv) filing annual or final account of estate (Sec. 118.052, Local Government Code)... \$25;

(v) filing application for sale of real or personal property (Sec. 118.052, Local Government Code)... \$25;

(vi) filing annual or final report of guardian of a person (Sec. 118.052, Local Government Code)... \$10; and

(vii) filing a document not listed under this paragraph after the filing of an order approving the inventory and appraisal or after the 120th day after the date of the initial filing of the action, whichever occurs first (Secs. 118.052 and 191.007, Local Government Code), if more than 25 pages... \$25;

(C) adverse probate action (Secs. 118.052 and 118.057, Local Government Code)... \$40;

(D) claim against estate (Secs. 118.052 and 118.058, Local Government Code) . . . \$10 ;

(E) supplemental court-initiated guardianship fee (Secs. 118.052 and 118.067, Local Government Code) . . . \$20; and

(F) supplemental public probate administrator fee (Secs. 118.052 and 118.068, Local Government Code) . . . \$10;

(4) other fees (Sec. 118.052, Local Government Code):

(A) issuing document (Secs. 118.052 and 118.059, Local Government Code):

(i) original document and one copy (Sec. 118.052, Local Government Code)... \$4; and

(ii) each additional set of an original and one copy (Sec. 118.052, Local Government Code)... \$4;

(B) certified papers (Secs. 118.052 and 118.060, Local Government Code):

(i) for the clerk's certificate (Sec. 118.052, Local Government Code)... \$5; and

(ii) a fee per page or part of a page (Sec. 118.052, Local Government Code)... \$1;

(C) noncertified papers, for each page or part of a page (Secs. 118.052 and 118.0605, Local Government Code)... \$1;

(D) letters testamentary, letter of guardianship, letter of administration, or abstract of judgment (Secs. 118.052 and 118.061, Local Government Code)... \$2;

(E) safekeeping of wills (Secs. 118.052 and 118.062, Local Government Code)... \$5;

(F) mail service of process (Secs. 118.052 and 118.063, Local Government Code)... same as sheriff; and

(G) records management and preservation fee (Secs. 118.052 and 118.0645, Local Government Code)... \$5; and

(5) court cost in civil cases other than suits for delinquent taxes to fund the county law library fund, if authorized by the county commissioners court (Sec. 323.023, Local Government Code)... not to exceed \$35.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1278 (S.B. 1180), § 1, effective June 21, 2003; am. Acts 2005, 79th Leg., ch. 1233 (H.B. 1404), § 3, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 7.105, effective September 1, 2007 (renumbered from Sec. 101.101(3), (7)—(9), and (13); am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 11.107(b), effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 1183 (H.B. 3637), § 12, effective September 1, 2009; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 9.110(a), effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 8.109, effective September 1, 2017.

Subchapter G

County Courts

Sec. 101.1213. County Court Fees and Costs: Health and Safety Code.

The clerk of a county court shall collect the following fees and costs under the Health and Safety Code:

(1) for filing an application for registration of death (Sec. 193.007, Health and Safety Code)... \$1;

(2) fee for judge's services on an application for court-ordered mental health services (Sec. 574.031, Health and Safety Code)... not to exceed \$50;

(3) fee for prosecutor's services on an application for court-ordered mental health services (Sec. 574.031, Health and Safety Code)... not to exceed \$50;

(4) for a hearing or proceeding under the Texas Mental Health Code (Subtitle C, Title 7, Health and Safety Code) as costs (Secs. 571.017 and 571.018, Health and Safety Code)... reasonable compensation to the following persons appointed under the Texas Mental Health Code:

(A) attorneys;

(B) physicians;

(C) language interpreters;

(D) sign interpreters; and

(E) associate judges;

(5) for a hearing or proceeding under the Texas Mental Health Code (Subtitle C, Title 7, Health and Safety Code) as costs (Sec. 571.018, Health and Safety Code):

(A) attorney's fees;

(B) physician examination fees;

(C) expense of transportation to a mental health facility or to a federal agency not to exceed \$50 if transporting within the same county and not to exceed the reasonable cost of transportation if transporting between counties;

(D) costs and salary supplements authorized under Section 574.031, Health and Safety Code; and

(E) prosecutors' fees authorized under Section 574.031, Health and Safety Code;

(6) expenses of transporting certain patients from the county of treatment to a hearing in the county in which the proceedings originated (Sec. 574.008, Health and Safety Code)... actual expenses unless certain arrangements are made to hold the hearing in the county in which the patient is receiving services;

(7) expenses for expert witness testimony for an indigent patient (Sec. 574.010, Health and Safety Code)... if authorized by the court as reimbursement to the attorney ad litem, court-approved expenses;

(8) fee for judge's services for holding a hearing on an application for court-ordered mental health services (Sec. 574.031, Health and Safety Code)... as assessed by the judge, not to exceed \$50;

(9) expenses to reimburse judge for holding a hearing in a hospital or location other than the county courthouse (Sec. 574.031, Health and Safety Code)... reasonable and necessary expenses as certified; and

(10) fee for services of a prosecuting attorney, including costs incurred for preparation of documents related to a hearing on an application for court-ordered mental health services (Sec. 574.031, Health and Safety Code)... as assessed by the judge, not to exceed \$50.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1278 (S.B. 1180), § 1, effective June 21, 2003; am. Acts 2005, 79th Leg., ch. 296 (S.B. 291), § 4, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 7.106(a), effective September 1, 2007 (renumbered from Sec. 101.121(6)—(8), and (27)—(33)); am. Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 11.108, effective September 1, 2011.

Sec. 101.1214. County Court Fees and Costs: Local Government Code.

The clerk of a county court shall collect the following fees and costs under the Local Government Code:

(1) additional filing fee to fund contingency fund for liability insurance, if authorized by the county commissioners court (Sec. 82.003, Local Government Code) . . . not to exceed \$5;

(2) civil court actions (Sec. 118.052, Local Government Code):

(A) filing of original action (Secs. 118.052 and 118.053, Local Government Code):

(i) garnishment after judgment (Sec. 118.052, Local Government Code) . . . \$15; and

(ii) all others (Sec. 118.052, Local Government Code) . . . \$40;

(B) filing of action other than original (Secs. 118.052 and 118.054, Local Government Code) . . . \$30; and

(C) services rendered after judgment in original action (Secs. 118.052 and 118.0545, Local Government Code):

(i) abstract of judgment (Sec. 118.052, Local Government Code) . . . \$5; and

(ii) execution, order of sale, writ, or other process (Sec. 118.052, Local Government Code) . . . \$5;

(3) probate court actions (Sec. 118.052, Local Government Code):

(A) probate original action (Secs. 118.052 and 118.055, Local Government Code):

(i) probate of a will with independent executor, administration with will attached, administration of an estate, guardianship or receivership of an estate, or muniment of title (Sec. 118.052, Local Government Code) . . . \$40;

(ii) community survivors (Sec. 118.052, Local Government Code) . . . \$40;

(iii) small estates (Sec. 118.052, Local Government Code) . . . \$40;

(iv) declarations of heirship (Sec. 118.052, Local Government Code) . . . \$40;

(v) mental health or chemical dependency services (Sec. 118.052, Local Government Code) . . . \$40; and

(vi) additional, special fee (Secs. 118.052 and 118.064, Local Government Code) . . . \$5;

(B) services in pending probate action (Secs. 118.052 and 118.056, Local Government Code):

(i) filing an inventory and appraisal (Secs. 118.052 and 118.056(d), Local Government Code) . . . \$25;

(ii) approving and recording bond (Sec. 118.052, Local Government Code) . . . \$3;

(iii) administering oath (Sec. 118.052, Local Government Code) . . . \$2;

(iv) filing annual or final account of estate (Sec. 118.052, Local Government Code) . . . \$25;

(v) filing application for sale of real or personal property (Sec. 118.052, Local Government Code) . . . \$25;

(vi) filing annual or final report of guardian of a person (Sec. 118.052, Local Government Code) . . . \$10; and

(vii) filing a document not listed under this paragraph after the filing of an order approving the inventory and appraisal or after the 120th day after the date of the initial filing of the action, whichever occurs first (Secs. 118.052 and 191.007, Local Government Code), if more than 25 pages . . . \$25;

(C) adverse probate action (Secs. 118.052 and 118.057, Local Government Code) . . . \$40;

(D) claim against estate (Secs. 118.052 and 118.058, Local Government Code) . . . \$10 ;

(E) supplemental court-initiated guardianship fee (Secs. 118.052 and 118.067, Local Government Code) . . . \$20; and

(F) supplemental public probate administrator fee (Secs. 118.052 and 118.068, Local Government Code) . . . \$10;

(4) other fees (Sec. 118.052, Local Government Code):

(A) issuing document (Secs. 118.052 and 118.059, Local Government Code):

(i) original document and one copy (Sec. 118.052, Local Government Code) . . . \$4; and

(ii) each additional set of an original and one copy (Sec. 118.052, Local Government Code) . . . \$4;

(B) certified papers (Secs. 118.052 and 118.060, Local Government Code):

(i) for the clerk’s certificate (Sec. 118.052, Local Government Code) . . . \$5; and

(ii) a fee per page or part of a page (Sec. 118.052, Local Government Code) . . . \$1;

(C) noncertified papers, for each page or part of a page (Secs. 118.052 and 118.0605, Local Government Code) . . . \$1;

(D) letters testamentary, letter of guardianship, letter of administration, or abstract of judgment (Secs. 118.052 and 118.061, Local Government Code) . . . \$2;

(E) safekeeping of wills (Secs. 118.052 and 118.062, Local Government Code) . . . \$5;

(F) mail service of process (Secs. 118.052 and 118.063, Local Government Code) . . . same as sheriff; and

(G) records management and preservation fee (Secs. 118.052, 118.0546, and 118.0645, Local Government Code) . . . \$5;

(5) deposit on filing petition requesting permission to create a municipal civic center authority (Sec. 281.013, Local Government Code) . . . \$200;

(6) additional filing fee to fund the courthouse security fund, if authorized by the county commissioners court (Sec. 291.008, Local Government Code) . . . not to exceed \$5;

(7) additional filing fee for filing documents not subject to certain filing fees to fund the courthouse security fund, if authorized by the county commissioners court (Sec. 291.008, Local Government Code) . . . \$1;

(8) additional filing fee to fund the courthouse security fund in Webb County, if authorized by the county commissioners court (Sec. 291.009, Local Government Code) . . . not to exceed \$20;

(9) court cost in civil cases other than suits for delinquent taxes to fund the county law library fund, if authorized by the county commissioners court (Sec. 323.023, Local Government Code) . . . not to exceed \$35;

(10) additional filing fee for filing any civil action or proceeding requiring a filing fee, including an appeal, and on the filing of any counterclaim, cross-action, intervention, interpleader, or third-party action requiring a filing fee, to fund civil legal services for the indigent (Sec. 133.153, Local Government Code) . . . \$10; and

(11) on the filing of a civil suit an additional filing fee to be used for court-related purposes for the support of the judiciary (Sec. 133.154, Local Government Code) . . . \$42.

HISTORY: am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 7.106(a), effective September 1, 2007 (renumbered from Sec. 101.121(9)—(17) and (21); am. Acts 2009, 81st Leg., ch. 87 (S.B.

1969), § 11.109(a), effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 1183 (H.B. 3637), § 14, effective September 1, 2009; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 9.113(a), effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 8.113, effective September 1, 2017.

SUBTITLE K

SPECIALTY COURTS

Chapter

121.

124.

125.

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General Provisions

Veterans Treatment Court Program

Mental Health Court Programs

Public Safety Employees Treatment Court

Program

CHAPTER 121

General Provisions

Section

121.001.

121.002.

121.003.

Definition.

Oversight.

[Expires September 1, 2019] Specialty

Courts Report.

Sec. 121.001. Definition.

In this subtitle, “specialty court” means a court established under this subtitle or former law.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.01, effective September 1, 2013.

Sec. 121.002. Oversight.

(a) The lieutenant governor and the speaker of the house of representatives may assign to appropriate legislative committees duties relating to the oversight of specialty court programs.

(b) For the purpose of determining the eligibility of a specialty court program to receive state or federal grant funds administered by a state agency, the governor or a legislative committee to which duties are assigned under Subsection (a) may request the state auditor to perform a management, operations, or financial or accounting audit of the program.

(c) Notwithstanding any other law, a specialty court program may not operate until the judge, magistrate, or coordinator:

(1) provides to the Office of Court Administration of the Texas Judicial System:

(A) written notice of the program;

(B) any resolution or other official declaration under which the program was established; and

(C) a copy of the applicable strategic plan that incorporates duties related to supervision that will be required under the program; and

(2) receives from the office written verification of the program’s compliance with Subdivision (1).

(d) A specialty court program shall:

(1) comply with all programmatic best practices recommended by the Specialty Courts Advisory Council under Section 772.0061(b)(2) and approved by the Texas Judicial Council; and

(2) report to the criminal justice division of the governor’s office and the Texas Judicial Council any infor-

mation required by the division or council regarding the performance of the program.

(e) A specialty court program that fails to comply with Subsections (c) and (d) is not eligible to receive any state or federal grant funds administered by any state agency.

(f) [As added by Acts 2019, 86th Leg., ch. 606 (S.B. 891)] The Office of Court Administration of the Texas Judicial System shall:

(1) on request provide technical assistance to the specialty court programs;

(2) coordinate with an entity funded by the criminal justice division of the governor’s office that provides services to specialty court programs;

(3) monitor the specialty court programs for compliance with programmatic best practices as required by Subsection (d)(1); and

(4) notify the criminal justice division of the governor’s office if a specialty court program fails to comply with programmatic best practices as required by Subsection (d)(1).

(f) [As added by Acts 2019, 86th Leg., ch. 865 (H.B. 2955)] The Office of Court Administration of the Texas Judicial System shall:

(1) on request provide technical assistance to the specialty court programs;

(2) coordinate with an entity funded by the criminal justice division of the governor’s office that provides services to specialty court programs;

(3) monitor compliance of the specialty court programs with the programmatic best practices as required by Subsection (d)(1); and

(4) notify the criminal justice division about each specialty court program that is not in compliance with the programmatic best practices as required by Subsection (d)(1).

(g) The Office of Court Administration of the Texas Judicial System shall coordinate with and provide information to the criminal justice division of the governor’s office on request of the division.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.01, effective September 1, 2013; am. Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 9.05, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 865 (H.B. 2955), § 1, effective September 1, 2019.

Sec. 121.003. [Expires September 1, 2019] Specialty Courts Report.

(a) In this section, “office” means the Office of Court Administration of the Texas Judicial System.

(b) For the period beginning September 1, 2017, and ending September 1, 2018, the office shall collect information from specialty courts in this state regarding outcomes of participants in those specialty courts who are persons with mental illness, including recidivism rates of those participants, and other relevant information as determined by the office.

(c) Not later than December 1, 2018, the office shall submit to the legislature a report containing and evaluating the information collected under Subsection (b).

(d) This section expires September 1, 2019.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 32, effective September 1, 2017.

CHAPTER 124

Veterans Treatment Court Program

Section	
124.001.	Veterans Treatment Court Program Defined; Procedures for Certain Defendants.
124.002.	Authority to Establish Program; Eligibility.
124.003.	Duties of Veterans Treatment Court Program.
124.004.	Establishment of Regional Program. [Effective until January 1, 2020]
124.004.	Establishment of Regional Program. [Effective January 1, 2020]
124.005.	Fees. [Effective until January 1, 2020]
124.005.	Reimbursement Fees. [Effective January 1, 2020]
124.006.	Courtesy Supervision.
124.007.	Report.

Sec. 124.001. Veterans Treatment Court Program Defined; Procedures for Certain Defendants.

(a) In this chapter, “veterans treatment court program” means a program that has the following essential characteristics:

(1) the integration of services in the processing of cases in the judicial system;

(2) the use of a nonadversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants;

(3) early identification and prompt placement of eligible participants in the program;

(4) access to a continuum of alcohol, controlled substance, mental health, and other related treatment and rehabilitative services;

(5) careful monitoring of treatment and services provided to program participants;

(6) a coordinated strategy to govern program responses to participants’ compliance;

(7) ongoing judicial interaction with program participants;

(8) monitoring and evaluation of program goals and effectiveness;

(9) continuing interdisciplinary education to promote effective program planning, implementation, and operations;

(10) development of partnerships with public agencies and community organizations, including the United States Department of Veterans Affairs; and

(11) inclusion of a participant’s family members who agree to be involved in the treatment and services provided to the participant under the program.

(b) If a defendant who was arrested for or charged with, but not convicted of or placed on deferred adjudication community supervision for, an offense successfully completes a veterans treatment court program, after notice to the attorney representing the state and a hearing in the veterans treatment court at which that court determines that a dismissal is in the best interest of justice, the veterans treatment court shall provide to the court in which the criminal case is pending information about the dismissal and shall include all of the information required about the defendant for a petition for expunction under

Section 2(b), Article 55.02, Code of Criminal Procedure. The court in which the criminal case is pending shall dismiss the case against the defendant and:

(1) if that trial court is a district court, the court may, with the consent of the attorney representing the state, enter an order of expunction on behalf of the defendant under Section 1a(a-1), Article 55.02, Code of Criminal Procedure; or

(2) if that trial court is not a district court, the court may, with the consent of the attorney representing the state, forward the appropriate dismissal and expunction information to enable a district court with jurisdiction to enter an order of expunction on behalf of the defendant under Section 1a(a-1), Article 55.02, Code of Criminal Procedure.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 840 (S.B. 1940), § 4, effective June 19, 2009; Enacted by Acts 2009, 81st Leg., ch. 1103 (H.B. 4833), § 17, effective September 1, 2009; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.05, effective September 1, 2013 (renumbered from Tex. Health & Safety Code Sec. 617.001); am. Acts 2015, 84th Leg., ch. 585 (H.B. 3729), § 1, effective June 16, 2015; am. Acts 2015, 84th Leg., ch. 1205 (S.B. 1474), § 2, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 693 (H.B. 322), § 4, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 889 (H.B. 3069), § 1, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 8.007, effective September 1, 2019.

Sec. 124.002. Authority to Establish Program; Eligibility.

(a) The commissioners court of a county may establish a veterans treatment court program for persons arrested for, charged with, convicted of, or placed on deferred adjudication community supervision for any misdemeanor or felony offense. A defendant is eligible to participate in a veterans treatment court program established under this chapter only if the attorney representing the state consents to the defendant's participation in the program and if the court in which the criminal case is pending or in which the defendant was convicted or placed on deferred adjudication community supervision, as applicable, finds that the defendant is a veteran or current member of the United States armed forces, including a member of the reserves, national guard, or state guard, who:

(1) suffers from a brain injury, mental illness, or mental disorder, including post-traumatic stress disorder, or was a victim of military sexual trauma if the injury, illness, disorder, or trauma:

(A) occurred during or resulted from the defendant's military service; and

(B) affected the defendant's criminal conduct at issue in the case; or

(2) is a defendant whose participation in a veterans treatment court program, considering the circumstances of the defendant's conduct, personal and social background, and criminal history, is likely to achieve the objective of ensuring public safety through rehabilitation of the veteran in the manner provided by Section 1.02(1), Penal Code.

(b) The court in which the criminal case is pending shall allow an eligible defendant to choose whether to proceed through the veterans treatment court program or otherwise through the criminal justice system.

(c) Proof of matters described by Subsection (a) may be submitted to the applicable criminal court in any form the court determines to be appropriate, including military service and medical records, previous determinations of a disability by a veteran's organization or by the United States Department of Veterans Affairs, testimony or affidavits of other veterans or service members, and prior determinations of eligibility for benefits by any state or county veterans office. The court's findings must accompany any docketed case.

(d) In this section, "military sexual trauma" means any sexual assault or sexual harassment that occurs while the victim is a member of the United States armed forces performing the person's regular duties.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 840 (S.B. 1940), § 4, effective June 19, 2009; Enacted by Acts 2009, 81st Leg., ch. 1103 (H.B. 4833), § 17, effective September 1, 2009; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.05, effective September 1, 2013 (renumbered from Tex. Health & Safety Code Sec. 617.002); am. Acts 2015, 84th Leg., ch. 1205 (S.B. 1474), § 3, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 889 (H.B. 3069), § 2, effective September 1, 2017.

Sec. 124.003. Duties of Veterans Treatment Court Program.

(a) A veterans treatment court program established under this chapter must:

(1) if there has not yet been a disposition in the criminal case, ensure that a defendant eligible for participation in the program is provided legal counsel before volunteering to proceed through the program and while participating in the program;

(2) allow a participant arrested for or charged with an offense to withdraw from the program at any time before a trial on the merits has been initiated;

(3) provide a participant with a court-ordered individualized treatment plan indicating the services that will be provided to the participant; and

(4) ensure that the jurisdiction of the veterans treatment court continues for a period of not less than six months but does not continue beyond the period of community supervision for the offense charged.

(b) A veterans treatment court program established under this chapter shall make, establish, and publish local procedures to ensure maximum participation of eligible defendants in the county or counties in which those defendants reside.

(b-1) A veterans treatment court program may allow a participant to comply with the participant's court-ordered individualized treatment plan or to fulfill certain other court obligations through the use of videoconferencing software or other Internet-based communications.

(c) This chapter does not prevent the initiation of procedures under Chapter 46B, Code of Criminal Procedure.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 840 (S.B. 1940), § 4, effective June 19, 2009; Enacted by Acts 2009, 81st Leg., ch. 1103 (H.B. 4833), § 17, effective September 1, 2009; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.05, effective September 1, 2013 (renumbered from Tex. Health & Safety Code Sec. 617.003); am. Acts 2015, 84th Leg., ch. 1205 (S.B. 1474), §§ 4, 5, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 889 (H.B. 3069), § 3, effective September 1, 2017.

Sec. 124.004. Establishment of Regional Program.
[Effective until January 1, 2020]

(a) The commissioners courts of two or more counties may elect to establish a regional veterans treatment court program under this chapter for the participating counties.

(b) For purposes of this chapter, each county that elects to establish a regional veterans treatment court program under this section is considered to have established the program and is entitled to retain fees under Article 102.0178, Code of Criminal Procedure, in the same manner as if the county had established a veterans treatment court program without participating in a regional program.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 840 (S.B. 1940), § 4, effective June 19, 2009; Enacted by Acts 2009, 81st Leg., ch. 1103 (H.B. 4833), § 17, effective September 1, 2009; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.05, effective September 1, 2013 (renumbered from Tex. Health & Safety Code Sec. 617.004); am. Acts 2015, 84th Leg., ch. 1205 (S.B. 1474), § 6, effective September 1, 2015.

Sec. 124.004. Establishment of Regional Program.
[Effective January 1, 2020]

(a) The commissioners courts of two or more counties may elect to establish a regional veterans treatment court program under this chapter for the participating counties.

(b) [Repealed.]

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 840 (S.B. 1940), § 4, effective June 19, 2009; Enacted by Acts 2009, 81st Leg., ch. 1103 (H.B. 4833), § 17, effective September 1, 2009; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.05, effective September 1, 2013 (renumbered from Tex. Health & Safety Code Sec. 617.004); am. Acts 2019, 86th Leg., ch. 1352 (S.B. 346), § 4.40(30), effective January 1, 2020.

Sec. 124.005. Fees. [Effective until January 1, 2020]

(a) A veterans treatment court program established under this chapter may collect from a participant in the program:

- (1) a reasonable program fee not to exceed \$1,000; and
- (2) a testing, counseling, and treatment fee in an amount necessary to cover the costs of any testing, counseling, or treatment performed or provided under the program.

(b) Fees collected under this section may be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or coordinator. The fees must be:

- (1) based on the participant's ability to pay; and
- (2) used only for purposes specific to the program.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 840 (S.B. 1940), § 4, effective June 19, 2009; Enacted by Acts 2009, 81st Leg., ch. 1103 (H.B. 4833), § 17, effective September 1, 2009; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.05, effective September 1, 2013 (renumbered from Tex. Health & Safety Code Sec. 617.006); am. Acts 2015, 84th Leg., ch. 1205 (S.B. 1474), § 7, effective September 1, 2015.

Sec. 124.005. Reimbursement Fees. [Effective January 1, 2020]

(a) A veterans treatment court program established under this chapter may collect from a participant in the program:

(1) a reasonable reimbursement fee for the program not to exceed \$1,000; and

(2) a testing, counseling, and treatment reimbursement fee in an amount necessary to cover the costs of any testing, counseling, or treatment performed or provided under the program.

(b) Reimbursement fees collected under this section may be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or coordinator. The fees must be:

- (1) based on the participant's ability to pay; and
- (2) used only for purposes specific to the program.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 840 (S.B. 1940), § 4, effective June 19, 2009; Enacted by Acts 2009, 81st Leg., ch. 1103 (H.B. 4833), § 17, effective September 1, 2009; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.05, effective September 1, 2013 (renumbered from Tex. Health & Safety Code Sec. 617.006); am. Acts 2019, 86th Leg., ch. 1352 (S.B. 346), § 2.47, effective January 1, 2020.

Sec. 124.006. Courtesy Supervision.

(a) A veterans treatment court program that accepts placement of a defendant may transfer responsibility for supervising the defendant's participation in the program to another veterans treatment court program that is located in the county where the defendant works or resides. The defendant's supervision may be transferred under this section only with the consent of both veterans treatment court programs and the defendant.

(b) A defendant who consents to the transfer of the defendant's supervision must agree to abide by all rules, requirements, and instructions of the veterans treatment court program that accepts the transfer.

(c) If a defendant whose supervision is transferred under this section does not successfully complete the program, the veterans treatment court program supervising the defendant shall return the responsibility for the defendant's supervision to the veterans treatment court program that initiated the transfer.

(d) If a defendant is charged with an offense in a county that does not operate a veterans treatment court program, the court in which the criminal case is pending may place the defendant in a veterans treatment court program located in the county where the defendant works or resides, provided that a program is operated in that county and the defendant agrees to the placement. A defendant placed in a veterans treatment court program in accordance with this subsection must agree to abide by all rules, requirements, and instructions of the program.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1205 (S.B. 1474), § 8, effective September 1, 2015.

Sec. 124.007. Report.

Not later than December 1 of each year, the Texas Veterans Commission shall report the following information for the preceding state fiscal year to the governor, the lieutenant governor, the speaker of the house of representatives, and each member of the legislature:

- (1) the number of defendants who:
 - (A) participated in each veterans treatment court program;
 - (B) successfully completed each program; and

- (C) did not successfully complete each program; and
- (2) the amount of grant funding received by each program.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 526 (S.B. 1180), § 1, effective September 1, 2019.

CHAPTER 125

Mental Health Court Programs

Section	
125.001.	Mental Health Court Program Defined; Procedures for Certain Defendants.
125.002.	Authority to Establish Program.
125.0025.	Establishment of Regional Program.
125.003.	Program.
125.004.	Participant Payment for Treatment and Services.
125.005.	Program in Certain Counties Mandatory.

Sec. 125.001. Mental Health Court Program Defined; Procedures for Certain Defendants.

(a) In this chapter, “mental health court program” means a program that has the following essential characteristics:

- (1) the integration of mental illness treatment services and mental retardation services in the processing of cases in the judicial system;
- (2) the use of a nonadversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants;
- (3) early identification and prompt placement of eligible participants in the program;
- (4) access to mental illness treatment services and mental retardation services;
- (5) ongoing judicial interaction with program participants;
- (6) diversion of potentially mentally ill or mentally retarded defendants to needed services as an alternative to subjecting those defendants to the criminal justice system;
- (7) monitoring and evaluation of program goals and effectiveness;
- (8) continuing interdisciplinary education to promote effective program planning, implementation, and operations; and
- (9) development of partnerships with public agencies and community organizations, including local mental retardation authorities.

(b) If a defendant successfully completes a mental health court program, after notice to the attorney representing the state and a hearing in the mental health court at which that court determines that a dismissal is in the best interest of justice, the mental health court shall provide to the court in which the criminal case is pending information about the dismissal and shall include all of the information required about the defendant for a petition for expunction under Section 2(b), Article 55.02, Code of Criminal Procedure. The court in which the criminal case is pending shall dismiss the case against the defendant and:

(1) if that trial court is a district court, the court may, with the consent of the attorney representing the state, enter an order of expunction on behalf of the defendant under Section 1a(a-2), Article 55.02, Code of Criminal Procedure; or

(2) if that trial court is not a district court, the court may, with the consent of the attorney representing the state, forward the appropriate dismissal and expunction information to enable a district court with jurisdiction to enter an order of expunction on behalf of the defendant under Section 1a(a-2), Article 55.02, Code of Criminal Procedure.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1120 (H.B. 2609), § 1, effective September 1, 2003; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.06, effective September 1, 2013 (renumbered from Tex. Health & Safety Code Sec. 616.001); am. Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 24, effective June 14, 2019.

Sec. 125.002. Authority to Establish Program.

The commissioners court of a county may establish a mental health court program for persons who:

- (1) have been arrested for or charged with a misdemeanor or felony; and
- (2) are suspected by a law enforcement agency or a court of having a mental illness or mental retardation.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1120 (H.B. 2609), § 1, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 1130 (H.B. 2518), § 1, effective June 18, 2005; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.06, effective September 1, 2013 (renumbered from Tex. Health & Safety Code Sec. 616.002).

Sec. 125.0025. Establishment of Regional Program.

The commissioners courts of two or more counties may elect to establish a regional mental health court program under this chapter for the participating counties.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 25, effective June 14, 2019.

Sec. 125.003. Program.

(a) A mental health court program established under Section 125.002:

- (1) may handle all issues arising under Articles 16.22 and 17.032, Code of Criminal Procedure, and Chapter 46B, Code of Criminal Procedure; and
- (2) must:

(A) ensure a person eligible for the program is provided legal counsel before volunteering to proceed through the mental health court program and while participating in the program;

(B) allow a person, if eligible for the program, to choose whether to proceed through the mental health court program or proceed through the regular criminal justice system;

(C) allow a participant to withdraw from the mental health court program at any time before a trial on the merits has been initiated;

(D) provide a participant with a court-ordered individualized treatment plan indicating the services that will be provided to the participant; and

(E) ensure that the jurisdiction of the mental health court extends at least six months but does not

extend beyond the probationary period for the offense charged if the probationary period is longer than six months.

(b) The issues shall be handled by a magistrate, as designated by Article 2.09, Code of Criminal Procedure, who is part of a mental health court program established under Section 125.002.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1120 (H.B. 2609), § 1, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 1130 (H.B. 2518), § 2, effective June 18, 2005; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.06, effective September 1, 2013 (renumbered from Tex. Health & Safety Code Sec. 616.003).

Sec. 125.004. Participant Payment for Treatment and Services.

A mental health court program may require a participant to pay the cost of all treatment and services received while participating in the program, based on the participant's ability to pay.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1120 (H.B. 2609), § 1, effective September 1, 2003; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.06, effective September 1, 2013 (renumbered from Tex. Health & Safety Code Sec. 616.005).

Sec. 125.005. Program in Certain Counties Mandatory.

(a) The commissioners court of a county with a population of more than 200,000 shall:

- (1) establish a mental health court program under Section 125.002; and
- (2) direct the judge, magistrate, or coordinator to comply with Section 121.002(c)(1).

(b) A county required under this section to establish a mental health court program shall apply for federal and state funds available to pay the costs of the program. The criminal justice division of the governor's office may assist a county in applying for federal funds as required by this subsection.

(c) Notwithstanding Subsection (a), a county is required to establish a mental health court program under this section only if:

- (1) the county receives federal or state funding specifically for that purpose in an amount sufficient to pay the fund costs of the mental health court program; and
- (2) the judge, magistrate, or coordinator receives the verification described by Section 121.002(c)(2).

(d) A county that is required under this section to establish a mental health court program and fails to establish or to maintain that program is ineligible to receive grant funding from this state or any state agency.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 25, effective June 14, 2019.

CHAPTER 129.

Public Safety Employees Treatment Court Program

<p>Section 129.001. 129.002.</p>	<p>Definition. Public Safety Employees Treatment Court Program Defined; Procedures for Certain Defendants.</p>
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<p>Section 129.003. 129.004. 129.005. 129.005. 129.006. 129.006. 129.007.</p>	<p>Authority to Establish Program; Eligibility. Duties of Public Safety Employees Treatment Court Program. Establishment of Regional Program. [Effective until January 1, 2020] Establishment of Regional Program. [Effective January 1, 2020] Fees. [Effective until January 1, 2020] Reimbursement Fees. [Effective January 1, 2020] Courtesy Supervision.</p>
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Sec. 129.001. Definition.

In this chapter, "public safety employee" means a peace officer, firefighter, detention officer, county jailer, or emergency medical services employee of this state or a political subdivision of this state.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 369 (H.B. 3391), § 1, effective September 1, 2017.

Sec. 129.002. Public Safety Employees Treatment Court Program Defined; Procedures for Certain Defendants.

(a) In this chapter, "public safety employees treatment court program" means a program that has the following essential characteristics:

- (1) the integration of services in the processing of cases in the judicial system;
- (2) the use of a nonadversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants;
- (3) early identification and prompt placement of eligible participants in the program;
- (4) access to a continuum of alcohol, controlled substance, mental health, and other related treatment and rehabilitative services;
- (5) careful monitoring of treatment and services provided to program participants;
- (6) a coordinated strategy to govern program responses to participants' compliance;
- (7) ongoing judicial interaction with program participants;
- (8) monitoring and evaluation of program goals and effectiveness;
- (9) continuing interdisciplinary education to promote effective program planning, implementation, and operations;
- (10) development of partnerships with public agencies and community organizations; and
- (11) inclusion of a participant's family members who agree to be involved in the treatment and services provided to the participant under the program.

(b) If a defendant successfully completes a public safety employees treatment court program, after notice to the attorney representing the state and a hearing in the public safety employees treatment court at which that court determines that a dismissal is in the best interest of justice, the court in which the criminal case is pending shall dismiss the case against the defendant.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 369 (H.B. 3391), § 1, effective September 1, 2017.

Sec. 129.003. Authority to Establish Program; Eligibility.

(a) The commissioners court of a county may establish a public safety employees treatment court program for persons arrested for or charged with any misdemeanor or felony offense. A defendant is eligible to participate in a public safety employees treatment court program established under this chapter only if the attorney representing the state consents to the defendant's participation in the program and if the court in which the criminal case is pending finds that the defendant is a current or former public safety employee who:

(1) suffers from a brain injury, mental illness, or mental disorder, including post-traumatic stress disorder, that:

(A) occurred during or resulted from the defendant's duties as a public safety employee; and

(B) affected the defendant's criminal conduct at issue in the case; or

(2) is a defendant whose participation in a public safety employees treatment court program, considering the circumstances of the defendant's conduct, personal and social background, and criminal history, is likely to achieve the objective of ensuring public safety through rehabilitation of the public safety employee in the manner provided by Section 1.02(1), Penal Code.

(b) The court in which the criminal case is pending shall allow an eligible defendant to choose whether to proceed through the public safety employees treatment court program or otherwise through the criminal justice system.

(c) Proof of matters described by Subsection (a) may be submitted to the court in which the criminal case is pending in any form the court determines to be appropriate, including medical records or testimony or affidavits of other public safety employees. The court's findings must accompany any docketed case.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 369 (H.B. 3391), § 1, effective September 1, 2017.

Sec. 129.004. Duties of Public Safety Employees Treatment Court Program.

(a) A public safety employees treatment court program established under this chapter must:

(1) ensure that a defendant eligible for participation in the program is provided legal counsel before volunteering to proceed through the program and while participating in the program;

(2) allow a participant to withdraw from the program at any time before a trial on the merits has been initiated;

(3) provide a participant with a court-ordered individualized treatment plan indicating the services that will be provided to the participant; and

(4) ensure that the jurisdiction of the public safety employees treatment court continues for a period of not less than six months but does not continue beyond the period of community supervision for the offense charged.

(b) A public safety employees treatment court program established under this chapter shall make, establish, and publish local procedures to ensure maximum participation

of eligible defendants in the county or counties in which those defendants reside.

(c) A public safety employees treatment court program may allow a participant to comply with the participant's court-ordered individualized treatment plan or to fulfill certain other court obligations through the use of video-conferencing software or other Internet-based communications.

(d) This chapter does not prevent the initiation of procedures under Chapter 46B, Code of Criminal Procedure.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 369 (H.B. 3391), § 1, effective September 1, 2017.

Sec. 129.005. Establishment of Regional Program. [Effective until January 1, 2020]

(a) The commissioners courts of two or more counties may elect to establish a regional public safety employees treatment court program under this chapter for the participating counties.

(b) For purposes of this chapter, each county that elects to establish a regional public safety employees treatment court program under this section is considered to have established the program and is entitled to retain fees under Article 102.0178, Code of Criminal Procedure, in the same manner as if the county had established a public safety employees treatment court program without participating in a regional program.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 369 (H.B. 3391), § 1, effective September 1, 2017.

Sec. 129.005. Establishment of Regional Program. [Effective January 1, 2020]

(a) The commissioners courts of two or more counties may elect to establish a regional public safety employees treatment court program under this chapter for the participating counties.

(b) [Repealed.]

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 369 (H.B. 3391), § 1, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 1352 (S.B. 346), § 4.40(31), effective January 1, 2020.

Sec. 129.006. Fees. [Effective until January 1, 2020]

(a) A public safety employees treatment court program established under this chapter may collect from a participant in the program:

(1) a reasonable program fee not to exceed \$1,000; and

(2) a testing, counseling, and treatment fee in an amount necessary to cover the costs of any testing, counseling, or treatment performed or provided under the program.

(b) Fees collected under this section may be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or coordinator. The fees must be:

(1) based on the participant's ability to pay; and

(2) used only for purposes specific to the program.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 369 (H.B. 3391), § 1, effective September 1, 2017.

Sec. 129.006. Reimbursement Fees. [Effective January 1, 2020]

(a) A public safety employees treatment court program established under this chapter may collect from a participant in the program:

- (1) a reasonable reimbursement fee for the program not to exceed \$1,000; and
- (2) a testing, counseling, and treatment reimbursement fee in an amount necessary to cover the costs of any testing, counseling, or treatment performed or provided under the program.

(b) Reimbursement fees collected under this section may be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or coordinator. The fees must be:

- (1) based on the participant's ability to pay; and
- (2) used only for purposes specific to the program.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 369 (H.B. 3391), § 1, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 1352 (S.B. 346), § 2.49, effective January 1, 2020.

Sec. 129.007. Courtesy Supervision.

(a) A public safety employees treatment court program that accepts placement of a defendant may transfer responsibility for supervising the defendant's participation in the program to another public safety employees treatment court program that is located in the county where the defendant works or resides. The defendant's supervision may be transferred under this section only with the consent of both public safety employees treatment court programs and the defendant.

(b) A defendant who consents to the transfer of the defendant's supervision must agree to abide by all rules, requirements, and instructions of the public safety employees treatment court program that accepts the transfer.

(c) If a defendant whose supervision is transferred under this section does not successfully complete the program, the public safety employees treatment court program supervising the defendant shall return the responsibility for the defendant's supervision to the public safety employees treatment court program that initiated the transfer.

(d) If a defendant is charged with an offense in a county that does not operate a public safety employees treatment court program, the court in which the criminal case is pending may place the defendant in a public safety employees treatment court program located in the county where the defendant works or resides, provided that a program is operated in that county and the defendant agrees to the placement. A defendant placed in a public safety employees treatment court program in accordance with this subsection must agree to abide by all rules, requirements, and instructions of the program.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 369 (H.B. 3391), § 1, effective September 1, 2017.

SUBTITLE L

COURT PROFESSIONS REGULATION

CHAPTER 155

Duties Respecting Guardianship

Subchapter A. General Provisions

Section
155.001. Definitions.

Subchapter C. Standards for and Certification of Certain Guardians

155.102. Certification Required for Certain Guardians.

Subchapter A

General Provisions

Sec. 155.001. Definitions.

In this chapter:

(1) "Advisory board" means the Guardianship Certification Advisory Board.

(2) "Corporate fiduciary" has the meaning assigned by Section 1002.007, Estates Code.

(3) "Guardian" has the meaning assigned by Section 1002.012, Estates Code.

(4) "Guardianship program" means a local, county, or regional program that provides guardianship and related services to an incapacitated person or other person who needs assistance in making decisions concerning the person's own welfare or financial affairs.

(5) "Incapacitated person" has the meaning assigned by Section 1002.017, Estates Code.

(6) "Private professional guardian" means a person, other than an attorney or a corporate fiduciary, who is engaged in the business of providing guardianship services.

(6-a) Notwithstanding Section 151.001, "registration" means registration of a guardianship under this chapter.

(7) "Ward" has the meaning assigned by Section 22.033, Estates Code.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 3.24, effective September 1, 2005; am. Acts 2013, 83rd Leg., ch. 42 (S.B. 966), § 1.05, effective September 1, 2014 (renumbered from Sec. 111.001); am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 21.001(21), effective September 1, 2015 (renumbered from Sec. Title 2, Subtitle K); am. Acts 2017, 85th Leg., ch. 313 (S.B. 1096), § 9, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 22.031, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 516 (S.B. 43), § 23, effective September 1, 2017.

Subchapter C

Standards for and Certification of Certain Guardians

Sec. 155.102. Certification Required for Certain Guardians.

(a) To provide guardianship services in this state, the

following individuals must hold a certificate issued under this section:

- (1) an individual who is a private professional guardian;
- (2) an individual who will provide those services to a ward of a private professional guardian on the guardian's behalf; and
- (3) an individual, other than a volunteer, who will provide those services or other services under Section 161.114, Human Resources Code, to a ward of a guardianship program or the Department of Aging and Disability Services on the program's or department's behalf.

(a-1) An individual who directly supervises an individual who will provide guardianship services in this state to a ward of a guardianship program must hold a certificate issued under this section.

(b) An applicant for a certificate under this section must:

- (1) apply to the commission on a form prescribed by the commission; and
- (2) submit with the application a nonrefundable application fee in an amount determined by the commission, subject to the approval of the supreme court.

(c) The supreme court may adopt rules and procedures for issuing a certificate and for renewing, suspending, or revoking a certificate issued under this section. Any rules adopted by the supreme court under this section must:

- (1) ensure compliance with the standards adopted under Section 155.101;
- (2) provide that the commission establish qualifications for obtaining and maintaining certification;
- (3) provide that the commission issue certificates under this section;
- (4) provide that a certificate expires on the last day of the month in which the second anniversary of the date the certificate was issued occurs unless renewed on or before that day;

(5) prescribe procedures for accepting complaints and conducting investigations of alleged violations of the minimum standards adopted under Section 155.101 or other terms of the certification by certificate holders; and

(6) prescribe procedures by which the commission, after notice and hearing, may suspend or revoke the certificate of a holder who fails to substantially comply with appropriate standards or other terms of the certification.

(d) If the requirements for issuing a certificate under this section or reissuing a certificate under Section 153.060 include passage of an examination covering guardianship education requirements:

- (1) the commission shall develop and the director shall administer the examination; or
- (2) the commission shall direct the director to contract with another person or entity the commission determines has the expertise and resources to develop and administer the examination.

(e) In lieu of the certification requirements imposed under this section, the commission may issue a certificate to an individual to engage in business as a guardian or to provide guardianship services in this state if the individual:

- (1) submits an application to the commission in the form prescribed by the commission;
 - (2) pays a fee in a reasonable amount determined by the commission, subject to the approval of the supreme court;
 - (3) is certified, registered, or licensed as a guardian by a national organization or association the commission determines has requirements at least as stringent as those prescribed by the commission under this subchapter; and
 - (4) is in good standing with the organization or association with whom the person is licensed, certified, or registered.
- (f) An employee of the Department of Aging and Disability Services who is applying for a certificate under this section to provide guardianship services to a ward of the department is exempt from payment of an application fee required by this section.

(g) An application fee or other fee collected under this section shall be deposited to the credit of the guardianship certification account in the general revenue fund and may be appropriated only to the office for the administration and enforcement of this chapter.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 3.24, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 599 (S.B. 220), § 1, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 42 (S.B. 966), § 1.05, effective September 1, 2014 (renumbered from Sec. 111.042); am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 21.001(21), effective September 1, 2015 (renumbered from Sec. Title 2, Subtitle K); am. Acts 2017, 85th Leg., ch. 516 (S.B. 43), § 24, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 715 (S.B. 36), § 3, effective September 1, 2017.

TITLE 3 LEGISLATIVE BRANCH

SUBTITLE C LEGISLATIVE AGENCIES AND OVERSIGHT COMMITTEES

CHAPTER 325

Sunset Law

Section 325.002. 325.0123.	Definitions. Review of Certain Agencies for Respectful Language.
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Sec. 325.002. Definitions.

In this chapter:

- (1) "State agency" means an entity expressly made subject to this chapter.
- (2) "Advisory committee" means a committee, council, commission, or other entity created under state law whose primary function is to advise a state agency.
- (3) "Commission" means the Sunset Advisory Commission.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 479 (S.B. 813), § 1, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 167 (S.B. 892), § 2.12(a), effective September 1, 1987; am. Acts

1987, 70th Leg., ch. 1008 (H.B. 2243), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 196 (S.B. 631), § 1, effective August 28, 1989; am. Acts 2019, 86th Leg., ch. 596 (S.B. 619), § 7.01, effective June 10, 2019.

Sec. 325.0123. Review of Certain Agencies for Respectful Language.

(a) As part of its review of a health and human services agency, the commission shall consider and make recommendations regarding the statutory revisions necessary to use the phrase “intellectual disability” instead of “mental retardation” and to use the phrase “person with intellectual disability” instead of “person with mental retardation.”

(b) As part of its review of an agency, the commission shall consider and recommend, as appropriate, statutory revisions in accordance with the person first respectful language initiative under Chapter 392.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 272 (H.B. 1481), § 2, effective September 1, 2011.

SUBTITLE Z

MISCELLANEOUS PROVISIONS

CHAPTER 392

Person First Respectful Language Initiative

Section	
392.001.	Findings and Intent.
392.002.	Use of Person First Respectful Language Required.

Sec. 392.001. Findings and Intent.

The legislature finds that language used in reference to persons with disabilities shapes and reflects society’s attitudes toward persons with disabilities. Certain terms and phrases are demeaning and create an invisible barrier to inclusion as equal community members. It is the intent of the legislature to establish preferred terms and phrases for new and revised laws by requiring the use of language that places the person before the disability.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 272 (H.B. 1481), § 1, effective September 1, 2011.

Sec. 392.002. Use of Person First Respectful Language Required.

(a) The legislature and the Texas Legislative Council are directed to avoid using the following terms and phrases in any new statute or resolution and to change those terms and phrases used in any existing statute or resolution as sections including those terms and phrases are otherwise amended by law:

- (1) disabled;
- (2) developmentally disabled;
- (3) mentally disabled;
- (4) mentally ill;
- (5) mentally retarded;
- (6) handicapped;
- (7) cripple; and
- (8) crippled.

(b) In enacting or revising statutes or resolutions, the legislature and the Texas Legislative Council are directed to replace, as appropriate, terms and phrases listed by Subsection (a) with the following preferred phrases or appropriate variations of those phrases:

- (1) “persons with disabilities”;
- (2) “persons with developmental disabilities”;
- (3) “persons with mental illness”; and
- (4) “persons with intellectual disabilities.”

(b-1) In addition to the terms and phrases listed in Subsection (a), the legislature and the Texas Legislative Council are directed to avoid using in any new statute or resolution “hearing impaired,” “auditory impairment,” and “speech impaired” in reference to a deaf or hard of hearing person, and the legislature and the Texas Legislative Council are directed to replace, when enacting or revising a statute or resolution, those phrases with “deaf” or “hard of hearing,” as appropriate.

(c) A statute or resolution is not invalid solely because it does not employ this section’s preferred phrases.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 272 (H.B. 1481), § 1, effective September 1, 2011; am. Acts 2019, 86th Leg., ch. 233 (S.B. 281), § 1, effective September 1, 2019.

TITLE 4

EXECUTIVE BRANCH

SUBTITLE B

LAW ENFORCEMENT AND PUBLIC PROTECTION

Chapter	
411.	Department of Public Safety of the State of Texas
418.	Emergency Management

CHAPTER 411

Department of Public Safety of the State of Texas

Subchapter Q

Alert for Missing Adults

Section	
411.461.	Definitions.
411.462.	Alert for Missing Adults.
411.463.	Administration.
411.464.	Department to Recruit Participants.
411.465.	State Agencies.
411.466.	Notification to Department of Missing Adult.
411.467.	Activation of Alert.
411.468.	Content of Alert.
411.469.	Termination of Alert.
411.470.	Limitation on Participation by Texas Department of Transportation.

Sec. 411.461. Definitions.

In this subchapter:

- (1) “Adult” means a person who is 18 years of age or older but younger than 65 years of age.

(2) "Alert" means the statewide alert for missing adults that is developed and implemented under this subchapter.

(3) "Bodily injury" has the meaning assigned by Section 1.07, Penal Code.

(4) "Local law enforcement agency" means a local law enforcement agency with jurisdiction over the investigation of a missing adult.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 227 (H.B. 1769), § 1, effective September 1, 2019.

Sec. 411.462. Alert for Missing Adults.

With the cooperation of the Texas Department of Transportation, the office of the governor, and other appropriate law enforcement agencies in this state, the department shall develop and implement a system to allow a statewide alert to be activated on behalf of a missing adult.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 227 (H.B. 1769), § 1, effective September 1, 2019.

Sec. 411.463. Administration.

(a) The director is the statewide coordinator of the alert system.

(b) The director shall adopt rules and issue directives as necessary to ensure proper implementation of the alert system. The rules and directives must include:

(1) the procedures to be used by a local law enforcement agency to verify whether an adult is missing and whether circumstances indicate that:

(A) the missing adult is in imminent danger of bodily injury or death; or

(B) the disappearance of the missing adult may not have been voluntary, including cases of abduction or kidnapping;

(2) a description of the circumstances under which a local law enforcement agency is required to report a missing adult to the department; and

(3) the procedures to be used by an individual or entity to report information about a missing adult to designated media outlets in this state.

(c) The director shall prescribe forms for use by local law enforcement agencies in requesting activation of the alert system.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 227 (H.B. 1769), § 1, effective September 1, 2019.

Sec. 411.464. Department to Recruit Participants.

The department shall recruit public and commercial television and radio broadcasters, private commercial entities, state or local governmental entities, the public, and other appropriate persons to assist in developing and implementing the alert system.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 227 (H.B. 1769), § 1, effective September 1, 2019.

Sec. 411.465. State Agencies.

(a) A state agency participating in the alert system shall:

(1) cooperate with the department and assist in developing and implementing the alert system; and

(2) establish a plan for providing relevant information to its officers, investigators, or employees, as appropriate, once the alert system has been activated.

(b) In addition to its duties as a state agency under Subsection (a), the Texas Department of Transportation shall establish a plan for providing relevant information to the public through an existing system of dynamic message signs located across the state.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 227 (H.B. 1769), § 1, effective September 1, 2019.

Sec. 411.466. Notification to Department of Missing Adult.

(a) A local law enforcement agency shall notify the department if the agency:

(1) receives a report regarding a missing adult;

(2) verifies that at the time the adult is reported missing:

(A) the person reported missing is 18 years of age or older but younger than 65 years of age;

(B) the adult's location is unknown; and

(C) the adult has been missing for less than 72 hours;

(3) confirms that a preliminary investigation has taken place with respect to the disappearance and that, as a result of that investigation, the agency believes that the adult is missing under circumstances described by Section 411.463(b)(1)(A) or (B); and

(4) believes sufficient information is available to disseminate to the public that could assist in locating the adult, a person suspected of abducting or kidnapping the adult, or a vehicle suspected of being used by the adult or in any abduction or kidnapping of the adult.

(b) The department may modify the criteria described by Subsection (a) as necessary for the proper implementation of the alert system.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 227 (H.B. 1769), § 1, effective September 1, 2019.

Sec. 411.467. Activation of Alert.

(a) When a local law enforcement agency notifies the department under Section 411.466, the department shall confirm the accuracy of the information and, if confirmed, immediately issue an alert under this subchapter in accordance with the department's rules and directives under Section 411.463.

(b) The department may issue the alert on its own initiative, without receiving the notification described by Subsection (a), if the issuance conforms to the department's rules and directives and if the criteria described by Section 411.466(a) are satisfied.

(c) In issuing the alert, the department shall send the alert to designated media outlets in this state. Following receipt of the alert, participating radio stations and television stations and other participating media outlets may issue the alert at designated intervals to assist in locating the missing adult.

(d) The department shall also send the alert to:

(1) any appropriate law enforcement agency;

(2) the Texas Department of Transportation;

(3) the Texas Lottery Commission; and

(4) the Independent Bankers Association of Texas.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 227 (H.B. 1769), § 1, effective September 1, 2019.

Sec. 411.468. Content of Alert.

The alert must include:

(1) all appropriate information that may lead to the safe recovery of the missing adult, as determined by the department; and

(2) a statement instructing any person with information related to the missing adult to contact a local or state law enforcement agency.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 227 (H.B. 1769), § 1, effective September 1, 2019.

Sec. 411.469. Termination of Alert.

(a) The director shall terminate any activation of the alert with respect to a particular missing adult not later than the earlier of the date on which:

(1) the missing adult is located or the situation is otherwise resolved; or

(2) the notification period ends, as determined by department rule.

(b) A local law enforcement agency that locates a missing adult who is the subject of an alert under this subchapter shall notify the department as soon as possible that the missing adult has been located.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 227 (H.B. 1769), § 1, effective September 1, 2019.

Sec. 411.470. Limitation on Participation by Texas Department of Transportation.

Notwithstanding Section 411.465(b), the Texas Department of Transportation is not required to use any existing system of dynamic message signs in a statewide alert system created under this subchapter if the department receives notice from the United States Department of Transportation Federal Highway Administration that the use of the signs would result in the loss of federal highway funding or other punitive actions taken against this state due to noncompliance with federal laws, regulations, or policies.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 227 (H.B. 1769), § 1, effective September 1, 2019.

CHAPTER 418

Emergency Management

Subchapter C. Texas Division of Emergency Management

Section 418.054.	Communications Immediately Following a Disaster.
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Subchapter F-1. Disaster Issues Affecting Persons Who Are Elderly and Persons with Disabilities

418.132.	Establishment; Purpose.
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Subchapter C

Texas Division of Emergency Management

Sec. 418.054. Communications Immediately Following a Disaster.

The division, in collaboration with other appropriate

entities selected by the division, shall to the extent practicable include private wireless communication, Internet, and cable service providers in the disaster planning process and determine the availability of the providers' portable satellite communications equipment and portable mobile telephone towers to assist in response and recovery immediately following disasters.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 285 (H.B. 2320), § 1, effective September 1, 2019.

Subchapter F-1

Disaster Issues Affecting Persons Who Are Elderly and Persons with Disabilities

Sec. 418.132. Establishment; Purpose.

The task force on disaster issues affecting persons who are elderly and persons with disabilities is established to study methods to more effectively:

(1) assist persons who are elderly and persons with disabilities during a disaster or emergency evacuation; and

(2) accommodate persons who are elderly and persons with disabilities in emergency shelters.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 614 (S.B. 982), § 2, effective September 1, 2019.

SUBTITLE C

STATE MILITARY FORCES AND VETERANS

CHAPTER 434

Veteran Assistance Agencies

Subchapter A. Texas Veterans Commission

Section 434.024.	Information Regarding Veteran's Employment Preference Policies. [Renumbered]
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Subchapter H. Statewide Coordination of Mental Health Program for Veterans

434.351.	Definitions.
434.352.	Duties.
434.3525.	Mental Health Program Director Eligibility.
434.353.	Training and Certification.

Subchapter I. Community Collaboration Initiative

434.401.	Community Collaboration.
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Subchapter A

Texas Veterans Commission

Sec. 434.024. Information Regarding Veteran's Employment Preference Policies. [Renumbered]

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 387 (S.B. 588), § 1, effective September 1, 2017; Renumbered to Tex. Gov't Code § 434.025 by Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 21.001(22), effective September 1, 2019.

Subchapter H

Statewide Coordination of Mental Health Program for Veterans

Sec. 434.351. Definitions.

In this subchapter:

- (1) "Commission" means the Texas Veterans Commission.
- (2) "Peer" means a person who is a veteran or a veteran's family member.
 - (2-a) "Peer service coordinator" means a person who recruits and retains veterans, peers, and volunteers to participate in the mental health program for veterans and related activities.
 - (3) "Veteran" means a person who has served in:
 - (A) the army, navy, air force, coast guard, or marine corps of the United States;
 - (B) the state military forces as defined by Section 431.001; or
 - (C) an auxiliary service of one of those branches of the armed forces.
 - (4) [Repealed.]

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 324 (H.B. 19), § 2, effective June 4, 2015; am. Acts 2017, 85th Leg., ch. 512 (S.B. 27), §§ 2, 8(1), effective September 1, 2017.

Sec. 434.352. Duties.

- (a) The commission and the Department of State Health Services shall coordinate to administer the mental health program for veterans developed under Chapter 1001, Health and Safety Code.
- (b) For the mental health program for veterans, the commission shall:
 - (1) provide training to peer service coordinators and peers in accordance with Section 434.353;
 - (2) provide technical assistance to peer service coordinators and peers;
 - (3) identify, train, and communicate with community-based licensed mental health professionals, community-based organizations, and faith-based organizations;
 - (4) coordinate services for justice involved veterans; and
 - (5) coordinate local delivery to veterans and immediate family members of veterans of mental health first aid for veterans training.
- (c) Subject to Section 434.3525, the executive director of the commission shall appoint a program director to administer the mental health program for veterans.
- (d) The commission shall provide appropriate facilities in support of the mental health program for veterans to the extent funding is available for that purpose.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 324 (H.B. 19), § 2, effective June 4, 2015; am. Acts 2017, 85th Leg., ch. 512 (S.B. 27), § 3, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. HB4429 (H.B. 4429), § 1, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 1276 (S.B. 601), § 7, effective September 1, 2019.

Sec. 434.3525. Mental Health Program Director Eligibility.

To be eligible for appointment under Section 434.352(c), an individual must:

- (1) have at least a master's degree in a recognized mental health field;
- (2) be licensed in this state to practice a mental health profession;
- (3) have multiple years of postgraduate experience in a human services setting, such as a community mental health center, chemical dependency rehabilitation center, or residential treatment facility; and
- (4) have experience in providing trauma-informed care, with preference given to a candidate with at least two years of that experience.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 593 (S.B. 601), § 8, effective September 1, 2019.

Sec. 434.353. Training and Certification.

- (a) The commission shall develop and implement methods for providing peer service coordinator certification training to peer service coordinators, including providing training for initial certification and recertification and providing continuing education.
- (b) The commission shall manage and coordinate the peer training program to include initial training, advanced training, certification, and continuing education for peers associated with the mental health program for veterans.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 324 (H.B. 19), § 2, effective June 4, 2015; am. Acts 2017, 85th Leg., ch. 512 (S.B. 27), § 4, effective September 1, 2017.

Subchapter I

Community Collaboration Initiative

Sec. 434.401. Community Collaboration.

- (a) The commission and the Department of State Health Services shall include as a part of the mental health program for veterans described by Section 434.352(a) an initiative to encourage local communities to conduct cross-sector collaboration to synchronize locally accessible resources available for veterans and military service members.
- (b) The initiative must be designed to encourage local communities to form a committee that is tasked with developing a plan to identify and support the needs of veterans and military service members residing in their community. The commission may designate general areas of focus for the initiative.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 324 (H.B. 19), § 2, effective June 4, 2015.

SUBTITLE G

CORRECTIONS

Chapter 493.	Texas Department of Criminal Justice: Organization
495.	Contracts for Correctional Facilities and Services
499.	Population Management; Special Programs
501.	Inmate Welfare
507.	State Jail Division
508.	Parole and Mandatory Supervision
509.	Community Justice Assistance Division

Chapter
511.

Commission On Jail Standards [Expires
September 1, 2021]

CHAPTER 493

Texas Department of Criminal Justice: Organization

Section
493.031.
493.032.

Case Management Committees.
Correctional Officer Training Related to
Pregnant Inmates.

Sec. 493.031. Case Management Committees.

(a) Each facility under the oversight of the correctional institutions division shall establish a case management committee to assess each inmate in the facility and ensure the inmate is receiving appropriate services or participating in appropriate programs. The case management committee shall:

(1) review each individualized treatment plan adopted under Section 508.152 for an inmate in the facility and, as applicable, discuss with the inmate a possible treatment plan, including participation in any program or service that may be available through the department, the Windham School District, or any volunteer organization; and

(2) meet with each inmate in the facility at the time of the inmate's initial placement in the facility and at any time in which the committee seeks to reclassify the inmate based on the inmate's refusal to participate in a program or service recommended by the committee.

(b) A case management committee must include the members of the unit classification committee. In addition to those members, a case management committee may include any of the following members, based on availability and inmate needs:

(1) an employee whose primary duty involves providing rehabilitation and reintegration programs or services;

(2) an employee whose primary duty involves providing vocational training or educational services to inmates;

(3) an employee whose primary duty involves providing medical care or mental health care treatment to inmates; or

(4) a representative of a faith-based or volunteer organization.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1154 (S.B. 213), § 2, effective September 1, 2013.

Sec. 493.032. Correctional Officer Training Related to Pregnant Inmates.

(a) The department shall provide training relating to medical and mental health care issues applicable to pregnant inmates to:

(1) each correctional officer employed by the department at a facility in which female inmates are confined; and

(2) any other department employee whose duties involve contact with pregnant inmates.

(b) The training must include information regarding:

(1) appropriate care for pregnant inmates; and
(2) the impact on a pregnant inmate and the inmate's unborn child of:

(A) the use of restraints;

(B) placement in administrative segregation; and

(C) invasive searches.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 123 (H.B. 650), § 1, effective September 1, 2019.

CHAPTER 495

Contracts for Correctional Facilities and Services

Subchapter B

Miscellaneous Contracts for Correctional Facilities and Services

Section
495.023.

Contracts for Diagnostic and Evaluation
Services.

Sec. 495.023. Contracts for Diagnostic and Evaluation Services.

(a) The institutional division shall request proposals and may award one contract to a private vendor or community supervision and corrections department to screen and diagnose, either before or after adjudications of guilt, persons who may be transferred to the division. The term of the contract may not be for more than two years. The institutional division shall award the contract if the division determines that:

(1) the person proposing to enter into the contract can provide psychiatric, psychological, or social evaluations of persons who are to be transferred to the division;

(2) the services provided will reduce the chances of misdiagnosis of mentally ill and mentally retarded persons who are to be transferred to the division, expedite the diagnostic process, and offer savings to the division;

(3) the quality of services offered equals or exceeds the quality of the same services provided by the division; and

(4) the state will assume no additional liability by entering into a contract for the services.

(b) If the institutional division enters into the contract and during or at the end of the contract period determines that the diagnostic services performed under the contract are of a sufficient quality and are cost effective, the division shall submit requests for additional proposals for contracts and award one or more contracts in the same manner as provided by Subsection (a).

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 212 (S.B. 1044), § 2.01, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 10.01(a), effective August 26, 1991 (renumbered from Sec. 494.023).

CHAPTER 499

Population Management; Special Programs

Subchapter E

Unit and System Capacity

Section	
499.102.	Staff Determinations and Recommendations.

Sec. 499.102. Staff Determinations and Recommendations.

(a) The staff of the institutional division, on its own initiative or as directed by the governor or the board, may recommend to the administration of the institutional division that the maximum capacity established under Section 499.101 for a unit be increased if the staff determines through written findings that the division can increase the maximum capacity and provide:

- (1) proper inmate classification and housing within the unit that is consistent with the classification system;
- (2) housing flexibility to allow necessary repairs and routine and preventive maintenance to be performed without compromising the classification system;
- (3) adequate space in dayrooms;
- (4) all meals within a reasonable time, allowing each inmate a reasonable time within which to eat;
- (5) operable hygiene facilities that ensure the availability of a sufficient number of fixtures to serve the inmate population;
- (6) adequate laundry services;
- (7) sufficient staff to:
 - (A) meet operational and security needs;
 - (B) meet health care needs, including the needs of inmates requiring psychiatric care, mentally retarded inmates, and physically handicapped inmates;
 - (C) provide a safe environment for inmates and staff; and
 - (D) provide adequate internal affairs investigation and review;
- (8) medical, dental, and psychiatric care adequate to ensure:
 - (A) minimal delays in delivery of service from the time sick call requests are made until the service is performed;
 - (B) access to regional medical facilities;
 - (C) access to the institutional division hospital at Galveston or contract facilities performing the same services;
 - (D) access to specialty clinics; and
 - (E) a sufficient number of psychiatric inpatient beds and sheltered beds for mentally retarded inmates;
- (9) a fair disciplinary system that ensures due process and is adequate to ensure safety and order in the unit;
- (10) work, vocational, academic, and on-the-job training programs that afford all eligible inmates with an opportunity to learn job skills or work habits that can be

applied on release, appropriately staffed and of sufficient quality;

(11) a sufficient number and quality of nonprogrammatic and recreational activities for all eligible inmates who choose to participate;

(12) adequate assistance from persons trained in the law or a law library with a collection containing necessary materials and space adequate for inmates to use the law library for study related to legal matters;

(13) adequate space and staffing to permit contact and noncontact visitation of all eligible inmates;

(14) adequate maintenance programs to repair and prevent breakdowns caused by increased use of facilities and fixtures; and

(15) space and staff sufficient to provide all the services and facilities required by this section.

(b) The staff of the institutional division shall request of the Legislative Budget Board an estimate of the initial cost of implementing the increase in capacity and the increase in operating costs of the unit for the five years immediately following the increase in capacity. The Legislative Budget Board shall provide the staff with the estimates, and the staff shall attach a copy of the estimates to the recommendations.

(c) The staff of the institutional division may not take more than 90 days from the date the process is initiated to make recommendations on an increase in the maximum capacity for a unit under this section.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 655 (H.B. 124), § 2, effective June 16, 1991; am. Acts 1995, 74th Leg., ch. 321 (H.B. 2162), § 1.061, effective September 1, 1995.

CHAPTER 501

Inmate Welfare

Subchapter A. General Welfare Provisions

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Subchapter A

General Welfare Provisions

Sec. 501.006. Emergency Absence.

(a) The institutional division may grant an emergency absence under escort to an inmate so that the inmate may:

- (1) obtain a medical diagnosis or medical treatment;
- (2) obtain treatment and supervision at a Texas Department of Mental Health and Mental Retardation facility; or
- (3) attend a funeral or visit a critically ill relative.

(b) The institutional division shall adopt policies for the administration of the emergency absence under escort program.

(c) An inmate absent under this section is considered to be in the custody of the institutional division, and the inmate must be under physical guard while absent.

(d) The institutional division may not grant a furlough to an inmate convicted of an offense under Section 42.072, Penal Code.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 212 (S.B. 1044), § 2.01, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 10.01(a), effective August 26, 1991 (renumbered from Sec. 500.006); am. Acts 1993, 73rd Leg., ch. 10 (S.B. 25), § 7, effective March 19, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 14.36, effective September 1, 1995; am. Acts 1995, 74th Leg., ch. 321 (H.B. 2162), § 1.074, effective September 1, 1995; am. Acts 1995, 74th Leg., ch. 657 (S.B. 126), § 7, effective June 14, 1995; am. Acts 1997, 75th Leg., ch. 1 (S.B. 97), § 9, effective January 28, 1997.

Sec. 501.0215. Educational Programming for Pregnant Inmates.

The department shall develop and provide to each pregnant inmate educational programming relating to pregnancy and parenting. The programming must include instruction regarding:

- (1) appropriate prenatal care and hygiene;
- (2) the effects of prenatal exposure to alcohol and drugs on a developing fetus;
- (3) parenting skills; and
- (4) medical and mental health issues applicable to children.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 123 (H.B. 650), § 3, effective September 1, 2019.

Sec. 501.023. Information Concerning Foster Care History.

(a) The department, during the diagnostic process, shall assess each inmate with respect to whether the inmate has at any time been in the conservatorship of a

state agency responsible for providing child protective services.

(b) Not later than December 31 of each year, the department shall submit a report to the governor, the lieutenant governor, and each member of the legislature and shall make the report available to the public on the department's Internet website. The report must summarize statistical information concerning the total number of inmates who have at any time been in the conservatorship of a state agency responsible for providing child protective services, including, disaggregated by age, the number of inmates who have not previously served a term of imprisonment.

HISTORY: am. Acts 2019, 86th Leg., ch. 761 (H.B. 1191), § 1, effective September 1, 2019.

Sec. 501.024. Verification of Inmate Veteran Status.

(a) The department, during the diagnostic process, shall record information relating to an inmate's military history in the inmate's admission sheet and intake screening form, or any other similar document.

(b) The department shall:

(1) in consultation with the Texas Veterans Commission, investigate and verify the veteran status of each inmate by using the best available federal data; and

(2) use the data described by Subdivision (1) to assist inmates who are veterans in applying for federal benefits or compensation for which the inmates may be eligible under a program administered by the United States Department of Veterans Affairs.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 261 (H.B. 634), § 1, effective June 14, 2013; am. Acts 2015, 84th Leg., ch. 281 (H.B. 875), § 1, effective September 1, 2015; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 21.001(24), effective September 1, 2015 (renumbered from Sec. 501.023).

Sec. 501.025. Veterans Services Coordinator.

(a) The department shall establish a veterans services coordinator to coordinate responses to the needs of veterans under the supervision of the department, including veterans who are released on parole or mandatory supervision. The veterans services coordinator, with the cooperation of the community justice assistance division, shall provide information to community supervision and corrections departments to help those departments coordinate responses to the needs of veterans placed on community supervision. The veterans services coordinator shall coordinate veterans' services for all of the department's divisions.

(b) The veterans services coordinator, in collaboration with the attorney general's office, shall provide each incarcerated veteran a child support modification application.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 987 (H.B. 865), § 1, effective September 1, 2017.

Subchapter B

General Medical and Mental Health Care Provisions

Sec. 501.056. Contract for Care of Mentally Ill and Mentally Retarded Inmates.

The department shall contract with the Texas Depart-

ment of Mental Health and Mental Retardation for provision of Texas Department of Mental Health and Mental Retardation facilities, treatment, and habilitation for mentally ill and mentally retarded inmates in the custody of the department. The contract must provide:

- (1) detailed characteristics of the mentally ill inmate population and the mentally retarded inmate population to be affected under the contract;
- (2) for the respective responsibilities of the Texas Department of Mental Health and Mental Retardation and the department with regard to the care and supervision of the affected inmates; and
- (3) that the department remains responsible for security.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 212 (S.B. 1044), § 2.01, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 10.01(a), effective August 26, 1991 (renumbered from Sec. 500.056); am. Acts 1995, 74th Leg., ch. 321 (H.B. 2162), § 1.091, effective September 1, 1995.

Sec. 501.057. Civil Commitment Before Parole.

(a) The department shall establish a system to identify mentally ill inmates who are nearing eligibility for release on parole.

(b) Not later than the 30th day before the initial parole eligibility date of an inmate identified as mentally ill, an institutional division psychiatrist shall examine the inmate. The psychiatrist shall file a sworn application for court-ordered temporary mental health services under Chapter 574, Health and Safety Code, if the psychiatrist determines that the inmate is mentally ill and as a result of the illness the inmate meets at least one of the criteria listed in Section 574.034 or 574.0345, Health and Safety Code.

(c) The psychiatrist shall include with the application a sworn certificate of medical examination for mental illness in the form prescribed by Section 574.011, Health and Safety Code.

(d) The institutional division is liable for costs incurred for a hearing under Chapter 574, Health and Safety Code, that follows an application filed by a division psychiatrist under this section.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 212 (S.B. 1044), § 2.01, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 10.01(a), effective August 26, 1991 (renumbered from Sec. 500.057); am. Acts 1995, 74th Leg., ch. 321 (H.B. 2162), § 1.092, effective September 1, 1995; am. Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 7, effective September 1, 2019.

Sec. 501.058. Compensation of Psychiatrists.

The amount of compensation paid by the institutional division to psychiatrists employed by the division should be similar to the amount of compensation authorized for the Texas Department of Mental Health and Mental Retardation to pay to psychiatrists employed by the Texas Department of Mental Health and Mental Retardation.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 212 (S.B. 1044), § 2.01, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 10.01(a), effective August 26, 1991 (renumbered from Sec. 500.058).

Sec. 501.066. Restraint of Pregnant Inmate or Defendant.

(a) The department may not place restraints around the ankles, legs, or waist of a pregnant woman in the

custody of the department at any time after the woman's pregnancy has been confirmed by a medical professional, unless the director, the director's designee, or a medical professional determines that the use of restraints is necessary based on a reasonable belief that the woman will harm herself, her unborn child or infant, or any other person or will attempt escape.

(b) If a determination to use restraints is made under Subsection (a), the type of restraint used and the manner in which the restraint is used must be the least restrictive available under the circumstances to ensure safety and security or to prevent escape.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1184 (H.B. 3653), § 1, effective September 1, 2009; am. Acts 2019, 86th Leg., ch. 123 (H.B. 650), § 4, effective September 1, 2019.

Sec. 501.0667. Inmate Postpartum Recovery Requirements.

(a) The department shall ensure that, for a period of 72 hours after the birth of an infant by an inmate:

(1) the infant is allowed to remain with the inmate, unless a medical professional determines doing so would pose a health or safety risk to the inmate or infant; and

(2) the inmate has access to any nutritional or hygiene-related products necessary to care for the infant, including diapers.

(b) The department shall make the items described by Subsection (a)(2) available free of charge to an indigent inmate.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 123 (H.B. 650), § 5, effective September 1, 2019.

Sec. 501.068. Developmentally Disabled Offender Program. [Renumbered]

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 406 (H.B. 2189), § 2, effective September 1, 2015; Renumbered to Tex. Gov't Code § 501.069 by Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 24.001(15), effective September 1, 2017.

Sec. 501.069. Developmentally Disabled Offender Program.

(a) In this section, "offender" has the meaning assigned by Section 501.091.

(b) The department shall establish and maintain a program for offenders:

(1) who are suspected of or identified as having an intellectual disability or borderline intellectual functioning; and

(2) whose adaptive functioning is significantly impaired.

(c) The program must provide an offender described by Subsection (b) with:

(1) a safe environment while confined; and

(2) specialized programs, treatments, and activities designed by the department to assist the offender in effectively managing, treating, or accommodating the offender's intellectual disability or borderline intellectual functioning.

(d) The department may accept gifts, awards, or grants for the purpose of providing the services described by Subsection (b).

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 406 (H.B. 2189), § 2, effective September 1, 2015; Renumbered from Tex. Gov't Code § 501.068 by Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 24.001(15), effective September 1, 2017.

Sec. 501.070. Trauma History Screening.

The department shall:

- (1) screen each female inmate during the diagnostic process to determine whether the inmate has experienced adverse childhood experiences or other significant trauma; and
- (2) refer the inmate as needed to the appropriate medical or mental health care professional for treatment.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 123 (H.B. 650), § 5, effective September 1, 2019.

Subchapter C

Continuity of Care Programs; Reentry Program

Sec. 501.091. Definitions.

In this subchapter:

- (1) "Correctional facility" means a facility operated by or under contract with the department.
- (2) "Offender" means an inmate or state jail defendant confined in a correctional facility.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 643 (H.B. 1711), § 2, effective September 1, 2009.

Sec. 501.092. Comprehensive Reentry and Reintegration Plan for Offenders.

(a) The department shall develop and adopt a comprehensive plan to reduce recidivism and ensure the successful reentry and reintegration of offenders into the community following an offender's release or discharge from a correctional facility.

(b) The reentry and reintegration plan adopted under this section must:

- (1) incorporate the use of the risk and needs assessment instrument adopted under Section 501.0921;
- (2) provide for programs that address the assessed needs of offenders;
- (3) provide for a comprehensive network of transition programs to address the needs of offenders released or discharged from a correctional facility;
- (4) identify and define the transition services that are to be provided by the department and which offenders are eligible for those services;
- (5) coordinate the provision of reentry and reintegration services provided to offenders through state-funded and volunteer programs across divisions of the department to:
 - (A) target eligible offenders efficiently; and
 - (B) ensure maximum use of existing facilities, personnel, equipment, supplies, and other resources;
- (6) provide for collecting and maintaining data regarding the number of offenders who received reentry and reintegration services and the number of offenders who were eligible for but did not receive those services, including offenders who did not participate in those services;

(7) provide for evaluating the effectiveness of the reentry and reintegration services provided to offenders by collecting, maintaining, and reporting outcome information, including recidivism data as applicable;

(8) identify providers of existing local programs and transitional services with whom the department may contract under Section 495.028 to implement the reentry and reintegration plan; and

(9) subject to Subsection (f), provide for the sharing of information between local coordinators, persons with whom the department contracts under Section 495.028, and other providers of services as necessary to adequately assess and address the needs of each offender.

(c) The department, in consultation with the Board of Pardons and Paroles and the Windham School District, shall establish the role of each entity in providing reentry and reintegration services. The reentry and reintegration plan adopted under this section must include, with respect to the department, the Board of Pardons and Paroles, and the Windham School District:

(1) the reentry and reintegration responsibilities and goals of each entity, including the duties of each entity to administer the risk and needs assessment instrument adopted under Section 501.0921;

(2) the strategies for achieving the goals identified by each entity; and

(3) specific timelines for each entity to implement the components of the reentry and reintegration plan for which the entity is responsible.

(d) The department shall regularly evaluate the reentry and reintegration plan adopted under this section. Not less than once in each three-year period following the adoption of the plan, the department shall update the plan.

(e) The department shall provide a copy of the initial reentry and reintegration plan adopted under this section and each evaluation and revision of the plan to the board, the Windham School District, and the Board of Pardons and Paroles.

(f) An offender's personal health information may be disclosed under Subsection (b)(9) only if:

(1) the offender consents to the disclosure; and

(2) the disclosure does not violate the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) or other state or federal law.

(g) The programs provided under Subsections (b)(2) and (3) must:

(1) be implemented by highly skilled staff who are experienced in working with inmate reentry and reintegration programs;

(2) provide offenders with:

(A) individualized case management and a full continuum of care;

(B) life-skills training, including information about budgeting, money management, nutrition, and exercise;

(C) education and, if an offender has a learning disability, special education;

(D) employment training;

(E) appropriate treatment programs, including substance abuse and mental health treatment programs; and

(F) parenting and relationship building classes; and

(3) be designed to build for former offenders post-release and post-discharge support from the community into which an offender is released or discharged, including support from agencies and organizations within that community.

(h) In developing the reentry and reintegration plan adopted under this section, the department shall ensure that the reentry program for long-term inmates under Section 501.096 and the reintegration services provided under Section 501.097 are incorporated into the plan.

(i) Not later than September 1 of each even-numbered year, the department shall deliver a report of the results of evaluations conducted under Subsection (b)(7) to the lieutenant governor, the speaker of the house of representatives, and each standing committee of the senate and house of representatives having primary jurisdiction over the department.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 643 (H.B. 1711), § 2, effective September 1, 2009; am. Acts 2013, 83rd Leg., ch. 1154 (S.B. 213), § 3, effective September 1, 2013.

Sec. 501.0921. Risk and Needs Assessment Instrument.

(a) The department shall adopt a standardized instrument to assess, based on criminogenic factors, the risks and needs of each offender within the adult criminal justice system.

(b) The department shall make the risk and needs assessment instrument available for use by each community supervision and corrections department established under Chapter 76.

(c) The department and the Windham School District shall jointly determine the duties of each entity with respect to implementing the risk and needs assessment instrument in order to efficiently use existing assessment processes.

(d) **[Expired.]**

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1154 (S.B. 213), § 4, effective September 1, 2013.

Sec. 501.0971. Provision of Reentry and Reintegration Information to Inmates.

(a) The department shall identify organizations that provide reentry and reintegration resource guides and shall collaborate with those organizations to prepare a resource guide that is to be made available to all inmates. At a minimum, the department shall collaborate with:

- (1) nonprofit entities that specialize in criminal justice issues;
- (2) faith-based organizations; and
- (3) organizations that:
 - (A) offer pro bono legal services to inmates; or
 - (B) are composed of the families and friends of inmates.

(b) The department shall make the resource guide available in the Windham School District libraries and in each of the following areas of a correctional facility:

- (1) peer educator classrooms;
- (2) chapels;
- (3) reintegration specialist offices; and

(4) any area or classroom that is used by the department for the purpose of providing information about reentry to inmates.

(c) The department shall make available a sufficient number of copies of the resource guide to ensure that each inmate is able to access the resource guide in a timely manner.

(d) The department shall identify organizations described by Subsection (a) that provide information described by Subsection (e) and shall collaborate with those organizations to compile county-specific information packets for inmates. The department shall, within the 180-day period preceding the date an inmate will discharge the inmate's sentence or is released on parole, mandatory supervision, or conditional pardon, provide the inmate with a county-specific information packet for the county that the inmate designates as the inmate's intended residence.

(e) At the minimum, a county-specific packet described by Subsection (d) must include, for the applicable county:

(1) contact information, including telephone numbers, e-mail addresses, physical locations, and mailing addresses, as applicable, of:

(A) workforce offices, housing options, places of worship, support groups, peer-to-peer counseling groups, and other relevant organizations or agencies as determined by the department and the collaborating organization;

(B) agencies and organizations that offer emergency assistance, such as food and clothing banks, temporary bus passes, low-cost medical assistance, and overnight and temporary housing; and

(C) agencies and organizations that offer mental health counseling; and

(2) information necessary for the inmate to apply for governmental assistance or benefits, including Medicaid, social security benefits, or nutritional assistance programs under Chapter 33, Human Resources Code.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 112 (S.B. 578), § 1, effective September 1, 2015.

Sec. 501.098. Reentry Task Force.

(a) The department shall establish a reentry task force and shall coordinate the work of the task force with the Office of Court Administration. The executive director shall ensure that the task force includes representatives of the following entities:

- (1) the Texas Juvenile Justice Department;
- (2) the Texas Workforce Commission;
- (3) the Department of Public Safety;
- (4) the Texas Department of Housing and Community Affairs;
- (5) the Texas Correctional Office on Offenders with Medical or Mental Impairments;
- (6) the Health and Human Services Commission;
- (7) the Texas Judicial Council;
- (8) the Board of Pardons and Paroles;
- (9) the Windham School District;
- (10) the Texas Commission on Jail Standards;
- (11) the Department of State Health Services;
- (12) the Texas Court of Criminal Appeals;

(13) the County Judges and Commissioners Association of Texas;

(14) the Sheriffs' Association of Texas;

(15) the Texas District and County Attorneys Association; and

(16) the Texas Conference of Urban Counties.

(b) The executive director shall appoint a representative from each of the following entities to serve on the reentry task force:

(1) a community supervision and corrections department established under Chapter 76;

(2) an organization that advocates on behalf of offenders;

(3) a local reentry planning entity; and

(4) a statewide organization that advocates for or provides reentry or reintegration services to offenders following their release or discharge from a correctional facility.

(c) To the extent feasible, the executive director shall ensure that the membership of the reentry task force reflects the geographic diversity of this state and includes members of both rural and urban communities.

(d) The executive director may appoint additional members as the executive director determines necessary.

(e) The reentry task force shall:

(1) identify gaps in services for offenders following their release or discharge to rural or urban communities in the areas of employment, housing, substance abuse treatment, medical care, and any other areas in which the offenders need special services; and

(2) coordinate with providers of existing local reentry and reintegration programs, including programs operated by a municipality or county, to make recommendations regarding the provision of comprehensive services to offenders following their release or discharge to rural or urban communities.

(f) In performing its duties under Subsection (e), the reentry task force shall:

(1) identify:

(A) specific goals of the task force;

(B) specific deliverables of the task force, including the method or format in which recommendations under Subsection (e)(2) will be made available; and

(C) the intended audience or recipients of the items described by Paragraph (B);

(2) specify the responsibilities of each entity represented on the task force regarding the goals of the task force; and

(3) specify a timeline for achieving the task force's goals and producing the items described by Subdivision (1)(B).

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 643 (H.B. 1711), § 2, effective June 19, 2009; am. Acts 2013, 83rd Leg., ch. 1154 (S.B. 213), § 5, effective September 1, 2013.

Sec. 501.103. Annual Report.

(a) Not later than December 31 of each year, the department's reentry and integration division and parole division shall jointly prepare and submit an annual report to:

(1) the governor;

(2) the lieutenant governor;

(3) the speaker of the house of representatives;

(4) the standing committees of the house and senate primarily responsible for criminal justice issues and corrections issues; and

(5) the reentry task force.

(b) The report must include the following information about parole during the year in which the report is submitted:

(1) the number of referrals of releasees for employment, housing, medical care, treatment for substance abuse or mental illness, education, or other basic needs;

(2) the outcome of each referral;

(3) the identified areas in which referrals are not possible due to unavailable resources or providers;

(4) community resources available to releasees, including faith-based and volunteer organizations; and

(5) parole officer training.

(c) The report must include the following information about reentry and reintegration during the year in which the report is submitted:

(1) the outcomes of programs and services that are available to releasees based on follow-up inquiries evaluating clients' progress after release;

(2) the common reentry barriers identified during releasees' individual assessments, including in areas of employment, housing, medical care, treatment for substance abuse or mental illness, education, or other basic needs;

(3) the common reentry benefits and services that reentry coordinators help releasees obtain or apply for;

(4) available community resources, including faith-based and volunteer organizations; and

(5) reentry coordinator training.

(d) The report required by Subsection (a) must be made available to the public.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1032 (H.B. 2719), § 2, effective September 1, 2013.

Subchapter D

Inmate Housing

Sec. 501.113. Triple-Celling Prohibited; Single-Celling Required for Certain Inmates.

(a) The institutional division may not house more than two inmates in a cell designed for occupancy by one inmate or two inmates.

(b) The institutional division shall house the following classes of inmates in single occupancy cells:

(1) inmates confined in death row segregation;

(2) inmates confined in administrative segregation;

(3) inmates assessed as mentally retarded and whose habilitation plans recommend housing in a single occupancy cell;

(4) inmates with a diagnosed psychiatric illness being treated on an inpatient or outpatient basis whose individual treatment plans recommend housing in single occupancy cells; and

(5) inmates whose medical treatment plans recommend housing in a single occupancy cell.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 655 (H.B. 124), § 3, effective June 16, 1991.

Sec. 501.114. Housing Requirements Applicable to Pregnant Inmates.

(a) The department may not place in administrative segregation an inmate who is pregnant or who gave birth during the preceding 30 days unless the director or director’s designee determines that the placement is necessary based on a reasonable belief that the inmate will harm herself, her unborn child or infant, or any other person or will attempt escape.

(b) The department may not assign a pregnant inmate to any bed that is elevated more than three feet above the floor.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 123 (H.B. 650), § 6, effective September 1, 2019.

CHAPTER 507

State Jail Division

Subchapter A. State Jail Felony Facilities

Section
507.007. Educational and Vocational Training Pilot Program.

Subchapter B. Miscellaneous Provisions

507.031. Furlough Program.
507.034. Veterans Reentry Dorm Program.

Subchapter A

State Jail Felony Facilities

Sec. 507.007. Educational and Vocational Training Pilot Program.

(a) The department shall establish a pilot program to provide educational and vocational training, employment, and reentry services to defendants placed on community supervision and required to serve a term of confinement in a state jail felony facility under Article 42A.562, Code of Criminal Procedure.

(b) The department, in consultation with interested parties, shall determine the eligibility criteria for a defendant to participate in the pilot program, including requiring the defendant to arrange for suitable housing while participating in the program.

(c) The department, in consultation with interested parties, shall determine not more than four locations in this state in which the pilot program will operate. In determining the locations, the department shall consider locating the program in various regions throughout the state, including locations having a variety of population sizes. The department shall also give consideration to whether a risk and needs assessment is generally conducted before sentencing defendants in a particular location and to the degree to which local judges show support for the establishment of the program in a particular location.

(d) The department shall issue a request for proposals from public or private entities to provide services through the pilot program. The department shall select one or more qualified applicants to provide services through the program to eligible defendants.

(e) The pilot program consists of approximately 180 days of employment-related services and support and must include:

- (1) an initial period during which the defendant will:
 - (A) receive training and education related to the defendant’s vocational goals; and
 - (B) be employed by the provider;
- (2) job placement services designed to provide employment for the defendant after the period described by Subdivision (1);
- (3) assistance in obtaining a high school diploma or industry certification for applicable defendants;
- (4) life-skills training, including information about budgeting and money management; and
- (5) counseling and mental health services.

(f) The department shall limit the number of defendants who may participate in the program to not more than 45 defendants per quarter per program location.

(g) The department shall pay providers not less than \$40 per day for each participant.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 1060 (H.B. 3130), § 2, effective September 1, 2017.

Subchapter B

Miscellaneous Provisions

Sec. 507.031. Furlough Program.

(a) The director of a state jail felony facility may grant a furlough to a defendant so that the defendant may:

- (1) obtain a medical diagnosis or medical treatment;
- (2) obtain treatment and supervision at a Texas Department of Mental Health and Mental Retardation facility;
- (3) attend a funeral or visit a critically ill relative; or
- (4) participate in a programmatic activity sanctioned by the state jail division.

(b) The state jail division shall adopt policies for the administration of the furlough program.

(c) A defendant furloughed under this section is considered to be in the custody of the state jail division, even if the defendant is not under physical guard while furloughed.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 321, § 1.099, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 31.01(43), effective September 1, 1997 (renumbered from Sec. 507.028).

Sec. 507.034. Veterans Reentry Dorm Program.

(a) The department, in coordination with the Texas Veterans Commission, shall establish and administer a voluntary rehabilitation and transition program for defendants confined in state jail felony facilities:

- (1) who are veterans of the United States armed forces, including veterans of the reserves, national guard, or state guard; and
- (2) who suffer from a brain injury, a mental illness, a mental disorder, including post-traumatic stress disorder, or substance abuse, or were victims of military sexual trauma, as defined by Section 124.002, that:

- (A) occurred during or resulted from their military service; and

- (B) may have contributed to their criminal activity.
- (b) The program established under this section must:
 - (1) provide for investigating and verifying the veteran status of each defendant confined in a state jail felony facility by using data made available from the Veterans Reentry Search Service (VRSS) operated by the United States Department of Veterans Affairs or a similar service;
 - (2) be available to male defendants and, if resources are available, female defendants;
 - (3) include provisions regarding interviewing and selecting defendants for participation in the program;
 - (4) allow a defendant to decline participation in the program or to withdraw from the program at any time;
 - (5) house defendants participating in the program in housing that is designed to mimic the squadron structure familiar to veterans;
 - (6) coordinate and provide available services and programming approved by the department, including:
 - (A) individual and group peer support programing, as appropriate;
 - (B) access to military trauma-informed licensed mental health professional counseling, as appropriate;
 - (C) evidence-based rehabilitation programming; and
 - (D) reemployment services; and
 - (7) to the extent feasible, not later than the 60th day before the date a defendant participating in the program is scheduled for release or discharge from the department:
 - (A) match the defendant with community-based veteran peer support services to assist the defendant in transitioning into the community; and
 - (B) transfer the defendant to a state jail felony facility located near the defendant's home community, or the community in which the defendant intends to reside after the defendant's release or discharge, to begin establishing transition relationships with community-based veteran peer support service providers and family members.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 987 (H.B. 865), § 2, effective September 1, 2017.

CHAPTER 508

Parole and Mandatory Supervision

Subchapter E. Parole and Mandatory Supervision; Release Procedures

Section 508.146.	Medically Recommended Intensive Supervision.
508.152.	Individual Treatment Plan.

Subchapter G. Discretionary Conditions of Parole or Mandatory Supervision

508.223.	Psychological Counseling.
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Subchapter J. Miscellaneous

508.316.	Special Programs.
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Subchapter E

Parole and Mandatory Supervision; Release Procedures

Sec. 508.146. Medically Recommended Intensive Supervision.

(a) An inmate other than an inmate who is serving a sentence of death or life without parole may be released on medically recommended intensive supervision on a date designated by a parole panel described by Subsection (e), except that an inmate with an instant offense that is an offense described in Article 42A.054, Code of Criminal Procedure, or an inmate who has a reportable conviction or adjudication under Chapter 62, Code of Criminal Procedure, may only be considered if a medical condition of terminal illness or long-term care has been diagnosed by a physician, if:

(1) the Texas Correctional Office on Offenders with Medical or Mental Impairments, in cooperation with the Correctional Managed Health Care Committee, identifies the inmate as being:

(A) a person who is elderly or terminally ill, a person with mental illness, an intellectual disability, or a physical disability, or a person who has a condition requiring long-term care, if the inmate is an inmate with an instant offense that is described in Article 42A.054, Code of Criminal Procedure; or

(B) in a persistent vegetative state or being a person with an organic brain syndrome with significant to total mobility impairment, if the inmate is an inmate who has a reportable conviction or adjudication under Chapter 62, Code of Criminal Procedure;

(2) the parole panel determines that, based on the inmate's condition and a medical evaluation, the inmate does not constitute a threat to public safety; and

(3) the Texas Correctional Office on Offenders with Medical or Mental Impairments, in cooperation with the pardons and paroles division, has prepared for the inmate a medically recommended intensive supervision plan that requires the inmate to submit to electronic monitoring, places the inmate on super-intensive supervision, or otherwise ensures appropriate supervision of the inmate.

(b) An inmate may be released on medically recommended intensive supervision only if the inmate's medically recommended intensive supervision plan under Subsection (a)(3) is approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments.

(c) The parole panel shall require as a condition of release under Subsection (a) that the releasee remain under the care of a physician and in a medically suitable placement. At least once each calendar quarter, the Texas Correctional Office on Offenders with Medical or Mental Impairments shall report to the parole panel on the releasee's medical and placement status. On the basis of the report, the parole panel may modify conditions of release and impose any condition on the releasee that a panel could impose on a releasee released under Section 508.145, including a condition that the releasee reside in a halfway house or community residential facility.

(d) The Texas Correctional Office on Offenders with Medical or Mental Impairments and the Texas Depart-

ment of Human Services shall jointly request proposals from public or private vendors to provide under contract services for inmates released on medically recommended intensive supervision. A request for proposals under this subsection may require that the services be provided in a medical care facility located in an urban area. For the purposes of this subsection, "urban area" means the area in this state within a metropolitan statistical area, according to the standards of the United States Bureau of the Census.

(e) Only parole panels composed of the presiding officer of the board and two members appointed to the panel by the presiding officer may make determinations regarding the release of inmates on medically recommended intensive supervision under Subsection (a) or of inmates released pending deportation. If the Texas Council on Offenders with Mental Impairments identifies an inmate as a candidate for release under the guidelines established by Subsection (a)(1), the council shall present to a parole panel described by this subsection relevant information concerning the inmate and the inmate's potential for release under this section.

(f) An inmate who is not a citizen of the United States, as defined by federal law, who is not under a sentence of death or life without parole, and who does not have a reportable conviction or adjudication under Chapter 62, Code of Criminal Procedure, or an instant offense described in Article 42A.054, Code of Criminal Procedure, may be released to immigration authorities pending deportation on a date designated by a parole panel described by Subsection (e) if the parole panel determines that on release the inmate would be deported to another country and that the inmate does not constitute a threat to public safety in the other country or this country and is unlikely to reenter this country illegally.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 12.01, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 1435 (H.B. 772), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 252 (H.B. 1670), § 1, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 21, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 787 (S.B. 60), § 5, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1247 (H.B. 2611), § 1, effective September 1, 2007; am. Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 2.52, effective January 1, 2017.

Sec. 508.152. Individual Treatment Plan.

(a) Not later than the 120th day after the date an inmate is admitted to the institutional division, the department shall obtain all pertinent information relating to the inmate, including:

- (1) the court judgment;
- (2) any sentencing report;
- (3) the circumstances of the inmate's offense;
- (4) the inmate's previous social history and criminal record;
- (5) the inmate's physical and mental health record;
- (6) a record of the inmate's conduct, employment history, and attitude in the institutional division; and
- (7) any written comments or information provided by local trial officials or victims of the offense.

(b) The department shall:

- (1) establish for the inmate an individual treatment plan; and

(2) submit the plan to the board at the time of the board's consideration of the inmate's case for release.

(b-1) The department shall include in an inmate's individual treatment plan:

(1) a record of the inmate's institutional progress that includes the inmate's participation in any program, including an intensive volunteer program as defined by the department;

(2) the results of any assessment of the inmate, including any assessment made using the risk and needs assessment instrument adopted under Section 501.0921 and any vocational, educational, or substance abuse assessment;

(3) the dates on which the inmate must participate in any subsequent assessment; and

(4) all of the treatment and programming needs of the inmate, prioritized based on the inmate's assessed needs.

(b-2) At least once in every 12-month period, the department shall review each inmate's individual treatment plan to assess the inmate's institutional progress and revise or update the plan as necessary. The department shall make reasonable efforts to provide an inmate the opportunity to complete any classes or programs included in the inmate's individual treatment plan, other than classes or programs that are to be completed immediately before the inmate's release on parole, in a timely manner so that the inmate's release on parole is not delayed due to any uncompleted classes or programs.

(c) The board shall conduct an initial review of an eligible inmate not later than the 180th day after the date of the inmate's admission to the institutional division. The board shall identify any classes or programs that the board intends to require the inmate to complete before releasing the inmate on parole. The department shall provide the inmate with a list of those classes or programs.

(d) Before the inmate is approved for release on parole, the inmate must agree to participate in the programs and activities described by the individual treatment plan.

(e) The institutional division shall:

(1) work closely with the board to monitor the progress of the inmate in the institutional division; and

(2) report the progress to the board before the inmate's release.

(f) An attorney representing the state in the prosecution of an inmate serving a sentence for an offense described by Section 508.187(a) shall provide written comments to the department on the circumstances related to the commission of the offense and other information determined by the attorney to be relevant to any subsequent parole decisions regarding the inmate.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 12.01, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 978 (H.B. 223), § 1, effective September 1, 2001; am. Acts 2013, 83rd Leg., ch. 1154 (S.B. 213), §§ 17, 18, effective September 1, 2013; am. Acts 2017, 85th Leg., ch. 505 (H.B. 2888), § 1, effective September 1, 2017.

Subchapter G

Discretionary Conditions of Parole or Mandatory Supervision

Sec. 508.223. Psychological Counseling.

A parole panel may require as a condition of parole or

mandatory supervision that a releasee serving a sentence for an offense under Section 42.072, Penal Code, attend psychological counseling sessions of a type and for a duration as specified by the parole panel, if the parole panel determines in consultation with a local mental health services provider that appropriate mental health services are available through the Texas Department of Mental Health and Mental Retardation in accordance with Section 534.053, Health and Safety Code, or through another mental health services provider.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 12.01, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 62 (S.B. 1368), § 10.28, effective September 1, 1999.

Subchapter J

Miscellaneous

Sec. 508.316. Special Programs.

(a) The department may contract for services for releasees if funds are appropriated to the department for the services, including services for releasees who have a history of:

- (1) mental impairment or mental retardation;
- (2) substance abuse; or
- (3) sexual offenses.

(b) The department shall seek funding for a contract under this section as a priority item.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 12.01, effective September 1, 1997.

CHAPTER 509

Community Justice Assistance Division

Section	Definitions.
509.001.	Purpose.
509.002.	Standards and Procedures.
509.003.	Use of Risk and Needs Assessment Instrument.
509.0041.	Community Corrections Facilities.
509.006.	Strategic Plan.
509.007.	Commitment Reduction Plan.
509.0071.	Payment of State Aid.
509.011.	Prison Diversion Progressive Sanctions Program.
509.016.	

Sec. 509.001. Definitions.

In this chapter:

(1) "Community corrections facility" means a physical structure, established by the judges described by Section 76.002 after authorization of the establishment of the structure has been included in a department's strategic plan, that is operated by the department or operated for the department by an entity under contract with the department, for the purpose of treating persons who have been placed on community supervision or who are participating in a pretrial intervention program operated under Section 76.011 or a drug court program established under Chapter 123 or former law and providing services and programs to modify criminal behavior, deter criminal activity, protect the public, and restore victims of crime. The term includes:

- (A) a restitution center;
- (B) a court residential treatment facility;
- (C) a substance abuse treatment facility;
- (D) a custody facility or boot camp;
- (E) a facility for an offender with a mental impairment, as defined by Section 614.001, Health and Safety Code; and
- (F) an intermediate sanction facility.

(2) "Department" means a community supervision and corrections department established under Chapter 76.

(3) "Division" means the community justice assistance division.

(4) "State aid" means funds appropriated by the legislature to the division to provide financial assistance to:

- (A) the judges described by Section 76.002 for:
 - (i) a department established by the judges;
 - (ii) the development and improvement of community supervision services and community-based correctional programs;
 - (iii) the establishment and operation of community corrections facilities; and
 - (iv) assistance in conforming with standards and policies of the division and the board; and
- (B) state agencies, counties, municipalities, and nonprofit organizations for the implementation and administration of community-based sanctions and programs.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 7.01, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 12.23(a), effective September 1, 1997; am. Acts 2005, 79th Leg., ch. 255 (H.B. 1326), § 9, effective May 30, 2005; am. Acts 2005, 79th Leg., ch. 1139 (H.B. 2791), § 3, effective June 18, 2005; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 2.11, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1051 (H.B. 1930), § 6, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 977 (H.B. 351), § 5(c), effective September 1, 2017.

Sec. 509.002. Purpose.

The purpose of this chapter is to:

- (1) allow localities to increase their involvement and responsibility in developing sentencing programs that provide effective sanctions for criminal defendants;
- (2) provide increased opportunities for criminal defendants to make restitution to victims of crime through financial reimbursement or community service;
- (3) provide increased use of community penalties designed specifically to meet local needs; and
- (4) promote efficiency and economy in the delivery of community-based correctional programs consistent with the objectives defined by Section 1.02, Penal Code.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 7.01, effective September 1, 1995.

Sec. 509.003. Standards and Procedures.

(a) The division shall propose and the board shall adopt reasonable rules establishing:

- (1) minimum standards for programs, community corrections facilities and other facilities, equipment, and other aspects of the operation of departments;
- (2) a list and description of core services that should be provided by each department;

(3) methods for measuring the success of community supervision and corrections programs, including methods for measuring rates of diversion, program completion, and recidivism;

(4) a format for strategic plans; and

(5) minimum standards for the operation of substance abuse facilities and programs funded through the division.

(b) In establishing standards relating to the operation of departments, the division shall consider guidelines developed and presented by the advisory committee on community supervision and corrections department management to the judicial advisory council established under Section 493.003(b).

(c) A substance abuse facility or program operating under the standards is not required to be licensed or otherwise approved by any other state or local agency.

(d) The division shall develop a screening and evaluation procedure for use in accordance with Section 76.017. The division shall determine if a single screening and evaluation procedure may be used in each program. If the division determines that a single procedure is not feasible, the division shall identify and approve procedures that may be used.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 7.01, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 12.24(a), effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1269 (H.B. 3244), § 5, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1051 (H.B. 1930), § 7, effective September 1, 2015.

Sec. 509.0041. Use of Risk and Needs Assessment Instrument.

The division shall require each department to use the risk and needs assessment instrument adopted by the Texas Department of Criminal Justice under Section 501.0921 to assess each defendant at the time of the defendant's initial placement on community supervision and at other times as required by the comprehensive reentry and reintegration plan adopted under Section 501.092.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1154 (S.B. 213), § 20, effective September 1, 2013.

Sec. 509.006. Community Corrections Facilities.

(a) To establish and maintain community corrections facilities, the division may:

(1) fund division-managed facilities;

(2) fund contracts for facilities that are managed by departments, counties, or vendors;

(3) provide funds to departments for the renovation of leased or donated buildings for use as facilities;

(4) accept ownership of real property pursuant to an agreement under which the division agrees to construct a facility and offer the facility for lease;

(5) allow departments, counties, or municipalities to accept and use buildings provided by units of local governments, including rural hospital districts, for use as facilities;

(6) provide funds to departments, counties, or municipalities to lease, purchase, or construct buildings or to lease or purchase land or other real property for use

as facilities, lease or purchase equipment necessary for the operation of facilities, and pay other costs as necessary for the management and operation of facilities; and

(7) be a party to a contract for correctional services or approve a contract for those services if the state, on a biennial appropriations basis, commits to fund a portion of the contract.

(b) The division may require that community corrections facilities comply with state and local safety laws and may develop standards for:

(1) the physical plant and operation of community corrections facilities;

(2) programs offered by community corrections facilities;

(3) disciplinary rules for residents of community corrections facilities; and

(4) emergency furloughs for residents of community corrections facilities.

(c) Minimum standards for community corrections facilities must include requirements that a facility:

(1) provide levels of security appropriate for the population served by the facility, including as a minimum a monitored and structured environment in which a resident's interior and exterior movements and activities can be supervised by specific destination and time; and

(2) accept only those residents who are physically and mentally capable of participating in any program offered at the facility that requires strenuous physical activity, if participation in the program is required of all residents of the facility.

(d) Standards developed by the division that relate to state jail felony facilities must meet minimum requirements adopted by the board for the operation of state jail felony facilities. The board may adopt rules and procedures for the operation of more than one type of state jail felony facility.

(e) With the consent of the department operating or contracting for the operation of the facility, the board may designate any community corrections facility that is an intermediate sanction facility as a state jail felony facility and confine state jail felons in that facility.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 7.01, effective September 1, 1995.

Sec. 509.007. Strategic Plan.

(a) The division shall require as a condition to payment of state aid to a department or county under Section 509.011 that a strategic plan be submitted for the department. The department shall submit the plan required by this subsection. A department may not submit a plan under this section unless the plan is first approved by the judges described by Section 76.002 who established the department. The department shall submit a revised plan to the division each even-numbered year not later than March 1. A plan may be amended at any time with the approval of the division.

(b) A strategic plan required under this section must include:

(1) a statement of goals and priorities and of commitment by the department and the judges described by

Section 76.002 who established the department to achieve a targeted level of alternative sanctions;

(2) a description of methods for measuring the success of programs provided by the department or provided by an entity served by the department;

(3) a summary of the programs and services the department provides or intends to provide, including a separate summary of:

(A) any services the department intends to provide in relation to a specialty court program; and

(B) any programs or other services the department intends to provide to enhance public safety, reduce recidivism, strengthen the investigation and prosecution of criminal offenses, improve programs and services available to victims of crime, and increase the amount of restitution collected from persons supervised by the department; and

(4) an outline of the department's projected programmatic and budgetary needs, based on the programs and services the department both provides and intends to provide.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 7.01, effective September 1, 1995; am. Acts 2005, 79th Leg., ch. 255 (H.B. 1326), § 10, effective May 30, 2005; am. Acts 2011, 82nd Leg., ch. 1045 (H.B. 3691), § 6, effective June 17, 2011; am. Acts 2011, 82nd Leg., ch. 1074 (S.B. 1055), § 5, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.07, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1051 (H.B. 1930), § 9, effective September 1, 2015.

Sec. 509.0071. Commitment Reduction Plan.

(a) In addition to submitting a community justice plan to the division under Section 509.007, a department or a regional partnership of departments may submit a commitment reduction plan to the division not later than the 60th day after the date on which the time for gubernatorial action on the state budget has expired under Section 14, Article IV, Texas Constitution.

(b) A commitment reduction plan submitted under this section may contain a request for additional state funding in the manner described by Subsection (e). A commitment reduction plan must contain:

(1) a target number by which the county or counties served by the department or regional partnership of departments will, relative to the number of individuals committed in the preceding state fiscal year from the county or counties to the Texas Department of Criminal Justice for offenses not listed in or described by Article 42A.054, Code of Criminal Procedure, reduce that number in the fiscal year for which the commitment reduction plan is submitted by reducing the number of:

(A) direct sentencing commitments;

(B) community supervision revocations; or

(C) direct sentencing commitments and community supervision revocations;

(2) a calculation, based on the most recent Criminal Justice Uniform Cost Report published by the Legislative Budget Board, of the savings to the state that will result from the county or counties reaching the target number described by Subdivision (1);

(3) an explanation of the programs and services the department or regional partnership of departments intends to provide using any funding received under

Subsection (e)(1), including any programs or services designed to enhance public safety, reduce recidivism, strengthen the investigation and prosecution of criminal offenses, improve programs and services available to victims of crime, and increase the amount of restitution collected from persons supervised by the department or regional partnership of departments;

(4) a pledge by the department or regional partnership of departments to provide accurate data to the division at the time and in the manner required by the division;

(5) a pledge to repay to the state, not later than the 30th day after the last day of the state fiscal year in which the lump-sum award is made, a percentage of the lump sum received under Subsection (e)(1) that is equal to the percentage by which the county or counties fail to reach the target number described by Subdivision (1), if the county or counties do not reach that target number; and

(6) if the commitment reduction plan is submitted by a regional partnership of departments, an agreement and plan for the receipt, division, and administration of any funding received under Subsection (e).

(c) For purposes of Subsection (b)(5), if the target number contained in the commitment reduction plan is described by Subsection (b)(1)(B), the county or counties fail to reach the target number if the sum of any increase in the number of direct sentencing commitments and any reduction in community supervision revocations is less than the target number contained in the commitment reduction plan.

(d) A pledge described by Subsection (b)(4) or (5) must be signed by:

(1) the director of the department submitting the commitment reduction plan; or

(2) if the commitment reduction plan is submitted by a regional partnership of departments, a director of one of the departments in the regional partnership submitting the commitment reduction plan.

(e) After reviewing a commitment reduction plan, if the division is satisfied that the plan is feasible and would achieve desirable outcomes, the division may award to the department or regional partnership of departments:

(1) a one-time lump sum in an amount equal to 35 percent of the savings to the state described by Subsection (b)(2); and

(2) on a biennial basis, and from the 65 percent of the savings to the state that remains after payment of the lump sum described by Subdivision (1), the following incentive payments for the department's or regional partnership's performance in the two years immediately preceding the payment:

(A) 15 percent, for reducing the percentage of persons supervised by the department or regional partnership of departments who commit a new felony while under supervision;

(B) five percent, for increasing the percentage of persons supervised by the department or regional partnership of departments who are not delinquent in making any restitution payments; and

(C) five percent, for increasing the percentage of persons supervised by the department or regional

partnership of departments who are gainfully employed, as determined by the division.

(f) A department or regional partnership of departments may use funds received under Subsection (e) to provide any program or service that a department is authorized to provide under other law, including implementing, administering, and supporting evidence-based community supervision strategies, electronic monitoring, substance abuse and mental health counseling and treatment, specialized community supervision caseloads, intermediate sanctions, victims' services, restitution collection, short-term incarceration in county jails, specialized courts, pretrial services and intervention programs, and work release and day reporting centers.

(g) Any funds received by a department or regional partnership of departments under Subsection (e):

(1) are in addition to any per capita or formula funding received under Section 509.011; and

(2) may not be deducted from any per capita or formula funding received or to be received by:

(A) another department, if the commitment reduction plan is submitted by a department; or

(B) any department, if the commitment reduction plan is submitted by a regional partnership of departments.

(h) The division shall deduct from future state aid paid to a department, or from any incentive payments under Subsection (e)(2) for which a department is otherwise eligible, an amount equal to the amount of any pledge described by Subsection (b)(5) that remains unpaid on the 31st day after the last day of the state fiscal year in which a lump-sum award is made under Subsection (e)(1). If the lump-sum award was made to a regional partnership of departments, the division shall deduct, in accordance with the agreement and plan described by Subsection (b)(6), the amount of the unpaid pledge from the future state aid to each department that is part of the partnership or from any incentive payments under Subsection (e)(2) for which the regional partnership of departments is otherwise eligible.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1045 (H.B. 3691), § 7, effective June 17, 2011; Enacted by Acts 2011, 82nd Leg., ch. 1074 (S.B. 1055), § 6, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 2.57, effective January 1, 2017; am. Acts 2015, 84th Leg., ch. 1051 (H.B. 1930), § 10, effective September 1, 2015.

Sec. 509.011. Payment of State Aid.

(a) If the division determines that a department complies with division standards and if the department has submitted a strategic plan under Section 509.007 and the supporting information required by the division and the division determines the plan and supporting information are acceptable, the division shall prepare and submit to the comptroller vouchers for payment to the department as follows:

(1) for per capita funding, a per diem amount for each felony defendant directly supervised by the department pursuant to lawful authority;

(2) for per capita funding, a per diem amount for a period not to exceed 182 days for each defendant supervised by the department pursuant to lawful authority, other than a felony defendant; and

(3) for formula funding, an annual amount as computed by multiplying a percentage determined by the allocation formula established under Subsection (f) times the total amount provided in the General Appropriations Act for payments under this subdivision.

(a-1) Repealed by Acts 2017, 85th Leg., R.S., Ch. 346 (H.B. 1526), Sec. 3, eff. September 1, 2017.

(b) The division may use discretionary grant funds to further the purposes of this chapter by contracting for services with state agencies or nonprofit organizations. The division may also make discretionary grants to departments, municipalities, or counties for the following purposes:

(1) development and operation of pretrial and presentencing services;

(2) electronic monitoring services, surveillance supervision programs, and controlled substances testing services;

(3) research projects to evaluate the effectiveness of community corrections programs, if the research is conducted in cooperation with the Criminal Justice Policy Council;

(4) contract services for felony defendants;

(5) residential services for misdemeanor defendants who exhibit levels of risk or needs indicating a need for confinement and treatment, as described by Section 509.005(b);

(6) establishment or operation of county correctional centers under Subchapter H, Chapter 351, Local Government Code, or community corrections facilities for which the division has established standards under Section 509.006;

(7) development and operation of treatment alternative to incarceration programs under Section 76.017; and

(8) other purposes determined appropriate by the division and approved by the board.

(b-1) The division may award a grant to a department for the development and operation of a pretrial intervention program for defendants who are:

(1) pregnant at the time of placement into the program; or

(2) the primary caretaker of a child younger than 18 years of age.

(c) Each department, county, or municipality shall deposit all state aid received from the division in a special fund of the county treasury or municipal treasury, as appropriate, to be used solely for the provision of services, programs, and facilities under this chapter or Subchapter H, Chapter 351, Local Government Code.

(d) The division shall provide state aid to each department on a biennial basis, pursuant to the strategic plan for the biennium submitted by the department. A department with prior division approval may transfer funds from one program or function to another program or function.

(e) In establishing per diem payments authorized by Subsections (a)(1) and (a)(2), the division shall consider the amounts appropriated in the General Appropriations Act for basic supervision as sufficient to provide basic supervision in each year of the fiscal biennium.

(f) The division annually shall compute for each department for community corrections program formula funding

a percentage determined by assigning equal weights to the percentage of the state's population residing in the counties served by the department and the department's percentage of all felony defendants in the state under direct community supervision. The division shall use the most recent information available in making computations under this subsection. The board by rule may adopt a policy limiting for all departments the percentage of benefit or loss that may be realized as a result of the operation of the formula.

(g) If the Texas Department of Criminal Justice determines that at the end of a biennium a department maintains in reserve an amount greater than six months' basic supervision operating costs for the department, the Texas Department of Criminal Justice in the succeeding biennium may reduce the amount of per capita and formula funding provided under Subsection (a) so that in the succeeding biennium the department's reserves do not exceed six months' basic supervision operating costs. The Texas Department of Criminal Justice may adopt policies and standards permitting a department to maintain reserves in an amount greater than otherwise permitted by this subsection as necessary to cover emergency costs or implement new programs with the approval of the Texas Department of Criminal Justice. The Texas Department of Criminal Justice may distribute unallocated per capita or formula funds to provide supplemental funds to individual departments to further the purposes of this chapter.

(h) A community supervision and corrections department at any time may transfer to the Texas Department of Criminal Justice any unencumbered state funds held by the department. The Texas Department of Criminal Justice may distribute funds received from a community supervision and corrections department under this subsection to provide supplemental funds to individual departments to further the purposes of this chapter.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 7.01, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 12.28(a), effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1188 (S.B. 365), § 1.39, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 1030 (H.B. 725), § 2.02, effective June 1, 2004; am. Acts 2005, 79th Leg., ch. 255 (H.B. 1326), § 11, effective May 30, 2005; am. Acts 2013, 83rd Leg., ch. 1154 (S.B. 213), § 22, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1051 (H.B. 1930), § 12, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 346 (H.B. 1526), § 3, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 1230 (H.B. 1374), § 1, effective June 14, 2019.

Sec. 509.016. Prison Diversion Progressive Sanctions Program.

(a) The division shall provide grants to selected departments for the implementation of a system of progressive sanctions designed to reduce the revocation rate of defendants placed on community supervision. The division shall give priority in providing grants to departments that:

- (1) serve counties in which the revocation rate for defendants on community supervision significantly exceeds the statewide average or historically has significantly exceeded the statewide average; or
- (2) have demonstrated success, through the implementation of a system of progressive sanctions, in reducing the revocation rate of defendants placed on community supervision.

(b) In determining which departments are proper candidates for grants under this section, the division shall give preference to departments that present to the division a plan that will target medium-risk and high-risk defendants and use progressive sanction models that adhere to the components set forth in Section 469.001, Health and Safety Code. As a condition to receiving a grant, a department must offer a plan that contains some if not all of the following components:

- (1) an evidence-based assessment process that includes risk and needs assessment instruments and clinical assessments that support conditions of community supervision or case management strategies;
- (2) reduced and specialized caseloads for supervision officers, which may include electronic monitoring or substance abuse testing of defendants;
- (3) the creation, designation, and fiscal support of courts and associated infrastructure necessary to increase judicial oversight and reduce revocations;
- (4) increased monitoring and field contact by supervision officers;
- (5) shortened terms of community supervision, with increased supervision during the earliest part of the term;
- (6) strategies that reduce the number of technical violations;
- (7) improved coordination between courts and departments to provide early assessment of defendant needs at the outset of supervision;
- (8) graduated sanctions and incentives, offered to a defendant by both the departments and courts served by the department;
- (9) the use of inpatient and outpatient treatment options, including substance abuse treatment, mental health treatment, and cognitive and behavioral programs for defendants;
- (10) the use of intermediate sanctions facilities;
- (11) the use of community corrections beds;
- (12) early termination strategies and capabilities;
- (13) gang intervention strategies; and
- (14) designation of faith-based community coordinators who will develop faith-based resources, including a mentoring program.

(c) The division shall, not later than December 1 of each even-numbered year, provide a report to the board. The report must state the number of departments receiving grants under this section, identify those departments by name, and describe for each department receiving a grant the components of the department's program and the success of the department in reducing revocations. The report must also contain an analysis of the scope, effectiveness, and cost benefit of programs funded by grants provided under this section and a comparison of those programs to similar programs in existence in various departments before March 1, 2005. The division may include in the report any other information the division determines will be beneficial to the board or the legislature. The board shall forward the report to the lieutenant governor and the speaker of the house of representatives not later than December 15 of each even-numbered year.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 799 (S.B. 166), § 1, effective June 15, 2007.

CHAPTER 511

Commission On Jail Standards
[Expires September 1, 2021]

Section	
511.001.	[Expires September 1, 2021] Definitions.
511.0085.	[Expires September 1, 2021] Risk Factors; Risk Assessment Plan.
511.009.	[Expires September 1, 2021] General Duties.
511.0098.	Prisoner Health Benefits Coverage Information; Payment for Mental Health Services. [Expires September 1, 2021]
511.011.	Report on Noncompliance. [Expires September 1, 2021]

Sec. 511.001. [Expires September 1, 2021] Definitions.

In this chapter:

(1) "Commission" means the Commission on Jail Standards.

(2) "Correctional facility" means a facility operated by a county, a municipality, or a private vendor for the confinement of a person arrested for, charged with, or convicted of a criminal offense.

(3) "County jail" means a facility operated by or for a county for the confinement of persons accused or convicted of an offense.

(4) "Executive director" means the executive director of the commission.

(5) "Federal prisoner" means a person arrested for, charged with, or convicted of a violation of a federal law.

(6) "Inmate" means a person arrested for, charged with, or convicted of a criminal offense of this state or another state of the United States and confined in a county jail, a municipal jail, or a correctional facility operated by a county, a municipality, or a private vendor.

(7) "Prisoner" means a person confined in a county jail.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 212 (S.B. 1044), § 2.01, effective September 1, 1989; am. Acts 1997, 75th Leg., ch. 259 (S.B. 367), § 1, effective September 1, 1997.

Sec. 511.0085. [Expires September 1, 2021] Risk Factors; Risk Assessment Plan.

(a) The commission shall develop a comprehensive set of risk factors to use in assessing the overall risk level of each jail under the commission's jurisdiction. The set of risk factors must include:

(1) a history of the jail's compliance with state law and commission rules, standards, and procedures;

(2) the population of the jail;

(3) the number and nature of complaints regarding the jail, including complaints regarding a violation of any required ratio of correctional officers to inmates;

(4) problems with the jail's internal grievance procedures;

(5) available mental and medical health reports relating to inmates in the jail, including reports relating to infectious disease or pregnant inmates;

(6) recent turnover among sheriffs and jail staff;

(7) inmate escapes from the jail;

(8) the number and nature of inmate deaths at the jail, including the results of the investigations of those deaths; and

(9) whether the jail is in compliance with commission rules, standards developed by the Texas Correctional Office on Offenders with Medical or Mental Impairments, and the requirements of Article 16.22, Code of Criminal Procedure, regarding screening and assessment protocols for the early identification of and reports concerning persons with mental illness or an intellectual disability.

(b) The commission shall use the set of risk factors developed under Subsection (a) to guide the inspections process for all jails under the commission's jurisdiction by:

(1) establishing a risk assessment plan to use in assessing the overall risk level of each jail; and

(2) regularly monitoring the overall risk level of each jail.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1215 (S.B. 1009), § 8, effective September 1, 2009; am. Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 22, effective September 1, 2019.

Sec. 511.009. [Expires September 1, 2021] General Duties.

(a) The commission shall:

(1) adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails;

(2) adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners;

(3) adopt reasonable rules establishing minimum standards for the number of jail supervisory personnel and for programs and services to meet the needs of prisoners;

(4) adopt reasonable rules and procedures establishing minimum requirements for programs of rehabilitation, education, and recreation in county jails;

(5) revise, amend, or change rules and procedures if necessary;

(6) provide to local government officials consultation on and technical assistance for county jails;

(7) review and comment on plans for the construction and major modification or renovation of county jails;

(8) require that the sheriff and commissioners of each county submit to the commission, on a form prescribed by the commission, an annual report on the conditions in each county jail within their jurisdiction, including all information necessary to determine compliance with state law, commission orders, and the rules adopted under this chapter;

(9) review the reports submitted under Subdivision (8) and require commission employees to inspect county jails regularly to ensure compliance with state law, commission orders, and rules and procedures adopted under this chapter;

(10) adopt a classification system to assist sheriffs and judges in determining which defendants are low-risk and consequently suitable participants in a county jail work release program under Article 42.034, Code of Criminal Procedure;

(11) adopt rules relating to requirements for segregation of classes of inmates and to capacities for county jails;

(12) require that the chief jailer of each municipal lockup submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the lockup, including all information necessary to determine compliance with state law concerning secure confinement of children in municipal lockups;

(13) at least annually determine whether each county jail is in compliance with the rules and procedures adopted under this chapter;

(14) require that the sheriff and commissioners court of each county submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the county jail, including all information necessary to determine compliance with state law concerning secure confinement of children in county jails;

(15) schedule announced and unannounced inspections of jails under the commission's jurisdiction using the risk assessment plan established under Section 511.0085 to guide the inspections process;

(16) adopt a policy for gathering and distributing to jails under the commission's jurisdiction information regarding:

(A) common issues concerning jail administration;

(B) examples of successful strategies for maintaining compliance with state law and the rules, standards, and procedures of the commission; and

(C) solutions to operational challenges for jails;

(17) report to the Texas Correctional Office on Offenders with Medical or Mental Impairments on a jail's compliance with Article 16.22, Code of Criminal Procedure;

(18) adopt reasonable rules and procedures establishing minimum requirements for a county jail to:

(A) determine if a prisoner is pregnant;

(B) ensure that the jail's health services plan addresses medical care, including obstetrical and gynecological care, mental health care, nutritional requirements, and any special housing or work assignment needs for prisoners who are known or determined to be pregnant; and

(C) identify when a pregnant prisoner is in labor and provide appropriate care to the prisoner, including promptly transporting the prisoner to a local hospital;

(19) provide guidelines to sheriffs regarding contracts between a sheriff and another entity for the provision of food services to or the operation of a commissary in a jail under the commission's jurisdiction, including specific provisions regarding conflicts of interest and avoiding the appearance of impropriety;

(20) adopt reasonable rules and procedures establishing minimum standards for prisoner visitation that provide each prisoner at a county jail with a minimum of two in-person, noncontact visitation periods per week of at least 20 minutes duration each;

(21) require the sheriff of each county to:

(A) investigate and verify the veteran status of each prisoner by using data made available from the

Veterans Reentry Search Service (VRSS) operated by the United States Department of Veterans Affairs or a similar service; and

(B) use the data described by Paragraph (A) to assist prisoners who are veterans in applying for federal benefits or compensation for which the prisoners may be eligible under a program administered by the United States Department of Veterans Affairs;

(22) adopt reasonable rules and procedures regarding visitation of a prisoner at a county jail by a guardian, as defined by Section 1002.012, Estates Code, that:

(A) allow visitation by a guardian to the same extent as the prisoner's next of kin, including placing the guardian on the prisoner's approved visitors list on the guardian's request and providing the guardian access to the prisoner during a facility's standard visitation hours if the prisoner is otherwise eligible to receive visitors; and

(B) require the guardian to provide the sheriff with letters of guardianship issued as provided by Section 1106.001, Estates Code, before being allowed to visit the prisoner;

(23) adopt reasonable rules and procedures to ensure the safety of prisoners, including rules and procedures that require a county jail to:

(A) give prisoners the ability to access a mental health professional at the jail or through a telemental health service 24 hours a day or, if a mental health professional is not at the county jail at the time, then require the jail to use all reasonable efforts to arrange for the inmate to have access to a mental health professional within a reasonable time;

(B) give prisoners the ability to access a health professional at the jail or through a telehealth service 24 hours a day or, if a health professional is unavailable at the jail or through a telehealth service, provide for a prisoner to be transported to access a health professional; and

(C) if funding is available under Section 511.019, install automated electronic sensors or cameras to ensure accurate and timely in-person checks of cells or groups of cells confining at-risk individuals; and

(24) adopt reasonable rules and procedures establishing minimum standards for the quantity and quality of feminine hygiene products, including tampons in regular and large sizes and menstrual pads with wings in regular and large sizes, provided to a female prisoner.

(a-1) A county jail that as of September 1, 2015, has incurred significant design, engineering, or construction costs to provide prisoner visitation that does not comply with a rule or procedure adopted under Subsection (a)(20), or does not have the physical plant capability to provide the in-person prisoner visitation required by a rule or procedure adopted under Subsection (a)(20), is not required to comply with any commission rule or procedure adopted under Subsection (a)(20).

(a-2) A commission rule or procedure adopted under Subsection (a)(20) may not restrict the authority of a county jail under the commission's rules in effect on September 1, 2015, to limit prisoner visitation for disciplinary reasons.

(b) A commission rule or procedure is not unreasonable because compliance with the rule or procedure requires

major modification or renovation of an existing jail or construction of a new jail.

(c) At any time and on the application of the county commissioners court or sheriff, the commission may grant reasonable variances, including variances that are to last for the life of a facility, clearly justified by the facts, for operation of a facility not in strict compliance with state law. A variance may not permit unhealthy, unsanitary, or unsafe conditions.

(d) The commission shall adopt reasonable rules and procedures establishing minimum standards regarding the continuity of prescription medications for the care and treatment of prisoners. The rules and procedures shall require that a qualified medical professional shall review as soon as possible any prescription medication a prisoner is taking when the prisoner is taken into custody.

(e) The commission may monitor compliance with the provisions of Article 43.13, Code of Criminal Procedure, relating to the release of a prisoner from county jail.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 212 (S.B. 1044), § 2.01, effective September 1, 1989; am. Acts 1995, 74th Leg., ch. 171 (S.B. 1168), § 1, effective August 28, 1995; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 89, effective January 1, 1996; am. Acts 1995, 74th Leg., ch. 722 (H.B. 179), § 2, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 12.30, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 259 (S.B. 367), § 7, effective September 1, 1997; am. Acts 2003, 78th Leg., ch. 1092 (H.B. 2071), § 1, effective June 20, 2003; am. Acts 2005, 79th Leg., ch. 1094 (H.B. 2120), § 8, effective September 1, 2005; am. Acts 2009, 81st Leg., ch. 977 (H.B. 3654), § 1, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 1215 (S.B. 1009), § 9, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 11.012, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 281 (H.B. 875), § 2, effective September 1, 2015; am. Acts 2015, 84th Leg., ch. 648 (H.B. 549), § 1, effective September 1, 2015; am. Acts 2015, 84th Leg., ch. 688 (H.B. 634), § 4, effective September 1, 2015; am. Acts 2019, 86th Leg., ch. 401 (S.B. 1700), § 2, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 1074 (H.B. 1651), § 1, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 1104 (H.B. 2169), § 1, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 1252 (H.B. 4468), § 1, effective September 1, 2019.

Sec. 511.0098. Prisoner Health Benefits Coverage Information; Payment for Mental Health Services. [Expires September 1, 2021]

(a) The commission shall adopt procedures by which a local mental health authority or other mental health services provider providing services to a prisoner in a county jail under a contract with the county may collect the following from a prisoner who receives those services and is covered by health insurance or other health benefits coverage:

- (1) the name of the policyholder or group contract holder;
- (2) the number of the policy or evidence of coverage;
- (3) a copy of the health coverage membership card, if available; and
- (4) any other information necessary for the prisoner to obtain benefits under the coverage.

(b) A local mental health authority or other mental health services provider who provides mental health services to a prisoner under a contract with a county may arrange for the issuer of the health insurance policy or other health benefits coverage to pay for those services.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1195 (H.B. 4559), § 1, effective September 1, 2019.

Sec. 511.011. Report on Noncompliance. [Expires September 1, 2021]

(a) If the commission finds that a county jail does not comply with state law, including Chapter 89, Health and Safety Code, or the rules, standards, or procedures of the commission, it shall report the noncompliance to the county commissioners and sheriff of the county responsible for the county jail and shall send a copy of the report to the governor.

(b) If a notice of noncompliance is issued to a facility operated by a private entity under Section 351.101 or 361.061, Local Government Code, the compliance status of the facility shall be reviewed at the next meeting of the Commission on Jail Standards.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 212 (S.B. 1044), § 2.01, effective September 1, 1989; am. Acts 1997, 75th Leg., ch. 348 (S.B. 939), § 12, effective September 1, 1997; am. Acts 2019, 86th Leg., ch. 1252 (H.B. 4468), § 2, effective September 1, 2019.

SUBTITLE I

HEALTH AND HUMAN SERVICES

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CHAPTER 531

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531.856 to 531.900. [Reserved].

Subchapter A

*General Provisions; Organization of Commission
[Expires September 1, 2027]*

Sec. 531.001. [Expires September 1, 2027] Definitions.

In this subtitle:

(1) "Caseload standards" means the minimum and maximum number of cases that an employee can reasonably be expected to perform in a normal work month based on the number of cases handled by or the number of different job functions performed by the employee.

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

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

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

(3-a) "Health and human services system" means the system for providing or otherwise administering health and human services in this state by the commission, including through an office or division of the commission or through another entity under the administrative and operational control of the executive commissioner.

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

- (A) Department of Aging and Disability Services;
- (B) Department of State Health Services; and
- (C) Department of Assistive and Rehabilitative Services.

(4-a) "Home telemonitoring service" means a health service that requires scheduled remote monitoring of data related to a patient's health and transmission of the data to a licensed home and community support services agency or a hospital, as those terms are defined by Section 531.02164(a).

(4-b) "Medicaid" means the medical assistance program established under Chapter 32, Human Resources Code.

(4-c) "Medicaid managed care organization" means a managed care organization as defined by Section 533.001 that contracts with the commission under Chapter 533 to provide health care services to Medicaid recipients.

(4-d) "Platform" means the technology, system, software, application, modality, or other method through which a health professional remotely interfaces with a patient when providing a health care service or procedure as a telemedicine medical service or telehealth service.

(5) "Professional caseload standards" means caseload standards that are established or are recommended for establishment for employees of health and human services agencies by management studies conducted for health and human services agencies or by an authority or association, including the Child Welfare League of America, the National Eligibility Workers Association,

the National Association of Social Workers, and associations of state health and human services agencies.

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

(7) "Telehealth service" has the meaning assigned by Section 111.001, Occupations Code.

(8) "Telemedicine medical service" has the meaning assigned by Section 111.001, Occupations Code.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 8.002(a), effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 14.01, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1022 (S.B. 359), § 97, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 7 (S.B. 351), § 2, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 899 (H.B. 2148), § 1, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 1460 (H.B. 2641), § 8.01, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 53 (S.B. 1589), § 1, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 957 (S.B. 1475), § 6, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 9.007, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), §§ 1.01(a)—(c), 2.01, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), § 9.009, effective September 1, 2003; am. Acts 2011, 82nd Leg., ch. 1205 (S.B. 293), § 1, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.007, effective April 2, 2015; am. Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 2.01, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 205 (S.B. 1107), § 8, effective May 27, 2017; am. Acts 2017, 85th Leg., ch. 316 (H.B. 5), § 22, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 623 (S.B. 1207), § 1, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 964 (S.B. 670), § 1, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 1235 (H.B. 1576), § 1, effective June 14, 2019; am. Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 1, effective September 1, 2019.

Sec. 531.003. [Expires September 1, 2027] Goals.

The commission's goals are to:

- (1) maximize federal funds through the efficient use of available state and local resources;
- (2) provide a system that delivers prompt, comprehensive, effective services to the people of this state by:
 - (A) improving access to health and human services at the local level; and
 - (B) eliminating architectural, communications, programmatic, and transportation barriers;
- (3) promote the health of the people of this state by:
 - (A) reducing the incidence of disease and disabling conditions;
 - (B) increasing the availability of health care services;
 - (C) improving the quality of health care services;
 - (D) addressing the high incidence of certain illnesses and conditions of minority populations;
 - (E) increasing the availability of trained health care professionals;
 - (F) improving knowledge of health care needs;
 - (G) reducing infant death and disease;
 - (H) reducing the impact of mental disorders in adults;
 - (I) reducing the impact of emotional disturbances in children;
 - (J) increasing participation in nutrition programs;
 - (K) increasing nutritional education; and
 - (L) reducing substance abuse;

(4) foster the development of responsible, productive, and self-sufficient citizens by:

- (A) improving workforce skills;
- (B) increasing employment, earnings, and benefits;
- (C) increasing housing opportunities;
- (D) increasing child-care and other dependent-care services;
- (E) improving education and vocational training to meet specific career goals;
- (F) reducing school dropouts;
- (G) reducing teen pregnancy;
- (H) improving parental effectiveness;
- (I) increasing support services for people with disabilities;

(J) increasing services to help people with disabilities maintain or increase their independence;

(K) improving access to work sites, accommodations, transportation, and other public places and activities covered by the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.); and

(L) improving services to juvenile offenders;

(5) provide needed resources and services to the people of this state when they cannot provide or care for themselves by:

(A) increasing support services for adults and their families during periods of unemployment, financial need, or homelessness;

(B) reducing extended dependency on basic support services; and

(C) increasing the availability and diversity of long-term care provided to support people with chronic conditions in settings that focus on community-based services with options ranging from their own homes to total-care facilities;

(6) protect the physical and emotional safety of all the people of this state by:

(A) reducing abuse, neglect, and exploitation of elderly people and adults with disabilities;

(B) reducing child abuse and neglect;

(C) reducing family violence;

(D) increasing services to truants and runaways, children at risk of truancy or running away, and their families;

(E) reducing crime and juvenile delinquency;

(F) reducing community health risks; and

(G) improving regulation of human services providers; and

(7) improve the coordination and delivery of children's services.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 8.002(a), effective September 1, 1995.

Subchapter B

Powers and Duties

[Expires September 1, 2027]

Sec. 531.02164. [Expires September 1, 2027] Medicaid Services Provided Through Home Telemonitoring Services.

(a) In this section:

(1) "Home and community support services agency" means a person licensed under Chapter 142, Health and Safety Code, to provide home health, hospice, or personal assistance services as defined by Section 142.001, Health and Safety Code.

(2) "Hospital" means a hospital licensed under Chapter 241, Health and Safety Code.

(b) If the commission determines that establishing a statewide program that permits reimbursement under Medicaid for home telemonitoring services would be cost-effective and feasible, the executive commissioner by rule shall establish the program as provided under this section.

(c) The program required under this section must:

(1) provide that home telemonitoring services are available only to persons who:

(A) are diagnosed with one or more of the following conditions:

(i) pregnancy;

(ii) diabetes;

(iii) heart disease;

(iv) cancer;

(v) chronic obstructive pulmonary disease;

(vi) hypertension;

(vii) congestive heart failure;

(viii) mental illness or serious emotional disturbance;

(ix) asthma;

(x) myocardial infarction; or

(xi) stroke; and

(B) exhibit two or more of the following risk factors:

(i) two or more hospitalizations in the prior 12-month period;

(ii) frequent or recurrent emergency room admissions;

(iii) a documented history of poor adherence to ordered medication regimens;

(iv) a documented history of falls in the prior six-month period;

(v) limited or absent informal support systems;

(vi) living alone or being home alone for extended periods of time; and

(vii) a documented history of care access challenges;

(2) ensure that clinical information gathered by a home and community support services agency or hospital while providing home telemonitoring services is shared with the patient's physician; and

(3) ensure that the program does not duplicate disease management program services provided under Section 32.057, Human Resources Code.

(c-1) Notwithstanding Subsection (c)(1), the program required under this section must also provide that home telemonitoring services are available to pediatric persons who:

(1) are diagnosed with end-stage solid organ disease;

(2) have received an organ transplant; or

(3) require mechanical ventilation.

(d) If, after implementation, the commission determines that the program established under this section is not cost-effective, the commission may discontinue the program and stop providing reimbursement under Medic-

aid for home telemonitoring services, notwithstanding Section 531.0216 or any other law.

(e) The commission shall determine whether the provision of home telemonitoring services to persons who are eligible to receive benefits under both Medicaid and the Medicare program achieves cost savings for the Medicare program.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1205 (S.B. 293), § 5, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.033, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 1061 (H.B. 1063), § 2, effective September 1, 2019.

Sec. 531.0221. Task Force on Rate-Setting Methodologies for Medicaid Program and State Child Health Plan Program [Expired].

Expired pursuant to Acts 2001, 77th Leg., ch. 1269 (S.B. 1299), § 1, effective September 1, 2005.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 603 (S.B. 877), § 1, effective September 1, 2001; Enacted by Acts 2001, 77th Leg., ch. 1260 (S.B. 1053), § 1, effective September 1, 2001; Enacted by Acts 2001, 77th Leg., ch. 1269 (S.B. 1299), § 1, effective September 1, 2001.

Sec. 531.0225. [Expires September 1, 2027] Mental Health and Substance Abuse Services.

(a) To ensure appropriate delivery of mental health and substance abuse services, the commission shall regularly evaluate program contractors and subcontractors that provide or arrange for the services for persons enrolled in:

- (1) the Medicaid managed care program; and
- (2) the state child health plan program.

(b) The commission shall monitor:

- (1) penetration rates, as they relate to mental health and substance abuse services provided by or through contractors and subcontractors;
- (2) utilization rates, as they relate to mental health and substance abuse services provided by or through contractors and subcontractors; and
- (3) provider networks used by contractors and subcontractors to provide mental health or substance abuse services.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 358 (S.B. 1182), § 2, effective June 18, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(32), effective September 1, 2005 (renumbered from Sec. 531.0224).

Sec. 531.02251. Ombudsman for Behavioral Health Access to Care.

(a) In this section, "ombudsman" means the individual designated as the ombudsman for behavioral health access to care.

(b) The executive commissioner shall designate an ombudsman for behavioral health access to care.

(c) The ombudsman is administratively attached to the office of the ombudsman for the commission.

(d) The commission may use an alternate title for the ombudsman in consumer-facing materials if the commission determines that an alternate title would be beneficial to consumer understanding or access.

(e) The ombudsman serves as a neutral party to help consumers, including consumers who are uninsured or have public or private health benefit coverage, and behavioral health care providers navigate and resolve issues

related to consumer access to behavioral health care, including care for mental health conditions and substance use disorders.

(f) The ombudsman shall:

(1) interact with consumers and behavioral health care providers with concerns or complaints to help the consumers and providers resolve behavioral health care access issues;

(2) identify, track, and help report potential violations of state or federal rules, regulations, or statutes concerning the availability of, and terms and conditions of, benefits for mental health conditions or substance use disorders, including potential violations related to quantitative and nonquantitative treatment limitations;

(3) report concerns, complaints, and potential violations described by Subdivision (2) to the appropriate regulatory or oversight agency;

(4) receive and report concerns and complaints relating to inappropriate care or mental health commitment;

(5) provide appropriate information to help consumers obtain behavioral health care;

(6) develop appropriate points of contact for referrals to other state and federal agencies; and

(7) provide appropriate information to help consumers or providers file appeals or complaints with the appropriate entities, including insurers and other state and federal agencies.

(g) The ombudsman shall participate in the mental health condition and substance use disorder parity work group established under Section 531.02252 and provide summary reports of concerns, complaints, and potential violations described by Subsection (f)(2) to the work group. This subsection expires September 1, 2021.

(h) The Texas Department of Insurance shall appoint a liaison to the ombudsman to receive reports of concerns, complaints, and potential violations described by Subsection (f)(2) from the ombudsman, consumers, or behavioral health care providers.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 769 (H.B. 10), § 1, effective September 1, 2017.

Sec. 531.02252. [Expires September 1, 2021] Mental Health Condition and Substance Use Disorder Parity Work Group.

(a) The commission shall establish and facilitate a mental health condition and substance use disorder parity work group at the office of mental health coordination to increase understanding of and compliance with state and federal rules, regulations, and statutes concerning the availability of, and terms and conditions of, benefits for mental health conditions and substance use disorders.

(b) The work group may be a part of or a subcommittee of the behavioral health advisory committee.

(c) The work group is composed of:

(1) a representative of:

- (A) Medicaid and the child health plan program;
- (B) the office of mental health coordination;
- (C) the Texas Department of Insurance;
- (D) a Medicaid managed care organization;
- (E) a commercial health benefit plan;
- (F) a mental health provider organization;

- (G) physicians;
- (H) hospitals;
- (I) children's mental health providers;
- (J) utilization review agents; and
- (K) independent review organizations;

(2) a substance use disorder provider or a professional with co-occurring mental health and substance use disorder expertise;

(3) a mental health consumer;

(4) a mental health consumer advocate;

(5) a substance use disorder treatment consumer;

(6) a substance use disorder treatment consumer advocate;

(7) a family member of a mental health or substance use disorder treatment consumer; and

(8) the ombudsman for behavioral health access to care.

(d) The work group shall meet at least quarterly.

(e) The work group shall study and make recommendations on:

(1) increasing compliance with the rules, regulations, and statutes described by Subsection (a);

(2) strengthening enforcement and oversight of these laws at state and federal agencies;

(3) improving the complaint processes relating to potential violations of these laws for consumers and providers;

(4) ensuring the commission and the Texas Department of Insurance can accept information on concerns relating to these laws and investigate potential violations based on de-identified information and data submitted to providers in addition to individual complaints; and

(5) increasing public and provider education on these laws.

(f) The work group shall develop a strategic plan with metrics to serve as a roadmap to increase compliance with the rules, regulations, and statutes described by Subsection (a) in this state and to increase education and outreach relating to these laws.

(g) Not later than September 1 of each even-numbered year, the work group shall submit a report to the appropriate committees of the legislature and the appropriate state agencies on the findings, recommendations, and strategic plan required by Subsections (e) and (f).

(h) The work group is abolished and this section expires September 1, 2021.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 769 (H.B. 10), § 1, effective September 1, 2017.

Sec. 531.02253. Telehealth Treatment for Substance Use Disorders.

The executive commissioner by rule shall establish a program to increase opportunities and expand access to telehealth treatment for substance use disorders in this state.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1167 (H.B. 3285), § 3, effective September 1, 2019.

Sec. 531.0227. [Expires September 1, 2027] Person First Respectful Language Promotion.

The executive commissioner shall ensure that the commission and each health and human services agency use

the terms and phrases listed as preferred under the person first respectful language initiative in Chapter 392 when proposing, adopting, or amending the commission's or agency's rules, reference materials, publications, and electronic media.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 272 (H.B. 1481), § 3, effective September 1, 2011.

Sec. 531.0244. [Expires September 1, 2027] Ensuring Appropriate Care Setting for Persons with Disabilities.

(a) The commission and appropriate health and human services agencies shall implement a comprehensive, effectively working plan that provides a system of services and support that fosters independence and productivity and provides meaningful opportunities for a person with a disability to live in the most appropriate care setting, considering:

(1) the person's physical, medical, and behavioral needs;

(2) the least restrictive care setting in which the person can reside;

(3) the person's choice of care settings in which to reside;

(4) the availability of state resources; and

(5) the availability of state programs for which the person qualifies that can assist the person.

(b) The comprehensive, effectively working plan required by Subsection (a) must require appropriate health and human services agencies to:

(1) provide to a person with a disability living in an institution and to any other person as required by Sections 531.042 and 531.02442 information regarding care and support options available to the person with a disability, including community-based services appropriate to the needs of that person;

(2) recognize that certain persons with disabilities are represented by legally authorized representatives as defined by Section 241.151, Health and Safety Code, whom the agencies must include in any decision-making process facilitated by the plan's implementation;

(3) facilitate a timely and appropriate transfer of a person with a disability from an institution to an appropriate setting in the community if:

(A) the person chooses to live in the community;

(B) the person's treating professionals determine the transfer is appropriate; and

(C) the transfer can be reasonably accommodated, considering the state's available resources and the needs of other persons with disabilities; and

(4) develop strategies to prevent the unnecessary placement in an institution of a person with a disability who is living in the community but is in imminent risk of requiring placement in an institution because of a lack of community services.

(c) For purposes of developing the strategies required by Subsection (b)(4), a person with a mental illness who is admitted to a facility of the Department of State Health Services for inpatient mental health services three or more times during a 180-day period is presumed to be in imminent risk of requiring placement in an institution. The strategies must be developed in a manner that

presumes the person's eligibility for and the appropriateness of intensive community-based services and support.

(c-1) For purposes of determining the appropriateness of transfers under Subsection (b)(3) and developing the strategies required by Subsection (b)(4), a health and human services agency shall presume the eligibility of a child residing in a general residential operation, as defined by Section 42.002, Human Resources Code, for transfer to an appropriate community-based setting.

(d) In implementing the plan required by Subsection (a), a health and human services agency may not deny an eligible person with a disability access to an institution or remove an eligible person with a disability from an institution if the person prefers the type and degree of care provided in the institution and that care is appropriate for the person. A health and human services agency may deny the person access to an institution or remove the person from an institution to protect the person's health or safety.

(e) Each appropriate health and human services agency shall implement the strategies and recommendations under the plan required by Subsection (a) subject to the availability of funds.

(f) This section does not create a cause of action.

(g) Not later than December 1 of each even-numbered year, the executive commissioner shall submit to the governor and the legislature a report on the status of the implementation of the plan required by Subsection (a). The report must include recommendations on any statutory or other action necessary to implement the plan.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1239 (S.B. 367), § 1, effective September 1, 2001; am. Acts 2013, 83rd Leg., ch. 728 (S.B. 49), § 1, effective June 14, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.059, effective April 2, 2015.

Sec. 531.02442. [Expires September 1, 2027] Community Living Options Information Process for Certain Persons with an Intellectual Disability.

(a) In this section:

(1) "Department" means the Department of Aging and Disability Services.

(1-a) "Institution" means:

(A) a residential care facility operated or maintained by the department to provide 24-hour services, including residential services, to persons with an intellectual disability; or

(B) an ICF-IID, as defined by Section 531.002, Health and Safety Code.

(2) "Legally authorized representative" has the meaning assigned by Section 241.151, Health and Safety Code.

(3) "Local intellectual and developmental disability authority" has the meaning assigned by Section 531.002, Health and Safety Code.

(b) In addition to providing information regarding care and support options as required by Section 531.042, the department shall implement a community living options information process in each institution to inform persons with an intellectual disability who reside in the institution and their legally authorized representatives of alternative community living options.

(c) The department shall provide the information required by Subsection (b) through the community living

options information process at least annually. The department shall also provide the information at any other time on request by a person with an intellectual disability who resides in an institution or the person's legally authorized representative.

(d) If a person with an intellectual disability residing in an institution or the person's legally authorized representative indicates a desire to pursue an alternative community living option after receiving the information provided under this section, the department shall refer the person or the person's legally authorized representative to the local intellectual and developmental disability authority. The local intellectual and developmental disability authority shall place the person in an alternative community living option, subject to the availability of funds, or on a waiting list for those options if the options are not available to the person for any reason on or before the 30th day after the date the person or the person's legally authorized representative is referred to the local intellectual and developmental disability authority.

(e) The department shall document in the records of each person with an intellectual disability who resides in an institution the information provided to the person or the person's legally authorized representative through the community living options information process and the results of that process.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1239 (S.B. 367), § 1, effective September 1, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.061, effective April 2, 2015.

Sec. 531.02443. [Expires September 1, 2027] Implementation of Community Living Options Information Process at State Institutions for Certain Adult Residents.

(a) In this section:

(1) "Adult resident" means a person with an intellectual disability who:

(A) is at least 22 years of age; and

(B) resides in a state supported living center.

(2) "Department" means the Department of Aging and Disability Services.

(3) "Legally authorized representative" has the meaning assigned by Section 241.151, Health and Safety Code.

(4) "Local intellectual and developmental disability authority" has the meaning assigned by Section 531.002, Health and Safety Code.

(5) State supported living center has the meaning assigned by Section 531.002, Health and Safety Code.

(b) This section applies only to the community living options information process for an adult resident.

(c) The department shall contract with local intellectual and developmental disability authorities to implement the community living options information process required by Section 531.02442 for an adult resident.

(d) The contract with the local intellectual and developmental disability authority must:

(1) delegate to the local intellectual and developmental disability authority the department's duties under Section 531.02442 with regard to the implementation of the community living options information process at a state supported living center;

(2) include performance measures designed to assist the department in evaluating the effectiveness of a local intellectual and developmental disability authority in implementing the community living options information process; and

(3) ensure that the local intellectual and developmental disability authority provides service coordination and relocation services to an adult resident who chooses, is eligible for, and is recommended by the interdisciplinary team for a community living option to facilitate a timely, appropriate, and successful transition from the state supported living center to the community living option.

(e) The department, with the advice and assistance of the interagency task force on ensuring appropriate care settings for persons with disabilities and representatives of family members or legally authorized representatives of adult residents, persons with an intellectual disability, state supported living centers, and local intellectual and developmental disability authorities, shall:

(1) develop an effective community living options information process;

(2) create uniform procedures for the implementation of the community living options information process; and

(3) minimize any potential conflict of interest regarding the community living options information process between a state supported living center and an adult resident, an adult resident's legally authorized representative, or a local intellectual and developmental disability authority.

(f) A state supported living center shall:

(1) allow a local intellectual and developmental disability authority to participate in the interdisciplinary planning process involving the consideration of community living options for an adult resident;

(2) to the extent not otherwise prohibited by state or federal confidentiality laws, provide a local intellectual and developmental disability authority with access to an adult resident and an adult resident's records to assist the authority in implementing the community living options information process; and

(3) provide the adult resident or the adult resident's legally authorized representative with accurate information regarding the risks of moving the adult resident to a community living option.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 970 (S.B. 27), § 1, effective June 15, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.062, effective April 2, 2015.

Sec. 531.02445. [Expires September 1, 2027] Transition Services for Youth with Disabilities.

(a) The executive commissioner shall monitor programs and services offered through health and human services agencies designed to assist youth with disabilities to transition from school-oriented living to post-schooling activities, services for adults, or community living.

(b) In monitoring the programs and services, the executive commissioner shall:

(1) consider whether the programs or services result in positive outcomes in the employment, community

integration, health, and quality of life of individuals with disabilities; and

(2) collect information regarding the outcomes of the transition process as necessary to assess the programs and services.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 465 (H.B. 1230), § 1, effective September 1, 2007.

Sec. 531.0248. [Expires September 1, 2027] Community-Based Support Systems.

(a) Subject to Section 531.0055(d), the commission shall assist communities in this state in developing comprehensive, community-based support systems for health and human services. At the request of a community, the commission shall provide resources and assistance to the community to enable the community to:

(1) identify and overcome institutional barriers to developing more comprehensive community support systems, including barriers that result from the policies and procedures of state health and human services agencies; and

(2) develop a system of blended funds to allow the community to customize services to fit individual community needs.

(b) At the request of the commission, a health and human services agency shall provide resources and assistance to a community as necessary to perform the commission's duties under Subsection (a).

(c) A health and human services agency that receives or develops a proposal for a community initiative shall submit the initiative to the commission for review and approval. The commission shall review the initiative to ensure that the initiative is consistent with other similar programs offered in communities and does not duplicate other services provided in the community.

(d) In implementing this section, the commission shall consider models used in other service delivery systems, including the mental health and intellectual disability service delivery systems.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1460 (H.B. 2641), § 3.02, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.066, effective April 2, 2015.

Sec. 531.02481. [Expires September 1, 2027] Community-Based Support and Service Delivery Systems for Long-Term Care Services.

(a) The commission and the Department of Aging and Disability Services shall assist communities in this state in developing comprehensive, community-based support and service delivery systems for long-term care services. At the request of a community-based organization or combination of community-based organizations, the commission may provide a grant to the organization or combination of organizations in accordance with Subsection (g). At the request of a community, the commission shall provide resources and assistance to the community to enable the community to:

(1) identify and overcome institutional barriers to developing more comprehensive community support systems, including barriers that result from the policies and procedures of state health and human services agencies;

(2) develop a system of blended funds, consistent with the requirements of federal law and the General Appropriations Act, to allow the community to customize services to fit individual community needs; and

(3) develop a local system of access and assistance to aid clients in accessing the full range of long-term care services.

(b) At the request of the commission, a health and human services agency shall provide resources and assistance to a community as necessary to perform the commission's duties under Subsection (a).

(c) A health and human services agency that receives or develops a proposal for a community initiative shall submit the initiative to the commission for review and approval. The commission shall review the initiative to ensure that the initiative is consistent with other similar programs offered in communities and does not duplicate other services provided in the community.

(d) In implementing this section, the commission shall consider models used in other service delivery systems.

(e) The executive commissioner shall assure the maintenance of no fewer than 28 area agencies on aging in order to assure the continuation of a local system of access and assistance that is sensitive to the aging population.

(f) A community-based organization or a combination of organizations may make a proposal under this section. A community-based organization includes:

- (1) an area agency on aging;
- (2) an independent living center;
- (3) a municipality, county, or other local government;
- (4) a nonprofit or for-profit organization; or
- (5) a community mental health and intellectual disability center.

(g) In making a grant to a community-based organization, the commission shall evaluate the organization's proposal based on demonstrated need and the merit of the proposal. If a combination of community-based organizations makes a proposal, the combination must designate a single organization to receive and administer the grant. The commission may adopt guidelines for proposals under this subsection. The commission shall give priority to proposals that will use the Internet and related information technologies to provide to clients referral services, other information regarding local long-term care services, and needs assessment. To receive a grant under this section, a community-based organization must at least partially match the state grant with money or other resources obtained from a nongovernmental entity, from a local government, or if the community-based organization is a local government, from fees or taxes collected by the local government. The community-based organization may then combine the money or resources the organization obtains from a variety of state, local, federal, or private sources to accomplish the purpose of the proposal. If a community-based organization receives a grant on behalf of a combination of community-based organizations or if the community-based organization's proposal involved coordinating with other entities to accomplish the purpose of the proposal, the commission may condition receipt of the grant on the organization's making a good faith effort to coordinate with other entities in the manner indicated in the proposal.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1505 (S.B. 374), § 1.01, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1442 (H.B. 1154), § 1, effective September 1, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.067, effective April 2, 2015.

Sec. 531.03132. [Expires September 1, 2027] Electronic Access to Referral Information About Housing Options for Persons with Mental Illness.

(a) The commission shall make available through the Texas Information and Referral Network Internet site established under Section 531.0313 information regarding housing options for persons with mental illness provided by public or private entities throughout the state. The Internet site will serve as a single point of access through which a person may be directed on how or where to apply for housing for persons with mental illness in the person's community. In this subsection, "private entity" includes any provider of housing specifically for persons with mental illness other than a state agency, municipality, county, or other political subdivision of this state, regardless of whether the provider accepts payment for providing housing for persons with mental illness.

(b) To the extent resources are available, the Internet site must be geographically indexed and designed to inform a person about the housing options for persons with mental illness provided in the area where the person lives.

(c) The Internet site must contain a searchable listing of available housing options for persons with mental illness by type, with a definition for each type of housing and an explanation of the populations of persons with mental illness generally served by that type of housing. The list must contain at a minimum the following types of housing for persons with mental illness:

- (1) state hospitals;
- (2) step-down units in state hospitals;
- (3) community hospitals;
- (4) private psychiatric hospitals;
- (5) a provider of inpatient treatment services in the network of service providers assembled by a local mental health authority under Section 533.035(e), Health and Safety Code;
- (6) assisted living facilities;
- (7) continuing care facilities;
- (8) boarding homes;
- (9) emergency shelters for homeless persons;
- (10) transitional housing intended to move homeless persons to permanent housing;
- (11) supportive housing, or long-term, community-based affordable housing that provides supportive services;
- (12) general residential operations, as defined by Section 42.002, Human Resources Code; and
- (13) residential treatment centers, or a type of general residential operation that provides services to children with emotional disorders in a structured and supportive environment.

(d) For each housing facility named in the listing of available housing options for persons with mental illness, the Internet site must indicate whether the provider that operates the housing facility is licensed by the state.

(e) The Internet site must display a disclaimer that the information provided is for informational purposes only

and is not an endorsement or recommendation of any type of housing or any housing facility.

(f) Each entity providing housing specifically for persons with mental illness in this state, including the Department of State Health Services, municipalities, counties, other political subdivisions of this state, and private entities, shall cooperate with the Texas Information and Referral Network as necessary in the administration of this section.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 288 (H.B. 1191), § 1, effective June 14, 2013.

Sec. 531.055. [Expires September 1, 2027] Memorandum of Understanding on Services for Persons Needing Multiagency Services.

(a) The Health and Human Services Commission, the Department of Family and Protective Services, the Department of State Health Services, the Texas Education Agency, the Texas Correctional Office on Offenders with Medical or Mental Impairments, the Texas Department of Criminal Justice, the Texas Department of Housing and Community Affairs, the Texas Workforce Commission, and the Texas Juvenile Justice Department shall enter into a joint memorandum of understanding to promote a system of local-level interagency staffing groups to identify and coordinate services for persons needing multiagency services to be provided in the least restrictive setting appropriate, using residential, institutional, or congregate care settings only as a last resort. The division within the Health and Human Services Commission that coordinates the policy and delivery of mental health services shall oversee the development and implementation of the joint memorandum of understanding.

(b) The memorandum must:

(1) clarify the statutory responsibilities of each agency in relation to persons needing multiagency services, including subcategories for different services such as:

- (A) family preservation and strengthening;
- (B) physical and behavioral health care;
- (C) prevention and early intervention services, including services designed to prevent:
 - (i) child abuse;
 - (ii) neglect; or
 - (iii) delinquency, truancy, or school dropout;
- (D) diversion from juvenile or criminal justice involvement;
- (E) housing;
- (F) aging in place;
- (G) emergency shelter;
- (H) residential care;
- (I) after-care;
- (J) information and referral; and
- (K) investigation services;

(2) include a functional definition of “persons needing multiagency services”;

(3) outline membership, officers, and necessary standing committees of local-level interagency staffing groups;

(4) define procedures aimed at eliminating duplication of services relating to assessment and diagnosis,

treatment, residential placement and care, and case management of persons needing multiagency services;

(5) define procedures for addressing disputes between the agencies that relate to the agencies’ areas of service responsibilities;

(6) provide that each local-level interagency staffing group includes:

- (A) a local representative of each agency;
- (B) representatives of local private sector agencies; and

(C) family members or caregivers of persons needing multiagency services or other current or previous consumers of multiagency services acting as general consumer advocates;

(7) provide that the local representative of each agency has authority to contribute agency resources to solving problems identified by the local-level interagency staffing group;

(8) provide that if a person’s needs exceed the resources of an agency, the agency may, with the consent of the person’s legal guardian, if applicable, submit a referral on behalf of the person to the local-level interagency staffing group for consideration;

(9) provide that a local-level interagency staffing group may be called together by a representative of any member agency;

(10) provide that an agency representative may be excused from attending a meeting if the staffing group determines that the age or needs of the person to be considered are clearly not within the agency’s service responsibilities, provided that each agency representative is encouraged to attend all meetings to contribute to the collective ability of the staffing group to solve a person’s need for multiagency services;

(11) define the relationship between state-level interagency staffing groups and local-level interagency staffing groups in a manner that defines, supports, and maintains local autonomy;

(12) provide that records that are used or developed by a local-level interagency staffing group or its members that relate to a particular person are confidential and may not be released to any other person or agency except as provided by this section or by other law; and

(13) provide a procedure that permits the agencies to share confidential information while preserving the confidential nature of the information.

(c) The agencies that participate in the formulation of the memorandum of understanding shall consult with and solicit input from advocacy and consumer groups.

(d) Each agency shall adopt the memorandum of understanding and all revisions to the memorandum. The agencies shall develop revisions as necessary to reflect major agency reorganizations or statutory changes affecting the agencies.

(e) The agencies shall ensure that a state-level interagency staffing group provides:

(1) information and guidance to local-level interagency staffing groups regarding:

(A) the availability of programs and resources in the community; and

(B) best practices for addressing the needs of persons with complex needs in the least restrictive setting appropriate; and

(2) a biennial report to the administrative head of each agency, the legislature, and the governor that includes:

(A) the number of persons served through the local-level interagency staffing groups and the outcomes of the services provided;

(B) a description of any barriers identified to the state's ability to provide effective services to persons needing multiagency services; and

(C) any other information relevant to improving the delivery of services to persons needing multi-agency services.

(f) In this section, "least restrictive setting" means a service setting for a person that, in comparison to other available service settings:

(1) is most able to meet the identified needs of the person;

(2) prioritizes a home and community-based care setting; and

(3) engages the strengths of the family.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 114 (S.B. 1468), § 1, effective September 1, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.092, effective April 2, 2015; am. Acts 2015, 84th Leg., ch. 1203 (S.B. 1455), § 9, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 507 (H.B. 2904), § 1, effective September 1, 2017.

Sec. 531.0992. [Expires September 1, 2027] Grant Program for Mental Health Services for Veterans and Their Families.

(a) To the extent funds are appropriated to the commission for that purpose, the commission shall establish a grant program for the purpose of supporting community mental health programs providing services and treatment to veterans and their families.

(b) [Repealed.]

(c) The commission shall ensure that each grant recipient obtains or secures contributions to match awarded grants in amounts of money or other consideration as required by Subsection (d-1) or (d-2). The money or other consideration obtained or secured by the commission may, as determined by the executive commissioner, include cash or in-kind contributions from private contributors or local governments but may not include state or federal funds.

(d) Money appropriated to, or obtained by, the commission for the grant program must be disbursed directly to grant recipients by the commission, as authorized by the executive commissioner.

(d-1) For services and treatment provided in a single county, the commission shall condition each grant provided under this section on a potential grant recipient providing funds from non-state sources in a total amount at least equal to:

(1) 50 percent of the grant amount if the community mental health program to be supported by the grant provides services and treatment in a county with a population of less than 250,000; or

(2) 100 percent of the grant amount if the community mental health program to be supported by the grant provides services and treatment in a county with a population of 250,000 or more.

(d-2) For a community mental health program that provides services and treatment in more than one county, the commission shall condition each grant provided under this section on a potential grant recipient providing funds from non-state sources in a total amount at least equal to:

(1) 50 percent of the grant amount if the largest county in which the community mental health program to be supported by the grant provides services and treatment has a population of less than 250,000; or

(2) 100 percent of the grant amount if the largest county in which the community mental health program to be supported by the grant provides services and treatment has a population of 250,000 or more.

(e) All grants awarded under the grant program must be used for the sole purpose of supporting community programs that provide mental health care services and treatment to veterans and their families and that coordinate mental health care services for veterans and their families with other transition support services.

(f) The commission shall select grant recipients based on the submission of applications or proposals by nonprofit and governmental entities. The executive commissioner shall develop criteria for the evaluation of those applications or proposals and the selection of grant recipients. The selection criteria must:

(1) evaluate and score:

(A) fiscal controls for the project;

(B) project effectiveness;

(C) project cost; and

(D) an applicant's previous experience with grants and contracts;

(2) address the possibility of and method for making multiple awards; and

(3) include other factors that the executive commissioner considers relevant.

(g) [Repealed.]

(h) The executive commissioner shall adopt any rules necessary to implement the grant program under this section.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 327 (S.B. 55), § 1, effective June 4, 2015; am. Acts 2019, 86th Leg., ch. 336 (S.B. 822), §§ 1, 2, effective May 31, 2019.

Sec. 531.0993. Obesity Prevention Pilot Program. [Repealed]

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1212 (S.B. 870), § 2, effective September 1, 2009; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.287(9), effective April 2, 2015.

Sec. 531.09935. [Expires September 1, 2027] Grant Program to Reduce Recidivism, Arrest, and Incarceration Among Individuals with Mental Illness and to Reduce Wait Time for Forensic Commitment in Most Populous County.

(a) The commission shall establish a program to provide a grant to a county-based community collaborative in the most populous county in this state for the purposes of reducing:

(1) recidivism by, the frequency of arrests of, and incarceration of persons with mental illness; and

(2) the total waiting time for forensic commitment of persons with mental illness to a state hospital.

(b) The community collaborative may receive a grant under the program only if the collaborative includes the county, a local mental health authority that operates in the county, and each hospital district located in the county. A community collaborative may include other local entities designated by the collaborative's members.

(c) Not later than the 30th day of each fiscal year, the commission shall make available to the community collaborative established in the county described by Subsection (a) a grant in an amount equal to the lesser of:

- (1) the amount appropriated to the commission for that fiscal year for a mental health jail diversion pilot program in that county; or
- (2) the collaborative's available matching funds.

(d) The commission shall condition a grant provided to the community collaborative under this section on the collaborative providing funds from non-state sources in a total amount at least equal to the grant amount.

(e) To raise the required non-state sourced funds, the collaborative may seek and receive gifts, grants, or donations from any person.

(f) Acceptable uses for the grant money and matching funds include:

- (1) the continuation of a mental health jail diversion program;
- (2) the establishment or expansion of a mental health jail diversion program;
- (3) the establishment of alternatives to competency restoration in a state hospital, including outpatient competency restoration, inpatient competency restoration in a setting other than a state hospital, or jail-based competency restoration;
- (4) the provision of assertive community treatment or forensic assertive community treatment with an outreach component;
- (5) the provision of intensive mental health services and substance abuse treatment not readily available in the county;
- (6) the provision of continuity of care services for an individual being released from a state hospital;
- (7) the establishment of interdisciplinary rapid response teams to reduce law enforcement's involvement with mental health emergencies; and
- (8) the provision of local community hospital, crisis, respite, or residential beds.

(g) Not later than the 90th day after the last day of the state fiscal year for which the commission distributes a grant under this section, the community collaborative shall prepare and submit a report describing the effect of the grant money and matching funds in fulfilling the purpose described by Subsection (a).

(h) The commission may make inspections of the operation and provision of mental health services provided by the community collaborative to ensure state money appropriated for the grant program is used effectively.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 528 (S.B. 292), § 2, effective September 1, 2017.

Sec. 531.0999. [Expires September 1, 2027] Grant Program for Mental Health Services. [Renumbered]

HISTORY: Renumbered to Tex. Gov't Code § 531.0991 by Acts

2019, 86th Leg., ch. HB4170 (H.B. 4170), § 21.001(25), effective September 1, 2019.

Sec. 531.0999. [Expires September 1, 2027] Peer Specialists. [Contingently enacted]

(a) With input from mental health and substance use peer specialists and the work group described by Subsection (b), the commission shall develop and the executive commissioner shall adopt:

- (1) rules that establish training requirements for peer specialists so that they are able to provide services to persons with mental illness or services to persons with substance use conditions;
- (2) rules that establish certification and supervision requirements for peer specialists;
- (3) rules that define the scope of services that peer specialists may provide;
- (4) rules that distinguish peer services from other services that a person must hold a license to provide; and
- (5) any other rules necessary to protect the health and safety of persons receiving peer services.

(b) The commission shall establish a stakeholder work group to provide input for the adoption of rules under Subsection (a). The work group is composed of the following stakeholders appointed by the executive commissioner:

- (1) one representative of each organization that certifies mental health and substance use peer specialists in this state;
- (2) three representatives of organizations that employ mental health and substance use peer specialists;
- (3) one mental health peer specialist who works in an urban area;
- (4) one mental health peer specialist who works in a rural area;
- (5) one substance use peer specialist who works in an urban area;
- (6) one substance use peer specialist who works in a rural area;
- (7) one person who trains mental health peer specialists;
- (8) one person who trains substance use peer specialists;
- (9) three representatives of mental health and addiction licensed health care professional groups who supervise mental health and substance use peer specialists;
- (10) to the extent possible, not more than three persons with personal experience recovering from mental illness, substance use conditions, or co-occurring mental illness and substance use conditions; and
- (11) any other persons considered appropriate by the executive commissioner.

(c) The executive commissioner shall appoint one member of the work group to serve as presiding officer.

(d) The work group shall meet once every month.

(e) The work group is automatically abolished on the adoption of rules under Subsection (a).

(f) The executive commissioner may not adopt rules under Subsection (a) that preclude the provision of mental health rehabilitative services under 25 T.A.C. Chapter 416, Subchapter A, as that subchapter existed on January 1, 2017.

(g) If the executive commissioner has not adopted rules by September 1, 2018, the executive commissioner shall submit on that date a written report to the governor, the lieutenant governor, the speaker of the house of representatives, the chair of the Senate Health and Human Services Committee, and the chair of the House Public Health Committee explaining why the rules have not yet been adopted. This subsection expires September 1, 2019.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 1015 (H.B. 1486), § 1.

Sec. 531.0999. [Expires September 1, 2027] Veteran Suicide Prevention Action Plan. [Renumbered]

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 561 (S.B. 578), § 1, effective June 9, 2017; Renumbered to Tex. Gov't Code § 531.0925 by Acts 2019, 86th Leg., ch. HB4170 (H.B. 4170), § 21.001(24), effective September 1, 2019.

Subchapter D-1

*Permanency Planning
[Expires September 1, 2027]*

Sec. 531.151. [Expires September 1, 2027] Definitions.

In this subchapter:

- (1) "Child" means a person with a developmental disability who is younger than 22 years of age.
- (2) "Community resource coordination group" means a coordination group established under the memorandum of understanding adopted under Section 531.055.
- (3) "Institution" means:
 - (A) an ICF-IID, as defined by Section 531.002, Health and Safety Code;
 - (B) a group home operated under the authority of the commission, including a residential service provider under a Medicaid waiver program authorized under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n), as amended, that provides services at a residence other than the child's home or agency foster home;
 - (C) a nursing facility;
 - (D) a general residential operation for children with an intellectual disability that is licensed by the commission; or
 - (E) another residential arrangement other than a foster home as defined by Section 42.002, Human Resources Code, that provides care to four or more children who are unrelated to each other.
- (4) "Permanency planning" means a philosophy and planning process that focuses on the outcome of family support by facilitating a permanent living arrangement with the primary feature of an enduring and nurturing parental relationship.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 241 (H.B. 885), § 1, effective May 23, 1997; am. Acts 2001, 77th Leg., ch. 590 (S.B. 368), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), § 9.010, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.159, effective April 2, 2015; am. Acts 2017, 85th Leg., ch. 317 (H.B. 7), § 39, effective September 1, 2017.

Sec. 531.152. [Expires September 1, 2027] Policy Statement.

It is the policy of the state to strive to ensure that the basic needs for safety, security, and stability are met for each child in Texas. A successful family is the most efficient and effective way to meet those needs. The state and local communities must work together to provide encouragement and support for well-functioning families and ensure that each child receives the benefits of being a part of a successful permanent family as soon as possible.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 241 (H.B. 885), § 1, effective May 23, 1997; am. Acts 2001, 77th Leg., ch. 590 (S.B. 368), § 1, effective September 1, 2001.

Sec. 531.1521. [Expires September 1, 2027] Preadmission Information.

(a) The executive commissioner by rule shall develop and implement a system by which the Department of Aging and Disability Services ensures that, for each child with respect to whom the department or a local intellectual and developmental disability authority is notified of a request for placement in an institution, the child's parent or guardian is fully informed before the child is placed in the institution of all community-based services and any other service and support options for which the child may be eligible. The system must be designed to ensure that the department provides the information through:

- (1) a local intellectual and developmental disability authority;
 - (2) any private entity that has knowledge and expertise regarding the needs of and full spectrum of care options available to children with disabilities as well as the philosophy and purpose of permanency planning; or
 - (3) a department employee.
- (b) An institution in which a child's parent or guardian is considering placing the child may provide information required under Subsection (a), but the information must also be provided by a local intellectual and developmental disability authority, private entity, or employee of the Department of Aging and Disability Services as required by Subsection (a).
- (c) The Department of Aging and Disability Services shall develop comprehensive information consistent with the policy stated in Section 531.152 to explain to a parent or guardian considering placing a child in an institution:
- (1) options for community-based services;
 - (2) the benefits to the child of living in a family or community setting;
 - (3) that the placement of the child in an institution is considered temporary in accordance with Section 531.159; and
 - (4) that an ongoing permanency planning process is required under this subchapter and other state law.

(d) Except as otherwise provided by this subsection and Subsection (e), the Department of Aging and Disability Services shall ensure that, not later than the 14th working day after the date the department is notified of a request for the placement of a child in an institution, the child's parent or guardian is provided the information described by Subsections (a) and (c). The department may provide the information after the 14th working day after the date the department is notified of the request if the

child's parent or guardian waives the requirement that the information be provided within the period otherwise required by this subsection.

(e) The requirements of this section do not apply to a request for the placement of a child in an institution if the child:

- (1) is involved in an emergency situation, as defined by rules adopted by the executive commissioner; or
- (2) has been committed to an institution under Chapter 46B, Code of Criminal Procedure, or Chapter 55, Family Code.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 1131 (H.B. 2579), § 1, effective September 1, 2005; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.160, effective April 2, 2015.

Sec. 531.153. [Expires September 1, 2027] Development of Permanency Plan.

(a) To further the policy stated in Section 531.152 and except as provided by Subsection (b), the commission and each appropriate health and human services agency shall develop procedures to ensure that a permanency plan is developed for each child who resides in an institution in this state on a temporary or long-term basis or with respect to whom the commission or appropriate health and human services agency is notified in advance that institutional care is sought.

(b) The Department of Family and Protective Services shall develop a permanency plan as required by this subchapter for each child who resides in an institution in this state for whom the department has been appointed permanent managing conservator. The department is not required to develop a permanency plan under this subchapter for a child for whom the department has been appointed temporary managing conservator, but may incorporate the requirements of this subchapter in a permanency plan developed for the child under Section 263.3025, Family Code.

(c) In developing procedures under Subsection (a), the commission and other appropriate health and human services agencies shall develop to the extent possible uniform procedures applicable to each of the agencies and each child who is the subject of a permanency plan that promote efficiency for the agencies and stability for each child.

(d) In implementing permanency planning procedures under Subsection (a) to develop a permanency plan for each child, the Department of Aging and Disability Services shall:

- (1) delegate the department's duty to develop a permanency plan to a local intellectual and developmental disability authority, as defined by Section 531.002, Health and Safety Code, or enter into a memorandum of understanding with the local intellectual and developmental disability authority to develop the permanency plan for each child who resides in an institution in this state or with respect to whom the department is notified in advance that institutional care is sought;
- (2) contract with a private entity, other than an entity that provides long-term institutional care, to develop a permanency plan for a child who resides in an institution in this state or with respect to whom the

department is notified in advance that institutional care is sought; or

(3) perform the department's duties regarding permanency planning procedures using department personnel.

(d-1) A contract or memorandum of understanding under Subsection (d) must include performance measures by which the Department of Aging and Disability Services may evaluate the effectiveness of a local intellectual and developmental disability authority's or private entity's permanency planning efforts.

(d-2) In implementing permanency planning procedures under Subsection (a) to develop a permanency plan for each child, the Department of Aging and Disability Services shall engage in appropriate activities in addition to those required by Subsection (d) to minimize the potential conflicts of interest that, in developing the plan, may exist or arise between:

- (1) the institution in which the child resides or in which institutional care is sought for the child; and
- (2) the best interest of the child.

(e) The commission, the Department of Aging and Disability Services, and the Department of Family and Protective Services may solicit and accept gifts, grants, and donations to support the development of permanency plans for children residing in institutions by individuals or organizations not employed by or affiliated with those institutions.

(f) A health and human services agency that contracts with a private entity under Subsection (d) to develop a permanency plan shall ensure that the entity is provided training regarding the permanency planning philosophy under Section 531.151 and available resources that will assist a child residing in an institution in making a successful transition to a community-based residence.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 241 (H.B. 885), § 1, effective May 23, 1997; am. Acts 2001, 77th Leg., ch. 590 (S.B. 368), § 1, effective September 1, 2001; am. Acts 2005, 79th Leg., ch. 783 (S.B. 40), § 1, effective September 1, 2005; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.161, effective April 2, 2015.

Sec. 531.1531. [Expires September 1, 2027] Assistance with Permanency Planning Efforts.

An institution in which a child resides shall assist with providing effective permanency planning for the child by:

- (1) cooperating with the health and human services agency, local intellectual and developmental disability authority, or private entity responsible for developing the child's permanency plan; and
- (2) participating in meetings to review the child's permanency plan as requested by a health and human services agency, local intellectual and developmental disability authority, or private entity responsible for developing the child's permanency plan.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 783 (S.B. 40), § 2, effective September 1, 2005; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.162, effective April 2, 2015.

Sec. 531.1532. [Expires September 1, 2027] Interference with Permanency Planning Efforts.

An entity that provides information to a child's parent or guardian relating to permanency planning shall refrain

from providing the child's parent or guardian with inaccurate or misleading information regarding the risks of moving the child to another facility or community setting.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 783 (S.B. 40), § 2, effective September 1, 2005.

Sec. 531.1533. [Expires September 1, 2027] Requirements on Admissions of Children to Certain Institutions.

On the admission of a child to an institution described by Section 531.151(3)(A), (B), or (D), the Department of Aging and Disability Services shall require the child's parent or guardian to submit:

- (1) an admission form that includes:
 - (A) the parent's or guardian's:
 - (i) name, address, and telephone number;
 - (ii) driver's license number and state of issuance or personal identification card number issued by the Department of Public Safety; and
 - (iii) place of employment and the employer's address and telephone number; and
 - (B) the name, address, and telephone number of a relative of the child or other person whom the department or institution may contact in an emergency, a statement indicating the relation between that person and the child, and at the parent's or guardian's option, that person's:
 - (i) driver's license number and state of issuance or personal identification card number issued by the Department of Public Safety; and
 - (ii) the name, address, and telephone number of that person's employer; and
- (2) a signed acknowledgment of responsibility stating that the parent or guardian agrees to:
 - (A) notify the institution in which the child is placed of any changes to the information submitted under Subdivision (1)(A); and
 - (B) make reasonable efforts to participate in the child's life and in planning activities for the child.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 1131 (H.B. 2579), § 1, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(37), effective September 1, 2007 (re-numbered from Sec. 531.1532).

Sec. 531.154. [Expires September 1, 2027] Notification Required.

(a) Not later than the third day after the date a child is initially placed in an institution, the institution shall notify:

- (1) the Department of Aging and Disability Services, if the child is placed in a nursing facility;
- (2) the local intellectual and developmental disability authority, as defined by Section 531.002, Health and Safety Code, where the institution is located, if the child:
 - (A) is placed in an ICF-IID, as defined by Section 531.002, Health and Safety Code; or
 - (B) is placed by a child protective services agency in a general residential operation for children with an intellectual disability that is licensed by the Department of Family and Protective Services;

(3) the community resource coordination group in the county of residence of a parent or guardian of the child;

(4) if the child is at least three years of age, the school district for the area in which the institution is located; and

(5) if the child is less than three years of age, the local early childhood intervention program for the area in which the institution is located.

(b) The Department of Aging and Disability Services shall notify the local intellectual and developmental disability authority, as defined by Section 531.002, Health and Safety Code, of a child's placement in a nursing facility if the child is known or suspected to have an intellectual disability or another disability for which the child may receive services through the Department of Aging and Disability Services.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 241 (H.B. 885), § 1, effective May 23, 1997; am. Acts 2001, 77th Leg., ch. 590 (S.B. 368), § 1, effective September 1, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.163, effective April 2, 2015.

Sec. 531.155. [Expires September 1, 2027] Offer of Services.

Each entity receiving notice of the initial placement of a child in an institution under Section 531.154 may contact the child's parent or guardian to ensure that the parent or guardian is aware of:

- (1) services and support that could provide alternatives to placement of the child in the institution;
- (2) available placement options; and
- (3) opportunities for permanency planning.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 241 (H.B. 885), § 1, effective May 23, 1997; am. Acts 2001, 77th Leg., ch. 590 (S.B. 368), § 1, effective September 1, 2001.

Sec. 531.156. [Expires September 1, 2027] Designation of Advocate.

(a) The Department of Aging and Disability Services shall designate a person, including a member of a community-based organization, to serve as a volunteer advocate for a child residing in an institution to assist in developing a permanency plan for the child if:

- (1) the child's parent or guardian requests the assistance of an advocate;
- (2) the institution in which the child is placed cannot locate the child's parent or guardian; or
- (3) the child resides in an institution operated by the department.

(b) The person designated to serve as the child's volunteer advocate under this section may be:

- (1) a person selected by the child's parent or guardian, except that the person may not be employed by or under a contract with the institution in which the child resides;
- (2) an adult relative of the child; or
- (3) a representative of a child advocacy group.

(c) The Department of Aging and Disability Services shall provide to each person designated to serve as a child's volunteer advocate information regarding permanency planning under this subchapter.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 590 (S.B. 368), § 1, effective September 1, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.164, effective April 2, 2015.

Sec. 531.157. [Expires September 1, 2027] Community-Based Services.

A state agency that receives notice of a child's placement in an institution shall ensure that, on or before the third day after the date the agency is notified of the child's placement in the institution, the child is also placed on a waiting list for waiver program services under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n), as amended, appropriate to the child's needs.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 590 (S.B. 368), § 1, effective September 1, 2001.

Sec. 531.158. [Expires September 1, 2027] Local Permanency Planning Sites.

The commission shall develop an implementation system that consists initially of four or more local sites and that is designed to coordinate planning for a permanent living arrangement and relationship for a child with a family. In developing the system, the commission shall:

- (1) include criteria to identify children who need permanency plans;
- (2) require the establishment of a permanency plan for each child who lives outside the child's family or for whom care or protection is sought in an institution;
- (3) include a process to determine the agency or entity responsible for developing and overseeing implementation of a child's permanency plan;
- (4) identify, blend, and use funds from all available sources to provide customized services and programs to implement a child's permanency plan;
- (5) clarify and expand the role of a local community resource coordination group in ensuring accountability for a child who resides in an institution or who is at risk of being placed in an institution;
- (6) require reporting of each placement or potential placement of a child in an institution or other living arrangement outside of the child's home; and
- (7) assign in each local permanency planning site area a single gatekeeper for all children in the area for whom placement in an institution through a program funded by the state is sought with authority to ensure that:
 - (A) family members of each child are aware of:
 - (i) intensive services that could prevent placement of the child in an institution; and
 - (ii) available placement options; and
 - (B) permanency planning is initiated for each child.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 241 (H.B. 3456), § 1, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 590 (S.B. 368), § 1, effective September 1, 2001.

Sec. 531.159. [Expires September 1, 2027] Monitoring of Permanency Planning Efforts.

(a) The commission and each appropriate health and human services agency shall require a person who develops a permanency plan for a child residing in an institution to identify and document in the child's permanency plan all ongoing permanency planning efforts at least semiannually to ensure that, as soon as possible, the child

will benefit from a permanent living arrangement with an enduring and nurturing parental relationship.

(b) The chief executive officer of each appropriate health and human services agency or the officer's designee must approve the placement of a child in an institution. The initial placement of the child in the institution is temporary and may not exceed six months unless the appropriate chief executive officer or the officer's designee approves an extension of an additional six months after conducting a review of documented permanency planning efforts to unite the child with a family in a permanent living arrangement. After the initial six-month extension of a child's placement in an institution approved under this subsection, the chief executive officer or the officer's designee shall conduct a review of the child's placement in the institution at least semiannually to determine whether a continuation of that placement is warranted. If, based on the review, the chief executive officer or the officer's designee determines that an additional extension is warranted, the officer or the officer's designee shall recommend to the executive commissioner that the child continue residing in the institution.

(c) On receipt of a recommendation made under Subsection (b) for an extension of a child's placement, the executive commissioner, the executive commissioner's designee, or another person with whom the commission contracts shall conduct a review of the child's placement. Based on the results of the review, the executive commissioner or the executive commissioner's designee may approve a six-month extension of the child's placement if the extension is appropriate.

(d) The child may continue residing in the institution after the six-month extension approved under Subsection (c) only if the chief executive officer of the appropriate health and human services agency or the officer's designee makes subsequent recommendations as provided by Subsection (b) for each additional six-month extension and the executive commissioner or the executive commissioner's designee approves each extension as provided by Subsection (c).

(e) The executive commissioner or the executive commissioner's designee shall conduct a semiannual review of data received from health and human services agencies regarding all children who reside in institutions in this state. The executive commissioner, the executive commissioner's designee, or a person with whom the commission contracts shall also review the recommendations of the chief executive officers of each appropriate health and human services agency or the officer's designee if the officer or the officer's designee repeatedly recommends that children continue residing in an institution.

(f) The executive commissioner by rule shall develop procedures by which to conduct the reviews required by Subsections (c), (d), and (e). In developing the procedures, the commission may seek input from the work group on children's long-term services, health services, and mental health services established under Section 22.035, Human Resources Code.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 590 (S.B. 368), § 1, effective September 1, 2001; am. Acts 2013, 83rd Leg., ch. 388 (S.B. 50), § 2, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.165, effective April 2, 2015.

Sec. 531.1591. [Expires September 1, 2027] Annual Reauthorization of Plans of Care for Certain Children.

(a) The executive commissioner shall adopt rules under which the Department of Aging and Disability Services requires a nursing facility in which a child resides to request from the child's parent or guardian a written reauthorization of the child's plan of care.

(b) The rules adopted under this section must require that the written reauthorization be requested annually.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 1131 (H.B. 2579), § 1, effective September 1, 2005.

Sec. 531.160. [Expires September 1, 2027] Inspections.

As part of each inspection, survey, or investigation of an institution, including a nursing facility, general residential operation for children with an intellectual disability that is licensed by the Department of Family and Protective Services, or ICF-IID, as defined by Section 531.002, Health and Safety Code, in which a child resides, the agency or the agency's designee shall determine the extent to which the nursing facility, general residential operation, or ICF-IID is complying with the permanency planning requirements under this subchapter.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 590 (S.B. 368), § 1, effective September 1, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.166, effective April 2, 2015.

Sec. 531.161. [Expires September 1, 2027] Access to Records.

Each institution in which a child resides shall allow the following to have access to the child's records to assist in complying with the requirements of this subchapter:

- (1) the commission;
- (2) appropriate health and human services agencies; and
- (3) to the extent not otherwise prohibited by state or federal confidentiality laws, a local intellectual and developmental disability authority or private entity that enters into a contract or memorandum of understanding under Section 531.153(d) to develop a permanency plan for the child.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 590 (S.B. 368), § 1, effective September 1, 2001; am. Acts 2005, 79th Leg., ch. 783 (S.B. 40), § 3, effective September 1, 2005; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.167, effective April 2, 2015.

Sec. 531.162. [Expires September 1, 2027] Permanency Reporting.

(a) For each of the local permanency planning sites, the commission shall develop a reporting system under which each appropriate health and human services agency responsible for permanency planning under this subchapter is required to provide to the commission semiannually:

- (1) the number of permanency plans developed by the agency for children residing in institutions or children at risk of being placed in institutions;
- (2) progress achieved in implementing permanency plans;
- (3) the number of children served by the agency residing in institutions;

(4) the number of children served by the agency at risk of being placed in an institution served by the local permanency planning sites;

(5) the number of children served by the agency reunited with their families or placed with alternate permanent families; and

(6) cost data related to the development and implementation of permanency plans.

(b) The executive commissioner shall submit a semiannual report to the governor and the committees of each house of the legislature that have primary oversight jurisdiction over health and human services agencies regarding:

(1) the number of children residing in institutions in this state and, of those children, the number for whom a recommendation has been made for a transition to a community-based residence but who have not yet made that transition;

(2) the circumstances of each child described by Subdivision (1), including the type of institution and name of the institution in which the child resides, the child's age, the residence of the child's parents or guardians, and the length of time in which the child has resided in the institution;

(3) the number of permanency plans developed for children residing in institutions in this state, the progress achieved in implementing those plans, and barriers to implementing those plans;

(4) the number of children who previously resided in an institution in this state and have made the transition to a community-based residence;

(5) the number of children who previously resided in an institution in this state and have been reunited with their families or placed with alternate families;

(6) the community supports that resulted in the successful placement of children described by Subdivision (5) with alternate families; and

(7) the community supports that are unavailable but necessary to address the needs of children who continue to reside in an institution in this state after being recommended to make a transition from the institution to an alternate family or community-based residence.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 241 (H.B. 3456), § 1, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 590 (S.B. 368), § 1, effective September 1, 2001 (renumbered from Sec. 531.155); am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.168, effective April 2, 2015.

Sec. 531.163. [Expires September 1, 2027] Effect on Other Law.

This subchapter does not affect responsibilities imposed by federal or other state law on a physician or other professional.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 590 (S.B. 368), § 1, effective September 1, 2001.

Sec. 531.164. [Expires September 1, 2027] Duties of Certain Institutions.

(a) This section applies only to an institution described by Section 531.151(3)(A), (B), or (D).

(b) An institution described by Section 531.151(3)(A) or (B) shall notify the local intellectual and developmental

disability authority for the region in which the institution is located of a request for placement of a child in the institution. An institution described by Section 531.151(3)(D) shall notify the Department of Aging and Disability Services of a request for placement of a child in the institution.

(c) An institution must make reasonable accommodations to promote the participation of the parent or guardian of a child residing in the institution in all planning and decision-making regarding the child's care, including participation in:

- (1) the initial development of the child's permanency plan and periodic review of the plan;
- (2) an annual review and reauthorization of the child's service plan;
- (3) decision-making regarding the child's medical care;
- (4) routine interdisciplinary team meetings; and
- (5) decision-making and other activities involving the child's health and safety.

(d) Reasonable accommodations that an institution must make under this section include:

- (1) conducting a meeting in person or by telephone, as mutually agreed upon by the institution and the parent or guardian;
- (2) conducting a meeting at a time and, if the meeting is in person, at a location that is mutually agreed upon by the institution and the parent or guardian;
- (3) if a parent or guardian has a disability, providing reasonable accommodations in accordance with the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.), including providing an accessible meeting location or a sign language interpreter, as applicable; and
- (4) providing a language interpreter, if applicable.

(e) Except as otherwise provided by Subsection (f):

(1) an ICF-IID must:

(A) attempt to notify the parent or guardian of a child who resides in the ICF-IID in writing of a periodic permanency planning meeting or annual service plan review and reauthorization meeting not later than the 21st day before the date the meeting is scheduled to be held; and

(B) request a response from the parent or guardian; and

(2) a nursing facility must:

(A) attempt to notify the parent or guardian of a child who resides in the facility in writing of an annual service plan review and reauthorization meeting not later than the 21st day before the date the meeting is scheduled to be held; and

(B) request a response from the parent or guardian.

(f) If an emergency situation involving a child residing in an ICF-IID or nursing facility occurs, the ICF-IID or nursing facility, as applicable, must:

- (1) attempt to notify the child's parent or guardian as soon as possible; and
- (2) request a response from the parent or guardian.

(g) If a child's parent or guardian does not respond to a notice under Subsection (e) or (f), the ICF-IID or nursing facility, as applicable, must attempt to locate the parent or

guardian by contacting another person whose information was provided by the parent or guardian under Section 531.1533(1)(B).

(h) Not later than the 30th day after the date an ICF-IID or nursing facility determines that it is unable to locate a child's parent or guardian for participation in activities listed under Subsection (e)(1) or (2), the ICF-IID or nursing facility must notify the Department of Aging and Disability Services of that determination and request that the department initiate a search for the child's parent or guardian.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 1131 (H.B. 2579), § 1, effective September 1, 2005; am. Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.002(7), eff. September 1, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.169, effective April 2, 2015.

Sec. 531.165. [Expires September 1, 2027] Search for Parent or Guardian of a Child.

(a) The Department of Aging and Disability Services shall develop and implement a process by which the department, on receipt of notification under Section 531.164(h) that a child's parent or guardian cannot be located, conducts a search for the parent or guardian. If, on the first anniversary of the date the department receives the notification under Section 531.164(h), the department has been unsuccessful in locating the parent or guardian, the department shall refer the case to:

(1) the child protective services division of the Department of Family and Protective Services if the child is 17 years of age or younger; or

(2) the adult protective services division of the Department of Family and Protective Services if the child is 18 years of age or older.

(b) On receipt of a referral under Subsection (a)(1), the child protective services division of the Department of Family and Protective Services shall exercise intense due diligence in attempting to locate the child's parent or guardian. If the division is unable to locate the child's parent or guardian, the department shall file a suit affecting the parent-child relationship requesting an order appointing the department as the child's temporary managing conservator.

(c) A child is considered abandoned for purposes of the Family Code if the child's parent or guardian cannot be located following the exercise of intense due diligence in attempting to locate the parent or guardian by the Department of Family and Protective Services under Subsection (b).

(d) On receipt of a referral under Subsection (a)(2), the adult protective services division of the Department of Family and Protective Services shall notify the court that appointed the child's guardian that the guardian cannot be located.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 1131 (H.B. 2579), § 1, effective September 1, 2005.

Sec. 531.166. [Expires September 1, 2027] Transfer of Child Between Institutions.

(a) This section applies only to an institution described by Section 531.151(3)(A), (B), or (D) in which a child resides.

(b) Before transferring a child who is 17 years of age or younger, or a child who is at least 18 years of age and for whom a guardian has been appointed, from one institution to another institution, the institution in which the child resides must attempt to obtain consent for the transfer from the child's parent or guardian unless the transfer is in response to an emergency situation, as defined by rules adopted by the executive commissioner.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 1131 (H.B. 2579), § 1, effective September 1, 2005.

Sec. 531.167. [Expires September 1, 2027] Collection of Information Regarding Involvement of Certain Parents and Guardians.

(a) The Department of Aging and Disability Services shall collect and maintain aggregate information regarding the involvement of parents and guardians of children residing in institutions described by Sections 531.151(3)(A), (B), and (D) in the lives of and planning activities relating to those children. The department shall obtain input from stakeholders concerning the types of information that are most useful in assessing the involvement of those parents and guardians.

(b) The Department of Aging and Disability Services shall make the aggregate information available to the public on request.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 1131 (H.B. 2579), § 1, effective September 1, 2005.

Secs. 531.168 to 531.170. [Reserved for expansion].

Subchapter G-1

*Developing Local Mental Health Systems of Care for Certain Children
[Expires September 1, 2027]*

Sec. 531.251. Texas System of Care Framework.

(a) In this section:

(1) "Minor" means an individual younger than 18 years of age.

(2) "Serious emotional disturbance" means a mental, behavioral, or emotional disorder of sufficient duration to result in functional impairment that substantially interferes with or limits a person's role or ability to function in family, school, or community activities.

(3) "System of care framework" means a framework for collaboration among state agencies, minors who have a serious emotional disturbance or are at risk of developing a serious emotional disturbance, and the families of those minors that improves access to services and delivers effective community-based services that are family-driven, youth- or young adult-guided, and culturally and linguistically competent.

(b) The commission shall implement a system of care framework to develop local mental health systems of care in communities for minors who are receiving residential mental health services and supports or inpatient mental health hospitalization, have or are at risk of developing a serious emotional disturbance, or are at risk of being removed from the minor's home and placed in a more restrictive environment to receive mental health services

and supports, including an inpatient mental health hospital, a residential treatment facility, or a facility or program operated by the Department of Family and Protective Services or an agency that is part of the juvenile justice system.

(c) The commission shall:

(1) maintain a comprehensive plan for the delivery of mental health services and supports to a minor and a minor's family using a system of care framework, including best practices in the financing, administration, governance, and delivery of those services;

(2) enter memoranda of understanding with the Department of State Health Services, the Department of Family and Protective Services, the Texas Education Agency, the Texas Juvenile Justice Department, and the Texas Correctional Office on Offenders with Medical or Mental Impairments that specify the roles and responsibilities of each agency in implementing the comprehensive plan described by Subdivision (1);

(3) identify appropriate local, state, and federal funding sources to finance infrastructure and mental health services and supports needed to support state and local system of care framework efforts;

(4) develop an evaluation system to measure cross-system performance and outcomes of state and local system of care framework efforts; and

(5) in implementing the provisions of this section, consult with stakeholders, including:

(A) minors who have or are at risk of developing a serious emotional disturbance or young adults who received mental health services and supports as a minor with or at risk of developing a serious emotional disturbance; and

(B) family members of those minors or young adults.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 446 (S.B. 1234), § 1, effective June 18, 1999; am. Acts 2013, 83rd Leg., ch. 1165 (S.B. 421), § 2, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.172, effective April 2, 2015; am. Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 2.16(a), effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 312 (S.B. 1021), § 3, effective May 29, 2017; Repealed by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 3.40(a)(11), effective January 1, 2016.

Sec. 531.252. Proposals for Expansion Communities [Repealed].

Repealed by Acts 2013, 83rd Leg., ch. 1165 (S.B. 421), § 5, effective September 1, 2013.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 446 (S.B. 1234), § 1, effective June 18, 1999.

Sec. 531.253. Selection of Expansion Communities [Repealed].

Repealed by Acts 2013, 83rd Leg., ch. 1165 (S.B. 421), § 5, effective September 1, 2013.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 446 (S.B. 1234), § 1, effective June 18, 1999.

Sec. 531.254. System Development Collaboration [Repealed].

Repealed by Acts 2013, 83rd Leg., ch. 1165 (S.B. 421), § 5, effective September 1, 2013.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 446 (S.B. 1234), § 1, effective June 18, 1999.

Sec. 531.255. [Expires September 1, 2027] Evaluation.

The commission shall monitor the implementation of a system of care framework under Section 531.251 and adopt rules as necessary to facilitate or adjust that implementation.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 446 (S.B. 1234), § 1, effective June 18, 1999; am. Acts 2013, 83rd Leg., ch. 1165 (S.B. 421), §§ 3, 5, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 2.16(b), effective September 1, 2015.

Sec. 531.256. Mental Health Services for Youth Grants [Repealed].

Repealed by Acts 2013, 83rd Leg., ch. 1165 (S.B. 421), § 5, effective September 1, 2013.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 446 (S.B. 1234), § 1, effective June 18, 1999.

Sec. 531.257. [Expires September 1, 2027] Technical Assistance for Projects.

The commission may provide technical assistance to a community that implements a local system of care.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 446 (S.B. 1234), § 1, effective June 18, 1999; am. Acts 2013, 83rd Leg., ch. 1165 (S.B. 421), § 4, effective September 1, 2013.

Sec. 531.258. Statewide Evaluation System [Repealed].

Repealed by Acts 2013, 83rd Leg., ch. 1165 (S.B. 421), § 5, effective September 1, 2013.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 446 (S.B. 1234), § 1, effective June 18, 1999.

Secs. 531.259 to 531.280. [Reserved for expansion].

Subchapter L

*Provision of Services for Certain Children With Multiagency Needs
[Expires September 1, 2027]*

Sec. 531.421. [Expires September 1, 2027] Definitions.

In this subchapter:

(1) “Children with severe emotional disturbances” includes:

(A) children who are at risk of incarceration or placement in a residential mental health facility;

(B) children for whom a court may appoint the Department of Family and Protective Services as managing conservator;

(C) children who are students in a special education program under Subchapter A, Chapter 29, Education Code; and

(D) children who have a substance abuse disorder or a developmental disability.

(2) “Community resource coordination group” means a coordination group established under a memorandum of understanding adopted under Section 531.055.

(3) “Systems of care services” means a comprehensive state system of mental health services and other necessary and related services that is organized as a coordinated network to meet the multiple and changing needs of children with severe emotional disturbances and their families.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.166(a), effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.183, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 573 (S.B. 241), § 1.07, effective September 1, 2019.

Sec. 531.422. [Expires September 1, 2027] Evaluations by Community Resource Coordination Groups.

(a) Each community resource coordination group shall evaluate the provision of systems of care services in the community that the group serves. Each evaluation must:

(1) describe and prioritize services needed by children with severe emotional disturbances in the community;

(2) review and assess the systems of care services that are available in the community to meet those needs;

(3) assess the integration of the provision of those services; and

(4) identify any barriers to the effective provision of those services.

(b) Each community resource coordination group shall create a report that includes the evaluation in Subsection (a) and makes related recommendations, including:

(1) suggested policy and statutory changes at agencies that provide systems of care services; and

(2) recommendations for overcoming barriers to the provision of systems of care services and improving the integration of those services.

(c) Each community resource coordination group shall submit the report described by Subsection (b) to the commission. The commission shall provide to each group a deadline for submitting the reports that is coordinated with any regional reviews by the commission of the delivery of related services.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.166(a), effective September 1, 2003; am. Acts 2019, 86th Leg., ch. 573 (S.B. 241), § 1.08, effective September 1, 2019.

Sec. 531.423. Summary Report by Commission.

(a) The commission shall create a summary report based on the evaluations in the reports submitted to the commission by community resource coordination groups under Section 531.422. The commission’s report must include recommendations for policy and statutory changes at each agency that is involved in the provision of systems of care services and the outcome expected from implementing each recommendation.

(b) The commission shall coordinate, where appropriate, the recommendations in the report created under this section with recommendations in the assessment developed under Chapter 23 (S.B. 491), Acts of the 78th Legislature, Regular Session, 2003, and with the con-

tinuum of care developed under Section 533.040(d), Health and Safety Code.

(c) The commission may include in the report created under this section recommendations for the statewide expansion of sites participating in the Texas System of Care and the integration of services provided at those sites with services provided by community resource coordination groups.

(d) The commission shall provide a copy of the report created under this section to each agency for which the report makes a recommendation and to other agencies as appropriate.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.166(a), effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 219 (S.B. 219), §§ 2.184, 2.185, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 573 (S.B. 241), § 1.09, effective September 1, 2019.

Sec. 531.424. [Expires September 1, 2027] Agency Implementation of Recommendations.

As appropriate, the person or entity responsible for adopting rules for an agency described by Section 531.423(a) shall adopt rules, and the agency shall implement policy changes and enter into memoranda of understanding with other agencies, to implement the recommendations in the report created under Section 531.423.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.166(a), effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.186, effective April 2, 2015.

Secs. 531.425 to 531.450. [Reserved for expansion].

Subchapter M-1

Statewide Behavioral Health Coordinating Council

Sec. 531.471. Definition.

In this subchapter, “council” means the statewide behavioral health coordinating council.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 856 (H.B. 2813), § 1, effective June 10, 2019.

Sec. 531.472. Purpose.

The council is established to ensure a strategic statewide approach to behavioral health services.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 856 (H.B. 2813), § 1, effective June 10, 2019.

Sec. 531.473. Composition of Council.

(a) The council is composed of at least one representative designated by each of the following entities:

- (1) the governor’s office;
- (2) the Texas Veterans Commission;
- (3) the commission;
- (4) the Department of State Health Services;
- (5) the Department of Family and Protective Services;
- (6) the Texas Civil Commitment Office;
- (7) The University of Texas Health Science Center at Houston;
- (8) The University of Texas Health Science Center at Tyler;

(9) the Texas Tech University Health Sciences Center;

(10) the Texas Department of Criminal Justice;

(11) the Texas Correctional Office on Offenders with Medical or Mental Impairments;

(12) the Commission on Jail Standards;

(13) the Texas Indigent Defense Commission;

(14) the court of criminal appeals;

(15) the Texas Juvenile Justice Department;

(16) the Texas Military Department;

(17) the Texas Education Agency;

(18) the Texas Workforce Commission;

(19) the Health Professions Council, representing:

(A) the State Board of Dental Examiners;

(B) the Texas State Board of Pharmacy;

(C) the State Board of Veterinary Medical Examiners;

(D) the Texas Optometry Board;

(E) the Texas Board of Nursing; and

(F) the Texas Medical Board; and

(20) the Texas Department of Housing and Community Affairs.

(b) The executive commissioner shall determine the number of representatives that each entity may designate to serve on the council.

(c) The council may authorize another state agency or institution that provides specific behavioral health services with the use of appropriated money to designate a representative to the council.

(d) A council member serves at the pleasure of the designating entity.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 856 (H.B. 2813), § 1, effective June 10, 2019.

Sec. 531.474. Presiding Officer.

The mental health statewide coordinator shall serve as the presiding officer of the council.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 856 (H.B. 2813), § 1, effective June 10, 2019.

Sec. 531.475. Meetings.

The council shall meet at least once quarterly or more frequently at the call of the presiding officer.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 856 (H.B. 2813), § 1, effective June 10, 2019.

Sec. 531.476. Powers and Duties.

The council:

(1) shall develop and monitor the implementation of a five-year statewide behavioral health strategic plan;

(2) shall develop a biennial coordinated statewide behavioral health expenditure proposal;

(3) shall annually publish an updated inventory of behavioral health programs and services that are funded by the state that includes a description of how those programs and services further the purpose of the statewide behavioral health strategic plan;

(4) may create subcommittees to carry out the council’s duties under this subchapter; and

(5) may facilitate opportunities to increase collaboration for the effective expenditure of available federal

and state funds for behavioral and mental health services in this state.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 856 (H.B. 2813), § 1, effective June 10, 2019.

Subchapter U

Mortality Review for Certain Individuals with an Intellectual or Developmental Disability [Expires September 1, 2027]

Sec. 531.8501. [Expires September 1, 2027] Definition.

In this subchapter, “contracted organization” means an entity that contracts with the commission for the provision of services as described by Section 531.851(c).

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1027 (H.B. 2673), § 4, effective June 14, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.195, effective April 2, 2015.

Sec. 531.851. [Expires September 1, 2027] Mortality Review.

(a) The executive commissioner shall establish an independent mortality review system to review the death of a person with an intellectual or developmental disability who, at the time of the person’s death or at any time during the 24-hour period before the person’s death:

- (1) resided in or received services from:
 - (A) an ICF-IID operated or licensed by the Department of Aging and Disability Services or a community center; or
 - (B) the ICF-IID component of the Rio Grande State Center; or
- (2) received services through a Section 1915(c) waiver program for individuals who are eligible for ICF-IID services.

(b) A review under this subchapter must be conducted in addition to any review conducted by the facility in which the person resided or the facility, agency, or provider from which the person received services. A review under this subchapter must be conducted after any investigation of alleged or suspected abuse, neglect, or exploitation is completed.

(c) The executive commissioner shall contract with an institution of higher education or a health care organization or association with experience in conducting research-based mortality studies to conduct independent mortality reviews of persons with an intellectual or developmental disability. The contract must require the contracted organization to form a review team consisting of:

- (1) a physician with expertise regarding the medical treatment of individuals with an intellectual or developmental disability;
- (2) a registered nurse with expertise regarding the medical treatment of individuals with an intellectual or developmental disability;
- (3) a clinician or other professional with expertise in the delivery of services and supports for individuals with an intellectual or developmental disability; and
- (4) any other appropriate person as provided by the executive commissioner.

(d) The executive commissioner shall adopt rules regarding the manner in which the death of a person described by Subsection (a) must be reported to the contracted organization by a facility or waiver program provider described by that subsection.

(e) To ensure consistency across mortality review systems, a review under this section must collect information consistent with the information required to be collected by any other independent mortality review process established specifically for persons with an intellectual or developmental disability.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 9, effective June 11, 2009; am. Acts 2013, 83rd Leg., ch. 1027 (H.B. 2673), § 5, effective June 14, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.196, effective April 2, 2015.

Sec. 531.852. [Expires September 1, 2027] Access to Information.

(a) A contracted organization may request information and records regarding a deceased person as necessary to carry out the contracted organization’s duties. Records and information that may be requested under this section include:

- (1) medical, dental, and mental health care information; and
- (2) information and records maintained by any state or local government agency, including:
 - (A) a birth certificate;
 - (B) law enforcement investigative data;
 - (C) medical examiner investigative data;
 - (D) juvenile court records;
 - (E) parole and probation information and records; and
 - (F) adult or child protective services information and records.

(b) On request of the contracted organization, the custodian of the relevant information and records relating to a deceased person shall provide those records to the contracted organization at no charge.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 9, effective June 11, 2009; am. Acts 2013, 83rd Leg., ch. 1027 (H.B. 2673), § 6, effective June 14, 2013.

Sec. 531.853. [Expires September 1, 2027] Mortality Review Report.

Subject to Section 531.854, a contracted organization shall submit:

- (1) to the Department of Aging and Disability Services, the Department of Family and Protective Services, the office of independent ombudsman for state supported living centers, and the commission’s office of inspector general a report of the findings of the mortality review; and
- (2) semiannually to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committees of the senate and house of representatives with primary jurisdiction over the Department of Aging and Disability Services, the Department of Family and Protective Services, the office of independent ombudsman for state supported living centers, and the commission’s office of inspector general a report that contains:

- (A) aggregate information regarding the deaths for which the contracted organization performed an independent mortality review;
- (B) trends in the causes of death identified by the contracted organization; and
- (C) any suggestions for system-wide improvements to address conditions that contributed to deaths reviewed by the contracted organization.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 9, effective June 11, 2009; am. Acts 2013, 83rd Leg., ch. 1027 (H.B. 2673), § 7, effective June 14, 2013.

Sec. 531.854. [Expires September 1, 2027] Use and Publication Restrictions; Confidentiality.

(a) The commission may use or publish information under this subchapter only to advance statewide practices regarding the treatment and care of individuals with an intellectual or developmental disability. A summary of the data in the contracted organization’s reports or a statistical compilation of data reports may be released by the commission for general publication if the summary or statistical compilation does not contain any information that would permit the identification of an individual or that is confidential or privileged under this subchapter or other state or federal law.

(b) Information and records acquired by the contracted organization in the exercise of its duties under this subchapter are confidential and exempt from disclosure under the open records law, Chapter 552, and may be disclosed only as necessary to carry out the contracted organization’s duties.

(c) The identity of a person whose death was reviewed in accordance with this subchapter is confidential and may not be revealed.

(d) The identity of a health care provider or the name of a facility or agency that provided services to or was the residence of a person whose death was reviewed in accordance with this subchapter is confidential and may not be revealed.

(e) Reports, information, statements, memoranda, and other information furnished under this subchapter to the contracted organization and any findings or conclusions resulting from a review by the contracted organization are privileged.

(f) A contracted organization’s report of the findings of the independent mortality review conducted under this subchapter and any records developed by the contracted organization relating to the review:

- (1) are confidential and privileged;
- (2) are not subject to discovery or subpoena; and
- (3) may not be introduced into evidence in any civil, criminal, or administrative proceeding.

(g) A member of the contracted organization’s review team may not testify or be required to testify in a civil, criminal, or administrative proceeding as to observations, factual findings, or conclusions that were made in conducting a review under this subchapter.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 9, effective June 11, 2009; am. Acts 2013, 83rd Leg., ch. 1027 (H.B. 2673), § 8, effective June 14, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.197, effective April 2, 2015.

Sec. 531.855. [Expires September 1, 2027] Limitation on Liability.

A health care provider or other person is not civilly or criminally liable for furnishing information to the contracted organization or to the commission for use by the contracted organization in accordance with this subchapter unless the person acted in bad faith or knowingly provided false information to the contracted organization or the commission.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 9, effective June 11, 2009; am. Acts 2013, 83rd Leg., ch. 1027 (H.B. 2673), § 9, effective June 14, 2013.

Secs. 531.856 to 531.900. [Reserved for expansion].

CHAPTER 534

System Redesign for Delivery of Medicaid Acute Care Services and Long-Term Services and Supports to Persons with an Intellectual Or Developmental Disability

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Subchapter A

General Provisions

Sec. 534.001. Definitions.

In this chapter:

(1) "Advisory committee" means the Intellectual and Developmental Disability System Redesign Advisory Committee established under Section 534.053.

(2) "Basic attendant services" means assistance with the activities of daily living, including instrumental activities of daily living, provided to an individual because of a physical, cognitive, or behavioral limitation related to the individual's disability or chronic health condition.

(3) "Comprehensive long-term services and supports provider" means a provider of long-term services and supports under this chapter that ensures the coordinated, seamless delivery of the full range of services in a recipient's program plan. The term includes:

- (A) a provider under the ICF-IID program; and
(B) a provider under a Medicaid waiver program.

(3-a) "Consumer direction model" has the meaning assigned by Section 531.051.

(4) "Functional need" means the measurement of an individual's services and supports needs, including the individual's intellectual, psychiatric, medical, and physical support needs.

(5) "Habilitation services" includes assistance provided to an individual with acquiring, retaining, or improving:

- (A) skills related to the activities of daily living; and
(B) the social and adaptive skills necessary to enable the individual to live and fully participate in the community.

(6) "ICF-IID" means the program under Medicaid serving individuals with an intellectual or developmental disability who receive care in intermediate care facilities other than a state supported living center.

(7) "ICF-IID program" means a program under Medicaid serving individuals with an intellectual or developmental disability who reside in and receive care from:

- (A) intermediate care facilities licensed under Chapter 252, Health and Safety Code; or
(B) community-based intermediate care facilities operated by local intellectual and developmental disability authorities.

(8) "Local intellectual and developmental disability authority" has the meaning assigned by Section 531.002, Health and Safety Code.

(9) "Managed care organization," "managed care plan," and "potentially preventable event" have the meanings assigned under Section 536.001.

(10) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.287(17), effective April 2, 2015.]

(11) "Medicaid waiver program" means only the following programs that are authorized under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)) for the provision of services to persons with an intellectual or developmental disability:

- (A) the community living assistance and support services (CLASS) waiver program;
(B) the home and community-based services (HCS) waiver program;
(C) the deaf-blind with multiple disabilities (DBMD) waiver program; and
(D) the Texas home living (TxHmL) waiver program.

(11-a) "Residential services" means services provided to an individual with an intellectual or developmental disability through a community-based ICF-IID, three- or four-person home or host home setting under the home and community-based services (HCS) waiver program, or a group home under the deaf-blind with multiple disabilities (DBMD) waiver program.

(12) "State supported living center" has the meaning assigned by Section 531.002, Health and Safety Code.

HISTORY: Enacted Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 1.01, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 2.241, 2.287(17), effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 6, effective September 1, 2019.

Sec. 534.002. Conflict with Other Law.

To the extent of a conflict between a provision of this chapter and another state law, the provision of this chapter controls.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 1.01, effective September 1, 2013.

Subchapter B

Acute Care Services and Long-Term Services and Supports System

Sec. 534.051. Acute Care Services and Long-Term Services and Supports System for Individuals with an Intellectual or Developmental Disability.

In accordance with this chapter, the commission shall design and implement an acute care services and long-term services and supports system for individuals with an

intellectual or developmental disability that supports the following goals:

- (1) provide Medicaid services to more individuals in a cost-efficient manner by providing the type and amount of services most appropriate to the individuals' needs and preferences in the most integrated and least restrictive setting;
- (2) improve individuals' access to services and supports by ensuring that the individuals receive information about all available programs and services, including employment and least restrictive housing assistance, and how to apply for the programs and services;
- (3) improve the assessment of individuals' needs and available supports, including the assessment of individuals' functional needs;
- (4) promote person-centered planning, self-direction, self-determination, community inclusion, and customized, integrated, competitive employment;
- (5) promote individualized budgeting based on an assessment of an individual's needs and person-centered planning;
- (6) promote integrated service coordination of acute care services and long-term services and supports;
- (7) improve acute care and long-term services and supports outcomes, including reducing unnecessary institutionalization and potentially preventable events;
- (8) promote high-quality care;
- (9) provide fair hearing and appeals processes in accordance with applicable federal law;
- (10) ensure the availability of a local safety net provider and local safety net services;
- (11) promote independent service coordination and independent ombudsmen services; and
- (12) ensure that individuals with the most significant needs are appropriately served in the community and that processes are in place to prevent inappropriate institutionalization of individuals.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 1.01, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.242, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 7, effective September 1, 2019.

Sec. 534.052. Implementation of System Redesign.

The commission shall, in consultation and collaboration with the advisory committee, implement the acute care services and long-term services and supports system for individuals with an intellectual or developmental disability in the manner and in the stages described in this chapter.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 1.01, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.243, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 7, effective September 1, 2019.

Sec. 534.053. Intellectual and Developmental Disability System Redesign Advisory Committee.

(a) The Intellectual and Developmental Disability System Redesign Advisory Committee shall advise the commission on the implementation of the acute care services and long-term services and supports system redesign under this chapter. Subject to Subsection (b), the executive

commissioner shall appoint members of the advisory committee who are stakeholders from the intellectual and developmental disabilities community, including:

(1) individuals with an intellectual or developmental disability who are recipients of services under the Medicaid waiver programs, individuals with an intellectual or developmental disability who are recipients of services under the ICF-IID program, and individuals who are advocates of those recipients, including at least three representatives from intellectual and developmental disability advocacy organizations;

(2) representatives of Medicaid managed care and nonmanaged care health care providers, including:

(A) physicians who are primary care providers and physicians who are specialty care providers;

(B) nonphysician mental health professionals; and

(C) providers of long-term services and supports, including direct service workers;

(3) representatives of entities with responsibilities for the delivery of Medicaid long-term services and supports or other Medicaid service delivery, including:

(A) representatives of aging and disability resource centers established under the Aging and Disability Resource Center initiative funded in part by the federal Administration on Aging and the Centers for Medicare and Medicaid Services;

(B) representatives of community mental health and intellectual disability centers;

(C) representatives of and service coordinators or case managers from private and public home and community-based services providers that serve individuals with an intellectual or developmental disability; and

(D) representatives of private and public ICF-IID providers; and

(4) representatives of managed care organizations contracting with the state to provide services to individuals with an intellectual or developmental disability.

(b) To the greatest extent possible, the executive commissioner shall appoint members of the advisory committee who reflect the geographic diversity of the state and include members who represent rural Medicaid recipients.

(c) The executive commissioner shall appoint the presiding officer of the advisory committee.

(d) The advisory committee must meet at least quarterly or more frequently if the presiding officer determines that it is necessary to address planning and development needs related to implementation of the acute care services and long-term services and supports system.

(e) A member of the advisory committee serves without compensation. A member of the advisory committee who is a Medicaid recipient or the relative of a Medicaid recipient is entitled to a per diem allowance and reimbursement at rates established in the General Appropriations Act.

(e-1) The advisory committee may establish work groups that meet at other times for purposes of studying and making recommendations on issues the committee considers appropriate.

(f) The advisory committee is subject to the requirements of Chapter 551.

(g) On the second anniversary of the date the commission completes implementation of the transition required under Section 534.202:

- (1) the advisory committee is abolished; and
- (2) this section expires.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 1.01, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.244, effective April 2, 2015; am. Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 3.17, effective January 1, 2016; am. Acts 2015, 84th Leg., ch. 946 (S.B. 277), § 2.17, effective January 1, 2016; am. Acts 2015, 84th Leg., ch. 1117 (H.B. 3523), § 3, effective September 1, 2015; am. Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), §§ 8, 9, effective September 1, 2019.

Sec. 534.054. [Expires January 1, 2026] Annual Report on Implementation.

(a) Not later than September 30 of each year, the commission, in consultation and collaboration with the advisory committee, shall prepare and submit a report to the legislature that must include:

(1) an assessment of the implementation of the system required by this chapter, including appropriate information regarding the provision of acute care services and long-term services and supports to individuals with an intellectual or developmental disability under Medicaid as described by this chapter;

(2) recommendations regarding implementation of and improvements to the system redesign, including recommendations regarding appropriate statutory changes to facilitate the implementation; and

(3) an assessment of the effect of the system on the following:

(A) access to long-term services and supports;

(B) the quality of acute care services and long-term services and supports;

(C) meaningful outcomes for Medicaid recipients using person-centered planning, individualized budgeting, and self-determination, including a person's inclusion in the community;

(D) the integration of service coordination of acute care services and long-term services and supports;

(E) the efficiency and use of funding;

(F) the placement of individuals in housing that is the least restrictive setting appropriate to an individual's needs;

(G) employment assistance and customized, integrated, competitive employment options; and

(H) the number and types of fair hearing and appeals processes in accordance with applicable federal law.

(b) This section expires on the second anniversary of the date the commission completes implementation of the transition required under Section 534.202.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 1.01, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.245, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 10, effective September 1, 2019.

Sec. 534.055. Report on Role of Local Intellectual and Developmental Disability Authorities As Service Providers. [Expired]

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 1.01, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.246, effective April 2, 2015.

Subchapter C

Stage One: Pilot Program for Improving Service Delivery Models
[Expires September 1, 2019]

Sec. 534.101. [Expires September 1, 2019] Definitions.

In this subchapter:

(1) "Capitation" means a method of compensating a provider on a monthly basis for providing or coordinating the provision of a defined set of services and supports that is based on a predetermined payment per services recipient.

(2) "Pilot program" means the pilot program established under this subchapter.

(3) "Pilot program workgroup" means the pilot program workgroup established under Section 534.1015.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 1.01, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.247, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 12, effective September 1, 2019.

Sec. 534.1015. Pilot Program Workgroup.

(a) The executive commissioner, in consultation with the advisory committee, shall establish a pilot program workgroup to provide assistance in developing and advice concerning the operation of the pilot program.

(b) The pilot program workgroup is composed of:

(1) representatives of the advisory committee;

(2) stakeholders representing individuals with an intellectual or developmental disability;

(3) stakeholders representing individuals with similar functional needs as those individuals described by Subdivision (2); and

(4) representatives of managed care organizations that contract with the commission to provide services under the STAR+PLUS Medicaid managed care program.

(c) Chapter 2110 applies to the pilot program workgroup.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 13, effective September 1, 2019.

Sec. 534.102. Pilot Program to Test Person-Centered Managed Care Strategies and Improvements Based on Capitation.

The commission, in consultation and collaboration with the advisory committee and pilot program workgroup, shall develop and implement a pilot program in accordance with this subchapter to test, through the STAR+PLUS Medicaid managed care program, the delivery of long-term services and supports to individuals participating in the pilot program.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 1.01, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.248, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 14, effective September 1, 2019.

Sec. 534.103. Stakeholder Input.

As part of developing and implementing the pilot program, the commission, in consultation and collaboration

with the advisory committee and pilot program workgroup, shall develop a process to receive and evaluate:

- (1) input from statewide stakeholders and stakeholders from a STAR+PLUS Medicaid managed care service area in which the pilot program will be implemented; and
- (2) other evaluations and data.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 1.01, effective September 1, 2013; am. Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 14, effective September 1, 2019.

Sec. 534.1035. Managed Care Organization Selection.

(a) The commission, in consultation and collaboration with the advisory committee and pilot program workgroup, shall develop criteria regarding the selection of a managed care organization to participate in the pilot program.

(b) The commission shall select and contract with not more than two managed care organizations that contract with the commission to provide services under the STAR+PLUS Medicaid managed care program to participate in the pilot program.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 15, effective September 1, 2019.

Sec. 534.104. Pilot Program Design.

(a) The pilot program must be designed to:

- (1) increase access to long-term services and supports;
- (2) improve quality of acute care services and long-term services and supports;
- (3) promote:
 - (A) informed choice and meaningful outcomes by using person-centered planning, flexible consumer-directed services, individualized budgeting, and self-determination; and
 - (B) community inclusion and engagement;
- (4) promote integrated service coordination of acute care services and long-term services and supports;
- (5) promote efficiency and the best use of funding based on an individual's needs and preferences;
- (6) promote through housing supports and navigation services stability in housing that is the most integrated and least restrictive based on the individual's needs and preferences;
- (7) promote employment assistance and customized, integrated, and competitive employment;
- (8) provide fair hearing and appeals processes in accordance with applicable federal and state law;
- (9) promote sufficient flexibility to achieve the goals listed in this section through the pilot program;
- (10) promote the use of innovative technologies and benefits, including telemedicine, telemonitoring, the testing of remote monitoring, transportation services, and other innovations that support community integration;
- (11) ensure an adequate provider network that includes comprehensive long-term services and supports providers and ensure that pilot program participants have a choice among those providers;

(12) ensure the timely initiation and consistent provision of long-term services and supports in accordance with an individual's person-centered plan;

(13) ensure that individuals with complex behavioral, medical, and physical needs are assessed and receive appropriate services in the most integrated and least restrictive setting based on the individuals' needs and preferences;

(14) increase access to, expand flexibility of, and promote the use of the consumer direction model; and

(15) promote independence, self-determination, the use of the consumer direction model, and decision making by individuals participating in the pilot program by using alternatives to guardianship, including a supported decision-making agreement as defined by Section 1357.002, Estates Code.

(b) An individual is not required to use an innovative technology described by Subsection (a)(10). If an individual chooses to use an innovative technology described by that subdivision, the commission shall ensure that services associated with the technology are delivered in a manner that:

- (1) ensures the individual's privacy, health, and well-being;
 - (2) provides access to housing in the most integrated and least restrictive environment;
 - (3) assesses individual needs and preferences to promote autonomy, self-determination, the use of the consumer direction model, and privacy;
 - (4) increases personal independence;
 - (5) specifies the extent to which the innovative technology will be used, including:
 - (A) the times of day during which the technology will be used;
 - (B) the place in which the technology may be used;
 - (C) the types of telemonitoring or remote monitoring that will be used; and
 - (D) for what purposes the technology will be used;
 - (6) is consistent with and agreed on during the person-centered planning process;
 - (7) ensures that staff overseeing the use of an innovative technology:
 - (A) review the person-centered and implementation plans for each individual before overseeing the use of the innovative technology; and
 - (B) demonstrate competency regarding the support needs of each individual using the innovative technology;
 - (8) ensures that an individual using an innovative technology is able to request the removal of equipment relating to the technology and, on receipt of a request for the removal, the equipment is immediately removed; and
 - (9) ensures that an individual is not required to use telemedicine at any point during the pilot program and, in the event the individual refuses to use telemedicine, the managed care organization providing health care services to the individual under the pilot program arranges for services that do not include telemedicine.
- (c) The pilot program must be designed to test innovative payment rates and methodologies for the provision of long-term services and supports to achieve the goals of the

pilot program by using payment methodologies that include:

(1) the payment of a bundled amount without downside risk to a comprehensive long-term services and supports provider for some or all services delivered as part of a comprehensive array of long-term services and supports;

(2) enhanced incentive payments to comprehensive long-term services and supports providers based on the completion of predetermined outcomes or quality metrics; and

(3) any other payment models approved by the commission.

(d) An alternative payment rate or methodology described by Subsection (c) may be used for a managed care organization and comprehensive long-term services and supports provider only if the organization and provider agree in advance and in writing to use the rate or methodology.

(e) In developing an alternative payment rate or methodology described by Subsection (c), the commission, managed care organizations, and comprehensive long-term services and supports providers shall consider:

(1) the historical costs of long-term services and supports, including Medicaid fee-for-service rates;

(2) reasonable cost estimates for new services under the pilot program; and

(3) whether an alternative payment rate or methodology is sufficient to promote quality outcomes and ensure a provider's continued participation in the pilot program.

(f) An alternative payment rate or methodology described by Subsection (c) may not reduce the minimum payment received by a provider for the delivery of long-term services and supports under the pilot program below the fee-for-service reimbursement rate received by the provider for the delivery of those services before participating in the pilot program.

(g) The pilot program must allow a comprehensive long-term services and supports provider for individuals with an intellectual or developmental disability or similar functional needs that contracts with the commission to provide services under Medicaid before the implementation date of the pilot program to voluntarily participate in the pilot program. A provider's choice not to participate in the pilot program does not affect the provider's status as a significant traditional provider.

(h) Under the pilot program, a participating managed care organization shall provide long-term services and supports under Medicaid to persons with an intellectual or developmental disability and persons with similar functional needs to test its managed care strategy based on capitation.

(i) The commission, in consultation and collaboration with the advisory committee and pilot program workgroup, shall analyze information provided by the managed care organizations participating in the pilot program and any information collected by the commission during the operation of the pilot program for purposes of making a recommendation about a system of programs and services for implementation through future state legislation or rules.

(j) The analysis under Subsection (i) must include an assessment of the effect of the managed care strategies implemented in the pilot program on the goals described by this section.

(k) Before implementing the pilot program, the commission, in consultation and collaboration with the advisory committee and pilot program workgroup, shall develop and implement a process to ensure pilot program participants remain eligible for Medicaid benefits for 12 consecutive months during the pilot program.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 1.01, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.249, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 16, effective September 1, 2019.

Sec. 534.1045. Pilot Program Benefits and Provider Qualifications.

(a) Subject to Subsection (b), the commission shall ensure that a managed care organization participating in the pilot program provides:

(1) all Medicaid state plan acute care benefits available under the STAR+PLUS Medicaid managed care program;

(2) long-term services and supports under the Medicaid state plan, including:

(A) Community First Choice services;

(B) personal assistance services;

(C) day activity health services; and

(D) habilitation services;

(3) long-term services and supports under the STAR+PLUS home and community-based services (HCBS) waiver program, including:

(A) assisted living services;

(B) personal assistance services;

(C) employment assistance;

(D) supported employment;

(E) adult foster care;

(F) dental care;

(G) nursing care;

(H) respite care;

(I) home-delivered meals;

(J) cognitive rehabilitative therapy;

(K) physical therapy;

(L) occupational therapy;

(M) speech-language pathology;

(N) medical supplies;

(O) minor home modifications; and

(P) adaptive aids;

(4) the following long-term services and supports under a Medicaid waiver program:

(A) enhanced behavioral health services;

(B) behavioral supports;

(C) day habilitation; and

(D) community support transportation;

(5) the following additional long-term services and supports:

(A) housing supports;

(B) behavioral health crisis intervention services; and

(C) high medical needs services;

(6) other nonresidential long-term services and supports that the commission, in consultation and collabo-

ration with the advisory committee and pilot program workgroup, determines are appropriate and consistent with applicable requirements governing the Medicaid waiver programs, person-centered approaches, home and community-based setting requirements, and achieving the most integrated and least restrictive setting based on an individual's needs and preferences; and

(7) dental services benefits in accordance with Subsection (a-1).

(a-1) In developing the pilot program, the commission shall:

(1) evaluate dental services benefits provided through Medicaid waiver programs and dental services benefits provided as a value-added service under the Medicaid managed care delivery model;

(2) determine which dental services benefits are the most cost-effective in reducing emergency room and inpatient hospital admissions due to poor oral health; and

(3) based on the determination made under Subdivision (2), provide the most cost-effective dental services benefits to pilot program participants.

(b) A comprehensive long-term services and supports provider may deliver services listed under the following provisions only if the provider also delivers the services under a Medicaid waiver program:

(1) Subsections (a)(2)(A) and (D);

(2) Subsections (a)(3)(B), (C), (D), (G), (H), (J), (K), (L), and (M); and

(3) Subsection (a)(4).

(c) A comprehensive long-term services and supports provider may deliver services listed under Subsections (a)(5) and (6) only if the managed care organization in the network of which the provider participates agrees to, in a contract with the provider, the provision of those services.

(d) Day habilitation services listed under Subsection (a)(4)(C) may be delivered by a provider who contracts or subcontracts with the commission to provide day habilitation services under the home and community-based services (HCS) waiver program or the ICF-IID program.

(e) A comprehensive long-term services and supports provider participating in the pilot program shall work in coordination with the care coordinators of a managed care organization participating in the pilot program to ensure the seamless delivery of acute care and long-term services and supports on a daily basis in accordance with an individual's plan of care. A comprehensive long-term services and supports provider may be reimbursed by a managed care organization for coordinating with care coordinators under this subsection.

(f) Before implementing the pilot program, the commission, in consultation and collaboration with the advisory committee and pilot program workgroup, shall:

(1) for purposes of the pilot program only, develop recommendations to modify adult foster care and supported employment and employment assistance benefits to increase access to and availability of those services; and

(2) as necessary, define services listed under Subsections (a)(4) and (5) and any other services determined to be appropriate under Subsection (a)(6).

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 17, effective September 1, 2019.

Sec. 534.105. Pilot Program: Measurable Goals.

(a) The commission, in consultation and collaboration with the advisory committee and pilot program workgroup and using national core indicators, the National Quality Forum long-term services and supports measures, and other appropriate Consumer Assessment of Healthcare Providers and Systems measures, shall identify measurable goals to be achieved by the pilot program.

(b) The commission, in consultation and collaboration with the advisory committee and pilot program workgroup, shall develop specific strategies and performance measures for achieving the identified goals. A proposed strategy may be evidence-based if there is an evidence-based strategy available for meeting the pilot program's goals.

(c) The commission, in consultation and collaboration with the advisory committee and pilot program workgroup, shall ensure that mechanisms to report, track, and assess specific strategies and performance measures for achieving the identified goals are established before implementing the pilot program.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 1.01, effective September 1, 2013; am. Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 18, effective September 1, 2019.

Sec. 534.106. Implementation, Location, and Duration.

(a) The commission shall implement the pilot program on September 1, 2023.

(b) The pilot program shall operate for at least 24 months.

(c) The pilot program shall be conducted in a STAR+PLUS Medicaid managed care service area selected by the commission.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 1.01, effective September 1, 2013; am. Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 18, effective September 1, 2019.

Sec. 534.1065. Recipient Enrollment, Participation, and Eligibility.

(a) An individual who is eligible for the pilot program will be enrolled automatically, and the decision whether to opt out of participation in the pilot program and not receive long-term services and supports under the pilot program may be made only by the individual or the individual's legally authorized representative.

(b) To ensure prospective pilot program participants are able to make an informed decision on whether to participate in the pilot program, the commission, in consultation and collaboration with the advisory committee and pilot program workgroup, shall develop and distribute informational materials on the pilot program that describe the pilot program's benefits, the pilot program's impact on current services, and other related information. The commission shall establish a timeline and process for the development and distribution of the materials and shall ensure:

(1) the materials are developed and distributed to individuals eligible to participate in the pilot program

with sufficient time to educate the individuals, their families, and other persons actively involved in their lives regarding the pilot program;

(2) individuals eligible to participate in the pilot program, including individuals enrolled in the STAR+PLUS Medicaid managed care program, their families, and other persons actively involved in their lives, receive the materials and oral information on the pilot program;

(3) the materials contain clear, simple language presented in a manner that is easy to understand; and

(4) the materials explain, at a minimum, that:

(A) on conclusion of the pilot program, pilot program participants will be asked to provide feedback on their experience, including feedback on whether the pilot program was able to meet their unique support needs;

(B) participation in the pilot program does not remove individuals from any Medicaid waiver program interest list;

(C) individuals who choose to participate in the pilot program and who, during the pilot program's operation, are offered enrollment in a Medicaid waiver program may accept the enrollment, transition, or diversion offer; and

(D) pilot program participants have a choice among acute care and comprehensive long-term services and supports providers and service delivery options, including the consumer direction model and comprehensive services model.

(c) The commission, in consultation and collaboration with the advisory committee and pilot program workgroup, shall develop pilot program participant eligibility criteria. The criteria must ensure pilot program participants:

(1) include individuals with an intellectual or developmental disability or a cognitive disability, including:

(A) individuals with autism;

(B) individuals with significant complex behavioral, medical, and physical needs who are receiving home and community-based services through the STAR+PLUS Medicaid managed care program;

(C) individuals enrolled in the STAR+PLUS Medicaid managed care program who:

(i) are on a Medicaid waiver program interest list;

(ii) meet the criteria for an intellectual or developmental disability; or

(iii) have a traumatic brain injury that occurred after the age of 21; and

(D) other individuals with disabilities who have similar functional needs without regard to the age of onset or diagnosis; and

(2) do not include individuals who are receiving only acute care services under the STAR+PLUS Medicaid managed care program and are enrolled in the community-based ICF-IID program or another Medicaid waiver program.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 1.01, effective September 1, 2013; am. Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 18, effective September 1, 2019.

Sec. 534.107. Commission Responsibilities.

(a) The commission shall require that a managed care organization participating in the pilot program:

(1) ensures that individuals participating in the pilot program have a choice among acute care and comprehensive long-term services and supports providers and service delivery options, including the consumer direction model;

(2) demonstrates to the commission's satisfaction that the organization's network of acute care, long-term services and supports, and comprehensive long-term services and supports providers have experience and expertise in providing services for individuals with an intellectual or developmental disability and individuals with similar functional needs;

(3) has a process for preventing inappropriate institutionalizations of individuals; and

(4) ensures the timely initiation and consistent provision of services in accordance with an individual's person-centered plan.

(b) For the duration of the pilot program, the commission shall ensure that comprehensive long-term services and supports providers are considered significant traditional providers and included in the provider network of a managed care organization participating in the pilot program.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 1.01, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.250, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 18, effective September 1, 2019.

Sec. 534.108. Pilot Program Information.

(a) The commission, in consultation and collaboration with the advisory committee and pilot program workgroup, shall determine which information will be collected from a managed care organization participating in the pilot program to use in conducting the evaluation and preparing the report under Section 534.112.

(b) For the duration of the pilot program, a managed care organization participating in the pilot program shall submit to the commission and the advisory committee quarterly reports on the services provided to each pilot program participant that include information on:

(1) the level of each requested service and the authorization and utilization rates for those services;

(2) timelines of:

(A) the delivery of each requested service;

(B) authorization of each requested service;

(C) the initiation of each requested service; and

(D) each unplanned break in the delivery of requested services and the duration of the break;

(3) the number of pilot program participants using employment assistance and supported employment services;

(4) the number of service denials and fair hearings and the dispositions of fair hearings;

(5) the number of complaints and inquiries received by the managed care organization and the outcome of each complaint; and

(6) the number of pilot program participants who choose the consumer direction model and the reasons why other participants did not choose the consumer direction model.

(c) The commission shall ensure that the mechanisms to report and track the information and data required by this section are established before implementing the pilot program.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 1.01, effective September 1, 2013; am. Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 18, effective September 1, 2019.

Sec. 534.109. Person-Centered Planning.

The commission, in consultation and collaboration with the advisory committee and pilot program workgroup, shall ensure that each individual who receives services and supports under Medicaid through the pilot program, or the individual's legally authorized representative, has access to a comprehensive, facilitated, person-centered plan that identifies outcomes for the individual and drives the development of the individualized budget. The consumer direction model must be an available option for individuals to achieve self-determination, choice, and control.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 1.01, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.251, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 18, effective September 1, 2019.

Sec. 534.110. Transition Between Programs; Continuity of Services.

(a) During the evaluation of the pilot program required under Section 534.112, the commission may continue the pilot program to ensure continuity of care for pilot program participants. If the commission does not continue the pilot program following the evaluation, the commission shall ensure that there is a comprehensive plan for transitioning the provision of Medicaid benefits for pilot program participants to the benefits provided before participating in the pilot program.

(b) A transition plan under Subsection (a) shall be developed in consultation and collaboration with the advisory committee and pilot program workgroup and with stakeholder input as described by Section 534.103.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 1.01, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.252, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 19, effective September 1, 2019.

Sec. 534.111. Conclusion of Pilot Program.

(a) On September 1, 2025, the pilot program is concluded unless the commission continues the pilot program under Section 534.110.

(b) If the commission continues the pilot program under Section 534.110, the commission shall publish notice of the pilot program's continuance in the Texas Register not later than September 1, 2025.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 1.01, effective September 1, 2013; am. Acts 2017, 85th Leg., ch. 1073 (H.B. 3295), § 1, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 20, effective September 1, 2019.

Sec. 534.112. Pilot Program Evaluations and Reports.

(a) The commission, in consultation and collaboration with the advisory committee and pilot program work-

group, shall review and evaluate the progress and outcomes of the pilot program and submit, as part of the annual report required under Section 534.054, a report on the pilot program's status that includes recommendations for improving the program.

(b) Not later than September 1, 2026, the commission, in consultation and collaboration with the advisory committee and pilot program workgroup, shall prepare and submit to the legislature a written report that evaluates the pilot program based on a comprehensive analysis. The analysis must:

(1) assess the effect of the pilot program on:

(A) access to and quality of long-term services and supports;

(B) informed choice and meaningful outcomes using person-centered planning, flexible consumer-directed services, individualized budgeting, and self-determination, including a pilot program participant's inclusion in the community;

(C) the integration of service coordination of acute care services and long-term services and supports;

(D) employment assistance and customized, integrated, competitive employment options;

(E) the number, types, and dispositions of fair hearings and appeals in accordance with applicable federal and state law;

(F) increasing the use and flexibility of the consumer direction model;

(G) increasing the use of alternatives to guardianship, including supported decision-making agreements as defined by Section 1357.002, Estates Code;

(H) achieving the best and most cost-effective use of funding based on a pilot program participant's needs and preferences; and

(I) attendant recruitment and retention;

(2) analyze the experiences and outcomes of the following systems changes:

(A) the comprehensive assessment instrument described by Section 533A.0335, Health and Safety Code;

(B) the 21st Century Cures Act (Pub. L. No. 114-255);

(C) implementation of the federal rule adopted by the Centers for Medicare and Medicaid Services and published at 79 Fed. Reg. 2948 (January 16, 2014) related to the provision of long-term services and supports through a home and community-based services (HCS) waiver program under Section 1915(c), 1915(i), or 1915(k) of the federal Social Security Act (42 U.S.C. Section 1396n(c), (i), or (k));

(D) the provision of basic attendant and habilitation services under Section 534.152; and

(E) the benefits of providing STAR+PLUS Medicaid managed care services to persons based on functional needs;

(3) include feedback on the pilot program based on the personal experiences of:

(A) individuals with an intellectual or developmental disability and individuals with similar functional needs who participated in the pilot program;

(B) families of and other persons actively involved in the lives of individuals described by Paragraph (A); and

- (C) comprehensive long-term services and supports providers who delivered services under the pilot program;
- (4) be incorporated in the annual report required under Section 534.054; and
- (5) include recommendations on:
 - (A) a system of programs and services for consideration by the legislature;
 - (B) necessary statutory changes; and
 - (C) whether to implement the pilot program statewide under the STAR+PLUS Medicaid managed care program for eligible individuals.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 21, effective September 1, 2019.

Subchapter D

Stage One: Provision of Acute Care and Certain Other Services

Sec. 534.151. Delivery of Acute Care Services for Individuals with an Intellectual or Developmental Disability.

(a) Subject to Section 533.0025, the commission shall provide acute care Medicaid benefits to individuals with an intellectual or developmental disability through the STAR + PLUS Medicaid managed care program or the most appropriate integrated capitated managed care program delivery model and monitor the provision of those benefits.

(b) The commission and the department, in consultation and collaboration with the advisory committee, shall analyze the outcomes of providing acute care Medicaid benefits to individuals with an intellectual or developmental disability under a model specified in Subsection (a). The analysis must:

- (1) include an assessment of the effects on:
 - (A) access to and quality of acute care services; and
 - (B) the number and types of fair hearing and appeals processes in accordance with applicable federal law;
- (2) be incorporated into the annual report to the legislature required under Section 534.054; and
- (3) include recommendations for delivery model improvements and implementation for consideration by the legislature, including recommendations for needed statutory changes.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 1.01, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.253, effective April 2, 2015; am. Acts 2015, 84th Leg., ch. 1117 (H.B. 3523), § 9, effective June 19, 2015.

Sec. 534.152. Delivery of Certain Other Services Under Star + Plus Medicaid Managed Care Program and by Waiver Program Providers.

- (a) The commission shall:
 - (1) implement the most cost-effective option for the delivery of basic attendant and habilitation services for individuals with an intellectual or developmental disability under the STAR + PLUS Medicaid managed care program that maximizes federal funding for the deliv-

ery of services for that program and other similar programs; and

- (2) provide voluntary training to individuals receiving services under the STAR + PLUS Medicaid managed care program or their legally authorized representatives regarding how to select, manage, and dismiss personal attendants providing basic attendant and habilitation services under the program.
- (b) The commission shall require that each managed care organization that contracts with the commission for the provision of basic attendant and habilitation services under the STAR + PLUS Medicaid managed care program in accordance with this section:
 - (1) include in the organization's provider network for the provision of those services:
 - (A) home and community support services agencies licensed under Chapter 142, Health and Safety Code, with which the department has a contract to provide services under the community living assistance and support services (CLASS) waiver program; and
 - (B) persons exempted from licensing under Section 142.003(a)(19), Health and Safety Code, with which the department has a contract to provide services under:
 - (i) the home and community-based services (HCS) waiver program; or
 - (ii) the Texas home living (TxHmL) waiver program;
 - (2) review and consider any assessment conducted by a local intellectual and developmental disability authority providing intellectual and developmental disability service coordination under Subsection (c); and
 - (3) enter into a written agreement with each local intellectual and developmental disability authority in the service area regarding the processes the organization and the authority will use to coordinate the services of individuals with an intellectual or developmental disability.

(c) The department shall contract with and make contract payments to local intellectual and developmental disability authorities to conduct the following activities under this section:

- (1) provide intellectual and developmental disability service coordination to individuals with an intellectual or developmental disability under the STAR + PLUS Medicaid managed care program by assisting those individuals who are eligible to receive services in a community-based setting, including individuals transitioning to a community-based setting;
- (2) provide an assessment to the appropriate managed care organization regarding whether an individual with an intellectual or developmental disability needs attendant or habilitation services, based on the individual's functional need, risk factors, and desired outcomes;
- (3) assist individuals with an intellectual or developmental disability with developing the individuals' plans of care under the STAR + PLUS Medicaid managed care program, including with making any changes resulting from periodic reassessments of the plans;
- (4) provide to the appropriate managed care organization and the department information regarding the

(c) The department shall contract with and make contract payments to local intellectual and developmental disability authorities to conduct the following activities under this section:

- (1) provide intellectual and developmental disability service coordination to individuals with an intellectual or developmental disability under the STAR + PLUS Medicaid managed care program by assisting those individuals who are eligible to receive services in a community-based setting, including individuals transitioning to a community-based setting;
- (2) provide an assessment to the appropriate managed care organization regarding whether an individual with an intellectual or developmental disability needs attendant or habilitation services, based on the individual's functional need, risk factors, and desired outcomes;
- (3) assist individuals with an intellectual or developmental disability with developing the individuals' plans of care under the STAR + PLUS Medicaid managed care program, including with making any changes resulting from periodic reassessments of the plans;
- (4) provide to the appropriate managed care organization and the department information regarding the

recommended plans of care with which the authorities provide assistance as provided by Subdivision (3), including documentation necessary to demonstrate the need for care described by a plan; and

(5) on an annual basis, provide to the appropriate managed care organization and the department a description of outcomes based on an individual's plan of care.

(d) Local intellectual and developmental disability authorities providing service coordination under this section may not also provide attendant and habilitation services under this section.

(e) During the first three years basic attendant and habilitation services are provided to individuals with an intellectual or developmental disability under the STAR + PLUS Medicaid managed care program in accordance with this section, providers eligible to participate in the home and community-based services (HCS) waiver program, the Texas home living (TxHmL) waiver program, or the community living assistance and support services (CLASS) waiver program on September 1, 2013, are considered significant traditional providers.

(f) A local intellectual and developmental disability authority with which the department contracts under Subsection (c) may subcontract with an eligible person, including a nonprofit entity, to coordinate the services of individuals with an intellectual or developmental disability under this section. The executive commissioner by rule shall establish minimum qualifications a person must meet to be considered an "eligible person" under this subsection.

(g) The department may contract with providers participating in the home and community-based services (HCS) waiver program, the Texas home living (TxHmL) waiver program, the community living assistance and support services (CLASS) waiver program, or the deaf-blind with multiple disabilities (DBMD) waiver program for the delivery of basic attendant and habilitation services described in Subsection (a) for individuals to which that subsection applies. The department has regulatory and oversight authority over the providers with which the department contracts for the delivery of those services.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 1.01, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.254, effective April 2, 2015; am. Acts 2015, 84th Leg., ch. 1117 (H.B. 3523), §§ 10, 11, effective June 19, 2015.

Subchapter E

Stage Two: Transition of ICF-IID Program Recipients and Long-Term Care Medicaid Waiver Program Recipients to Integrated Managed Care System

Sec. 534.201. Transition of Recipients Under Texas Home Living (TxHmL) Waiver Program to Managed Care Program. [Repealed]

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 1.01, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.255, effective April 2, 2015; am. Acts 2015, 84th Leg., ch. 1117 (H.B. 3523), § 12, effective June 19, 2015; am. Acts 2017, 85th Leg., ch. 1073 (H.B. 3295), § 2, effective September 1,

2017; Repealed by Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 27, effective September 1, 2019.

Sec. 534.202. Determination to Transition ICF-IID Program Recipients and Certain Other Medicaid Waiver Program Recipients to Managed Care Program.

(a) This section applies to individuals with an intellectual or developmental disability who are receiving long-term services and supports under:

- (1) a Medicaid waiver program; or
- (2) an ICF-IID program.

(b) Subject to Subsection (g), after implementing the pilot program under Subchapter C and completing the evaluation under Section 534.112, the commission, in consultation and collaboration with the advisory committee, shall develop a plan for the transition of all or a portion of the services provided through an ICF-IID program or a Medicaid waiver program to a Medicaid managed care model. The plan must include:

(1) a process for transitioning the services in phases as follows:

(A) beginning September 1, 2027, the Texas home living (TxHmL) waiver program services;

(B) beginning September 1, 2029, the community living assistance and support services (CLASS) waiver program services;

(C) beginning September 1, 2031, nonresidential services provided under the home and community-based services (HCS) waiver program and the deaf-blind with multiple disabilities (DBMD) waiver program; and

(D) subject to Subdivision (2), the residential services provided under an ICF-IID program, the home and community-based services (HCS) waiver program, and the deaf-blind with multiple disabilities (DBMD) waiver program; and

(2) a process for evaluating and determining the feasibility and cost efficiency of transitioning residential services described by Subdivision (1)(D) to a Medicaid managed care model that is based on an evaluation of a separate pilot program conducted by the commission, in consultation and collaboration with the advisory committee, that operates after the transition process described by Subdivision (1).

(c) Before implementing the transition described by Subsection (b), the commission shall, subject to Subsection (g), determine whether to:

(1) continue operation of the Medicaid waiver programs or ICF-IID program only for purposes of providing, if applicable:

(A) supplemental long-term services and supports not available under the managed care program delivery model selected by the commission; or

(B) long-term services and supports to Medicaid waiver program recipients who choose to continue receiving benefits under the waiver programs as provided by Subsection (g); or

(2) provide all or a portion of the long-term services and supports previously available under the Medicaid waiver programs or ICF-IID program through the managed care program delivery model selected by the commission.

(d) In implementing the transition described by Subsection (b), the commission shall develop a process to receive and evaluate input from interested statewide stakeholders that is in addition to the input provided by the advisory committee.

(e) The commission shall ensure that there is a comprehensive plan for transitioning the provision of Medicaid benefits under this section that protects the continuity of care provided to individuals to whom this section applies and ensures individuals have a choice among acute care and comprehensive long-term services and supports providers and service delivery options, including the consumer direction model.

(f) Before transitioning the provision of Medicaid benefits for children under this section, a managed care organization providing services under the managed care program delivery model selected by the commission must demonstrate to the satisfaction of the commission that the organization's network of providers has experience and expertise in the provision of services to children with an intellectual or developmental disability. Before transitioning the provision of Medicaid benefits for adults with an intellectual or developmental disability under this section, a managed care organization providing services under the managed care program delivery model selected by the commission must demonstrate to the satisfaction of the commission that the organization's network of providers has experience and expertise in the provision of services to adults with an intellectual or developmental disability.

(g) If the commission determines that all or a portion of the long-term services and supports previously available under the Medicaid waiver programs should be provided through a managed care program delivery model under Subsection (c)(2), the commission shall, at the time of the transition, allow each recipient receiving long-term services and supports under a Medicaid waiver program the option of:

- (1) continuing to receive the services and supports under the Medicaid waiver program; or
- (2) receiving the services and supports through the managed care program delivery model selected by the commission.

(h) A recipient who chooses to receive long-term services and supports through a managed care program delivery model under Subsection (g) may not, at a later time, choose to receive the services and supports under a Medicaid waiver program.

(i) In addition to the requirements of Section 533.005, a contract between a managed care organization and the commission for the organization to provide Medicaid benefits under this section must contain a requirement that the organization implement a process for individuals with an intellectual or developmental disability that:

- (1) ensures that the individuals have a choice among acute care and comprehensive long-term services and supports providers and service delivery options, including the consumer direction model;
- (2) to the greatest extent possible, protects those individuals' continuity of care with respect to access to primary care providers, including the use of single-case agreements with out-of-network providers; and
- (3) provides access to a member services phone line for individuals or their legally authorized representa-

tives to obtain information on and assistance with accessing services through network providers, including providers of primary, specialty, and other long-term services and supports.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 1.01, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.256, effective April 2, 2015; am. Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), §§ 23, 24, effective September 1, 2019.

Sec. 534.203. Responsibilities of Commission Under Subchapter.

In administering this subchapter, the commission shall ensure, on making a determination to transition services under Section 534.202:

- (1) that the commission is responsible for setting the minimum reimbursement rate paid to a provider of ICF-IID services or a group home provider under the integrated managed care system, including the staff rate enhancement paid to a provider of ICF-IID services or a group home provider;
- (2) that an ICF-IID service provider or a group home provider is paid not later than the 10th day after the date the provider submits a clean claim in accordance with the criteria used by the commission for the reimbursement of ICF-IID service providers or a group home provider, as applicable;
- (3) the establishment of an electronic portal through which a provider of ICF-IID services or a group home provider participating in the STAR+PLUS Medicaid managed care program delivery model or the most appropriate integrated capitated managed care program delivery model, as appropriate, may submit long-term services and supports claims to any participating managed care organization; and
- (4) that the consumer direction model is an available option for each individual with an intellectual or developmental disability who receives Medicaid benefits in accordance with this subchapter to achieve self-determination, choice, and control, and that the individual or the individual's legally authorized representative has access to a comprehensive, facilitated, person-centered plan that identifies outcomes for the individual.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 1.01, effective September 1, 2013; am. Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 25, effective September 1, 2019.

Subchapter F

Other Implementation Requirements and Responsibilities

Sec. 534.251. Delayed Implementation Authorized.

Notwithstanding any other law, the commission may delay implementation of a provision of this chapter without further investigation, adjustments, or legislative action if the commission determines the provision adversely affects the system of services and supports to persons and programs to which this chapter applies.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 26, effective September 1, 2019.

Sec. 534.252. Requirements Regarding Transition of Services.

- (a) For purposes of implementing the pilot program

under Subchapter C and transitioning the provision of services provided to recipients under certain Medicaid waiver programs to a Medicaid managed care delivery model following completion of the pilot program, the commission shall:

- (1) implement and maintain a certification process for and maintain regulatory oversight over providers under the Texas home living (TxHmL) and home and community-based services (HCS) waiver programs; and
- (2) require managed care organizations to include in the organizations' provider networks providers who are certified in accordance with the certification process described by Subdivision (1).

(b) For purposes of implementing the pilot program under Subchapter C and transitioning the provision of services described by Section 534.202 to the STAR+PLUS Medicaid managed care program, a comprehensive long-term services and supports provider:

- (1) must report to the managed care organization in the network of which the provider participates each encounter of any directly contracted service;
- (2) must provide to the managed care organization quarterly reports on:
 - (A) coordinated services and time frames for the delivery of those services; and
 - (B) the goals and objectives outlined in an individual's person-centered plan and progress made toward meeting those goals and objectives; and
- (3) may not be held accountable for the provision of services specified in an individual's service plan that are not authorized or subsequently denied by the managed care organization.

(c) On transitioning services under a Medicaid waiver program to a Medicaid managed care delivery model, the commission shall ensure that individuals do not lose benefits they receive under the Medicaid waiver program.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1330 (H.B. 4533), § 26, effective September 1, 2019.

CHAPTER 539

Community Collaboratives

Section	
539.001.	Definition.
539.002.	Grants for Establishment and Expansion of Community Collaboratives.
539.003.	Acceptable Uses of Grant Money.
539.004.	Elements of Community Collaboratives.
539.005.	Outcome Measures for Community Collaboratives.
539.0051.	Plan Required for Certain Community Collaboratives.
539.006.	Annual Review of Outcome Measures.
539.007.	Reduction and Cessation of Funding.
539.008.	Rules.

Sec. 539.001. Definition.

In this chapter, "department" means the Department of State Health Services.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1143 (S.B. 58), § 2, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.277, effective April 2, 2015.

Sec. 539.002. Grants for Establishment and Expansion of Community Collaboratives.

(a) To the extent funds are appropriated to the department for that purpose, the department shall make grants to entities, including local governmental entities, non-profit community organizations, and faith-based community organizations, to establish or expand community collaboratives that bring the public and private sectors together to provide services to persons experiencing homelessness, substance abuse issues, or mental illness. In awarding grants, the department shall give special consideration to entities:

- (1) establishing new collaboratives; or
- (2) establishing or expanding collaboratives that serve two or more counties, each with a population of less than 100,000.

(b) Except as provided by Subsection (c), the department shall require each entity awarded a grant under this section to:

- (1) leverage additional funding or in-kind contributions from private sources in an amount that is at least equal to the amount of the grant awarded under this section;
- (2) provide evidence of significant coordination and collaboration between the entity, local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in establishing or expanding a community collaborative funded by a grant awarded under this section; and
- (3) provide evidence of a local law enforcement policy to divert appropriate persons from jails or other detention facilities to an entity affiliated with a community collaborative for the purpose of providing services to those persons.

(c) The department may award a grant under this chapter to an entity for the purpose of establishing a community mental health program in a county with a population of less than 250,000, if the entity leverages additional funding from private sources in an amount equal to one-quarter of the amount of the grant to be awarded under this section, and the entity otherwise meets the requirements of Subsections (b)(2) and (3).

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1143 (S.B. 58), § 2, effective September 1, 2013; am. Acts 2017, 85th Leg., ch. 950 (S.B. 1849), § 2.03, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 1252 (H.B. 4468), § 4, effective September 1, 2019.

Sec. 539.003. Acceptable Uses of Grant Money.

An entity shall use money received from a grant made by the department and private funding sources for the establishment or expansion of a community collaborative, provided that the collaborative must be self-sustaining within seven years. Acceptable uses for the money include:

- (1) the development of the infrastructure of the collaborative and the start-up costs of the collaborative;
- (2) the establishment, operation, or maintenance of other community service providers in the community served by the collaborative, including intake centers, detoxification units, sheltering centers for food, workforce training centers, microbusinesses, and educational centers;

(3) the provision of clothing, hygiene products, and medical services to and the arrangement of transitional and permanent residential housing for persons served by the collaborative;

(4) the provision of mental health services and substance abuse treatment not readily available in the community served by the collaborative;

(5) the provision of information, tools, and resource referrals to assist persons served by the collaborative in addressing the needs of their children; and

(6) the establishment and operation of coordinated intake processes, including triage procedures, to protect the public safety in the community served by the collaborative.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1143 (S.B. 58), § 2, effective September 1, 2013.

Sec. 539.004. Elements of Community Collaboratives.

(a) If appropriate, an entity may incorporate into the community collaborative operated by the entity the use of the Homeless Management Information System, transportation plans, and case managers. An entity may also consider incorporating into a collaborative mentoring and volunteering opportunities, strategies to assist homeless youth and homeless families with children, strategies to reintegrate persons who were recently incarcerated into the community, services for veterans, and strategies for persons served by the collaborative to participate in the planning, governance, and oversight of the collaborative.

(b) The focus of a community collaborative shall be the eventual successful transition of persons from receiving services from the collaborative to becoming integrated into the community served by the collaborative through community relationships and family supports.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1143 (S.B. 58), § 2, effective September 1, 2013.

Sec. 539.005. Outcome Measures for Community Collaboratives.

Each entity that receives a grant from the department to establish or expand a community collaborative shall select at least four of the following outcome measures that the entity will focus on meeting through the implementation and operation of the collaborative:

(1) persons served by the collaborative will find employment that results in those persons having incomes that are at or above 100 percent of the federal poverty level;

(2) persons served by the collaborative will find permanent housing;

(3) persons served by the collaborative will complete alcohol or substance abuse programs;

(4) the collaborative will help start social businesses in the community or engage in job creation, job training, or other workforce development activities;

(5) there will be a decrease in the use of jail beds by persons served by the collaborative;

(6) there will be a decrease in the need for emergency care by persons served by the collaborative;

(7) there will be a decrease in the number of children whose families lack adequate housing referred to the

Department of Family and Protective Services or a local entity responsible for child welfare; and

(8) any other appropriate outcome measure that measures whether a collaborative is meeting a specific need of the community served by the collaborative and that is approved by the department.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1143 (S.B. 58), § 2, effective September 1, 2013.

Sec. 539.0051. Plan Required for Certain Community Collaboratives.

(a) The governing body of a county shall develop and make public a plan detailing:

(1) how local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in the county could coordinate to establish or expand a community collaborative to accomplish the goals of Section 539.002;

(2) how entities in the county may leverage funding from private sources to accomplish the goals of Section 539.002 through the formation or expansion of a community collaborative; and

(3) how the formation or expansion of a community collaborative could establish or support resources or services to help local law enforcement agencies to divert persons who have been arrested to appropriate mental health care or substance abuse treatment.

(b) The governing body of a county in which an entity that received a grant under Section 539.002 before September 1, 2017, is located is not required to develop a plan under Subsection (a).

(c) Two or more counties, each with a population of less than 100,000, may form a joint plan under Subsection (a).

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 950 (S.B. 1849), § 2.04, effective September 1, 2017.

Sec. 539.006. Annual Review of Outcome Measures.

The department shall contract with an independent third party to verify annually whether a community collaborative is meeting the outcome measures under Section 539.005 selected by the entity that operates the collaborative.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1143 (S.B. 58), § 2, effective September 1, 2013.

Sec. 539.007. Reduction and Cessation of Funding.

The department shall establish processes by which the department may reduce or cease providing funding to an entity if the community collaborative operated by the entity does not meet the outcome measures selected by the entity for the collaborative under Section 539.005 or is not self-sustaining after seven years. The department shall redistribute any funds withheld from an entity under this section to other entities operating high-performing collaboratives on a competitive basis.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1143 (S.B. 58), § 2, effective September 1, 2013.

Sec. 539.008. Rules.

The executive commissioner shall adopt any rules necessary to implement the community collaborative grant

program established under this chapter, including rules to establish the requirements for an entity to be eligible to receive a grant, the required elements of a community collaborative operated by an entity, and permissible and prohibited uses of money received by an entity from a grant made by the department under this chapter.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1143 (S.B. 58), § 2, effective September 1, 2013.

TITLE 7

INTERGOVERNMENTAL RELATIONS

CHAPTER 772

Governmental Planning

Subchapter A

Planning Entities

Section
772.0061.

Specialty Courts Advisory Council.

Sec. 772.0061. Specialty Courts Advisory Council.

(a) In this section:

(1) "Council" means the Specialty Courts Advisory Council.

(2) "Specialty court" means:

(A) a commercially sexually exploited persons court program established under Chapter 126 or former law;

(B) a family drug court program established under Chapter 122 or former law;

(C) a drug court program established under Chapter 123 or former law;

(D) a veterans treatment court program established under Chapter 124 or former law;

(E) a mental health court program established under Chapter 125 or former law; and

(F) a public safety employees treatment court program established under Chapter 129.

(b) The governor shall establish the Specialty Courts Advisory Council within the criminal justice division established under Section 772.006 to:

(1) evaluate applications for grant funding for specialty courts in this state and to make funding recommendations to the criminal justice division; and

(2) make recommendations to the criminal justice division regarding best practices for specialty courts

established under Chapter 122, 123, 124, 125, or 129 or former law.

(c) The council is composed of nine members appointed by the governor as follows:

(1) one member with experience as the judge of a specialty court described by Subsection (a)(2)(A);

(2) one member with experience as the judge of a specialty court described by Subsection (a)(2)(B);

(3) one member with experience as the judge of a specialty court described by Subsection (a)(2)(C);

(4) one member with experience as the judge of a specialty court described by Subsection (a)(2)(D); and

(5) five members who represent the public.

(d) The members appointed under Subsection (c)(5) must:

(1) reside in various geographic regions of the state; and

(2) have experience practicing law in a specialty court or possess knowledge and expertise in a field relating to behavioral or mental health issues or to substance abuse treatment.

(e) Members are appointed for staggered six-year terms, with the terms of three members expiring February 1 of each odd-numbered year.

(f) A person may not be a member of the council if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the council.

(g) If a vacancy occurs on the council, the governor shall appoint a person to serve for the remainder of the unexpired term.

(h) The council shall select a presiding officer.

(i) The council shall meet at the call of its presiding officer or at the request of the governor.

(j) A member of the council may not receive compensation for service on the council. The member may receive reimbursement from the criminal justice division for actual and necessary expenses incurred in performing council functions as provided by Section 2110.004.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 287 (H.B. 1771), § 1, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), §§ 1.08, 1.09, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1167 (S.B. 484), § 3, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 604 (S.B. 536), § 3, effective June 16, 2015; am. Acts 2015, 84th Leg., ch. 1205 (S.B. 1474), § 11, effective September 1, 2015; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 9.009, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 369 (H.B. 3391), §§ 5, 6, effective September 1, 2017.

HUMAN RESOURCES CODE

TITLE 2

HUMAN SERVICES AND PROTECTIVE SERVICES IN GENERAL

SUBTITLE D

DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES; CHILD WELFARE AND PROTECTIVE SERVICES

CHAPTER 40

Department of Family and Protective Services [Expires September 1, 2023]

Subchapter C

General Functions of Department [Expires September 1, 2027]

Section 40.079.	Strategic State Plan to Implement Community-Based Care and Foster Care Prevention Services. [Expires September 1, 2021]
40.080.	Strategic Plan to Implement Federal Law Regarding Specified Settings for Placement of Foster Children. [Expires September 1, 2027]

Sec. 40.079. Strategic State Plan to Implement Community-Based Care and Foster Care Preven- tion Services. [Expires September 1, 2021]

(a) The department shall develop a strategic plan for the coordinated implementation of:

(1) community-based care as defined by Section 264.152, Family Code; and

(2) foster care prevention services that meet the requirements of Title VII, Div. E, Pub. L. No. 115-123.

(b) The strategic plan required under this section must:

(1) identify a network of services providers to provide mental health, substance use, and in-home parenting support services for:

(A) children at risk of entering foster care;

(B) the parents and caregivers of children identified under Paragraph (A); and

(C) pregnant or parenting youth in foster care;

(2) identify methods for the statewide implementation of foster care prevention services, including implementation in department regions that are transitioning to community-based care;

(3) identify resources necessary for the department to implement community-based care and to coordinate

that implementation with the implementation of foster care prevention services, including:

(A) enhanced training related to procurement, contract monitoring and enforcement services, information technology services, and financial and legal services;

(B) a financial methodology for funding the implementation of community-based care and foster care prevention services; and

(C) resources to address the placement of children in settings eligible for federal financial participation under the requirements of Title VII, Div. E, Pub. L. No. 115-123;

(4) identify methods to:

(A) maximize resources from the federal government under Title VII, Div. E, Pub. L. No. 115-123;

(B) apply for other available federal and private funds;

(C) streamline and reduce duplication of effort by each state agency involved in providing services described by Subdivision (1);

(D) streamline the procedures for determining eligibility for services described by Subdivision (1);

(E) prescribe and terminate services described by Subdivision (1); and

(F) reduce recidivism in foster care prevention services;

(5) include a method to:

(A) notify the Senate Health and Human Services Committee, the Senate Finance Committee, the House Committee on Human Services, the House Committee on Public Health, and the House Appropriations Committee of federal and private funding opportunities; and

(B) respond to the opportunities described by Paragraph (A); and

(6) identify opportunities to coordinate with independent researchers to assist community programs in evaluating and developing trauma-informed services and promising, supported, or well-supported services and strategies under Title VII, Div. E, Pub. L. No. 115-123.

(c) In identifying the network of providers described by Subsection (b)(1), the department shall consult with the Health and Human Services Commission, the Department of State Health Services, and community stakeholders.

(d) This section does not supersede or limit the department's duty to develop and maintain the plan under Section 264.153, Family Code.

(e) The department shall submit the plan developed under this section to the governor, the lieutenant governor, the speaker of the house of representatives, and each member of the standing committees of the senate and house of representatives having primary jurisdiction over child welfare issues not later than September 1, 2020.

(f) This section expires September 1, 2021.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1270 (S.B. 355), § 1, effective June 14, 2019.

Sec. 40.080. Strategic Plan to Implement Federal Law Regarding Specified Settings for Placement of Foster Children. [Expires September 1, 2027]

(a) The department shall develop a strategic plan regarding the placement of children in settings eligible for federal financial participation under the requirements of the federal Family First Prevention Services Act (Title VII, Div. E, Pub. L. No. 115-123).

(b) The strategic plan required under this section must:

(1) assess any available evidence regarding the impact of accreditation on qualitative performance of accredited providers;

(2) assess a potential structure and any funding requirements necessary to incentivize providers to become accredited;

(3) study any available evidence regarding the qualitative outcomes in qualified residential treatment providers, as defined in the federal Family First Prevention Services Act (Title VII, Div. E, Pub. L. No. 115-123);

(4) assess the fiscal implications to this state of developing settings that meet the federal definition of qualified residential treatment providers and all associated requirements; and

(5) make any appropriate recommendations related to implementation of the requirements for qualified residential treatment providers.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 394 (S.B. 781), § 3, effective September 1, 2019.

TITLE 3

FACILITIES AND SERVICES FOR CHILDREN

SUBTITLE B

SERVICES FOR CHILDREN

CHAPTER 73

Early Childhood Intervention Services

Section	
73.001.	Definitions.
73.002.	Board. [Repealed]
73.0021.	Eligibility Requirement for Board Membership. [Repealed]
73.0022.	Removal of Board Members. [Repealed]
73.0023.	Board Member Training. [Repealed]
73.0024.	Restrictions on Board Members and Employees. [Repealed]
73.0025.	Complaint Process. [Repealed]
73.003.	Strategic Plan.
73.004.	Advisory Committee.
73.0041.	Advisory Committee Duties.
73.0045.	Commissioner's Powers and Duties; Effect of Conflict with Other Law.
73.005.	Issues Related to Intervention Services; Legislative Proposals.
73.0051.	Powers and Duties of Executive Commissioner and Department Under Chapter.
73.0052.	Personnel Matters. [Repealed]
73.006.	Reimbursement for Expenses.

Section	
73.007.	Public Awareness and Training.
73.008.	Early Identification Strategy.
73.009.	Referral for Services.
73.010.	Eligibility for Services.
73.011.	Provider Selection.
73.012.	Monitoring [Repealed].
73.013.	Intervention Services [Repealed].
73.014.	Report [Repealed].
73.015.	New Program Strategy [Repealed].
73.016.	Grant Request for Program [Repealed].
73.017.	Approval Criteria [Repealed].
73.018.	Program Approval [Repealed].
73.019.	Program Standards [Repealed].
73.020.	Council Guidelines [Repealed].
73.021.	Program Monitoring [Repealed].
73.022.	Finances.
73.023.	Application of Sunset Act. [Repealed]
73.024.	Application of Open Meetings Law, Open Records Law, And Administrative Procedure Law to Advisory Committee.

Sec. 73.001. Definitions.

In this chapter:

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

(2) "Department" means the Department of Assistive and Rehabilitative Services.

(3) "Developmental delay" means a significant variation in normal development as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:

- (A) cognitive development;
- (B) physical development;
- (C) communication development;
- (D) social or emotional development; or
- (E) adaptive development.

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

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 235 (S.B. 761), art. 4, § 4(a), effective September 1, 1983; am. Acts 1985, 69th Leg., ch. 931 (H.B. 2091), art. 12, § 1, effective September 1, 1985; am. Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 1, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.304, effective April 2, 2015.

Sec. 73.002. Board. [Repealed]

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 235 (S.B. 761), art. 4, § 4(a), effective September 1, 1983; am. Acts 1985, 69th Leg., ch. 264 (S.B. 351), § 21, effective August 26, 1985; am. Acts 1985, 69th Leg., ch. 931 (H.B. 2091), art. 12, § 1, effective September 1, 1985; am. Acts 1993, 73rd Leg., ch. 747 (H.B. 1510), § 30, effective September 1, 1993; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 6.56, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 2, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 33 (H.B. 1503), § 1, effective September 1, 1999; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(56), effective April 2, 2015.

Sec. 73.0021. Eligibility Requirement for Board Membership. [Repealed]

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 3, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 33, (H.B. 1503), § 2, effective September 1, 1999; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(57), effective April 2, 2015.

Sec. 73.0022. Removal of Board Members. [Repealed]

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 4, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 33, (H.B. 1503), § 3, effective September 1, 1999; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(58), effective April 2, 2015.

Sec. 73.0023. Board Member Training. [Repealed]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 33 (H.B. 1503), § 4, effective September 1, 1999; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(59), effective April 2, 2015.

Sec. 73.0024. Restrictions on Board Members and Employees. [Repealed]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 33 (H.B. 1503), § 4, effective September 1, 1999; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(60), effective April 2, 2015.

Sec. 73.0025. Complaint Process. [Repealed]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 33 (H.B. 1503), § 4, effective September 1, 1999; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(61), effective April 2, 2015.

Sec. 73.003. Strategic Plan.

The department shall develop and implement a strategic plan for a statewide system of early childhood intervention services, as required by Part C, Individuals with Disabilities Education Act (IDEA) (20 U.S.C. Section 1431 et seq.), and its subsequent amendments, to ensure that the provisions of this chapter are properly implemented by the agencies affected.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 235 (S.B. 761), art. 4, § 4(a), effective September 1, 1983; am. Acts 1985, 69th Leg., ch. 931 (H.B. 2091), art. 12, § 1, effective September 1, 1985; am. Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 5, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.305, effective April 2, 2015.

Sec. 73.004. Advisory Committee.

(a) The governor shall appoint an advisory committee to assist the department in the performance of its duties under this chapter. The executive commissioner shall establish the size and composition of the committee by rule, consistent with federal regulations and state rules. The commissioner of assistive and rehabilitative services may also appoint ex officio members to serve for specific purposes to assist the department in the performance of its duties under this chapter.

(b) The committee shall meet and serve in accordance with department rules, but the committee shall elect its own presiding officer. The committee may be divided into regional committees to assist the department in community-level program planning and implementation under this chapter.

(c) The advisory committee is not subject to Chapter 2110, Government Code.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 235 (S.B. 761), art. 4, § 4(a), effective September 1, 1983; am. Acts 1985, 69th Leg., ch. 931 (H.B. 2091), art. 12, § 12(1), effective September 1, 1985; am. Acts 1991, 72nd Leg., 1st C.S., ch. 15, (H.B. 7), § 5.18, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 923

(S.B. 305), § 6, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.306, effective April 2, 2015.

Sec. 73.0041. Advisory Committee Duties.

The advisory committee established under Section 73.004 shall perform the duties and responsibilities required of an advisory committee under 20 U.S.C. Section 1441 and its subsequent amendments.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 7, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.307, effective April 2, 2015.

Sec. 73.0045. Commissioner's Powers and Duties; Effect of Conflict with Other Law.

To the extent a power or duty given to the commissioner of assistive and rehabilitative services by this chapter or another law conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1460 (H.B. 2641), § 2.06, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.308, effective April 2, 2015.

Sec. 73.005. Issues Related to Intervention Services; Legislative Proposals.

(a) The executive commissioner with the advice of the advisory committee shall address contemporary issues affecting intervention services in the state including:

- (1) successful intervention strategies;
- (2) personnel preparation and continuing education;
- (3) screening services;
- (4) day or respite care services;
- (5) public awareness; and
- (6) contemporary research.

(b) The executive commissioner with the advice of the advisory committee shall advise the legislature on legislation that is needed to maintain a statewide system of quality intervention services for children with developmental delay who are under three years of age and the families of those children. The department may develop and submit legislation to the legislature or comment on pending legislation that affects this population.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 235 (S.B. 761), art. 4, § 4(a), effective September 1, 1983; am. Acts 1985, 69th Leg., ch. 931 (H.B. 2091), art. 12, § 1, effective September 1, 1985; am. Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 8, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.309, effective April 2, 2015.

Sec. 73.0051. Powers and Duties of Executive Commissioner and Department Under Chapter.

(a) The department is the lead agency designated by the governor under Part C, Individuals with Disabilities Education Act (IDEA) (20 U.S.C. Section 1431 et seq.), and its subsequent amendments, for the administration, supervision, and monitoring of a statewide comprehensive system of early intervention services that will ensure that all infants and toddlers in this state who are below the age of three and have developmental needs or are at risk of developmental delay receive services that are provided in partnership with their families and in the context of their local community.

(b) The executive commissioner by rule shall:

(1) provide for compliance with the terms and provisions of applicable federal and state laws in the administration of programs and the delivery of services under this chapter;

(2) establish a program to monitor fiscal and program implementation under this chapter; and

(3) establish appropriate sanctions for providers who fail to comply with statutory and regulatory fiscal and program requirements under this chapter.

(c) The department may enter into, administer, and monitor contracts with providers for programs and projects authorized under this chapter.

(d) The department shall periodically monitor program activities and fiscal performance of the entities funded under this chapter to:

(1) determine compliance with federal and state requirements;

(2) assess the performance of the entities in identifying children under three years of age with developmental delay in populations at risk of developmental delay; and

(3) issue reports regarding program monitoring.

(e) The department may apply for and accept gifts, grants, and donations from public and private sources for use in programs authorized under this chapter. The department shall deposit money received under this section into the state treasury.

(f) The department shall:

(1) cooperate with the commission and other local, state, and federal agencies in the strategic planning, funding, delivery, and monitoring of services authorized under this chapter; and

(2) jointly with the Department of Family and Protective Services develop and implement policies applicable to providers of services authorized under this chapter in situations involving service recipients who are vulnerable to abuse or neglect.

(g) The department shall make periodic reports relating to the department's functions under this chapter as required by law to other agencies, the legislature, appropriate committees, the governor, and the United States secretary of education.

(h) The department shall ensure that all programs and department functions under this chapter are conducted in a nondiscriminatory manner.

(i) The department shall include parents when deciding the appropriate treatment for the needs of their child or children under this chapter. After establishing an initial and ongoing treatment plan for a child, the department shall ensure that the child's parents continue to be included in all decisions relating to the services provided to the child, including the determination of the most appropriate setting for the child to receive services. The department shall ensure that a child's parents receive written notification of the progress toward meeting the child's treatment plan. The notification must include details to assist parents in meeting the child's treatment goals.

(j) The department shall provide services under this chapter in the child's natural environments but must make alternatives available when early intervention cannot be achieved satisfactorily in a natural environment.

(k) The department shall cooperate with the commission to select an appropriate automated system or systems

currently used by a state agency to plan, manage, and maintain records of client services under this chapter. If cost-effective, the department may use the automated system or systems to carry out other appropriate department administrative functions under this chapter.

(l) The executive commissioner by rule may establish a system of payments by families of children receiving services under this chapter, including a schedule of sliding fees, in a manner consistent with 34 C.F.R. Sections 303.13(a)(3), 303.520, and 303.521.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 9, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 33 (H.B. 1503), § 5, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.114, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.310, effective April 2, 2015.

Sec. 73.0052. Personnel Matters. [Repealed]

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 10, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 33 (H.B. 1503), § 6, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 1460 (H.B. 2641), § 2.07, effective September 1, 1999; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(62), effective April 2, 2015.

Sec. 73.006. Reimbursement for Expenses.

(a) [Repealed by Acts 2015, 84th Leg., ch. 1 (SB 219), § 4.465(a)(63), effective April 2, 2015.]

(b) The members of the advisory committee are entitled to reimbursement for reasonable and necessary expenses incurred in the performance of advisory committee duties, including reimbursement for child care.

(c), (d) [Repealed by Acts 2015, 84th Leg., ch. 1 (SB 219), § 4.465(a)(63), effective April 2, 2015.]

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 235 (S.B. 761), art. 4, § 4(a), effective September 1, 1983; am. Acts 1985, 69th Leg., ch. 931 (H.B. 2091), art. 12, § 1, effective September 1, 1985; am. Acts 1993, 73rd Leg., ch. 747 (H.B. 1510), § 31, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 8.142, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 11, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 4.311, 4.465(a)(63), effective April 2, 2015.

Sec. 73.007. Public Awareness and Training.

The department shall develop and implement:

(1) a general public awareness strategy focusing on the importance of prenatal care and early identification of infants and toddlers with developmental delay and the availability of resources to meet their needs; and

(2) a statewide plan for conducting training and technical assistance for service providers, primary referral sources, and families with children under three years of age with developmental delay.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 235 (S.B. 761), art. 4, § 4(a), effective September 1, 1983; am. Acts 1985, 69th Leg., ch. 264 (S.B. 351), § 22, effective August 26, 1985; am. Acts 1985, 69th Leg., ch. 931 (H.B. 2091), art. 12 § 1, effective September 1, 1985; am. Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 12, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.312, effective April 2, 2015.

Sec. 73.008. Early Identification Strategy.

(a) The department shall develop and implement a statewide strategy for:

(1) the early identification of children under three years of age with developmental delay;

(2) improving the early identification of children under three years of age with developmental delay in populations at risk of developmental delay, through measures such as:

(A) targeting at-risk populations and appropriate geographical regions; and

(B) monitoring the performance of providers of services authorized under this chapter in identifying those children; and

(3) the coordination of programs with other agencies serving children with developmental delay, including the coordination of policy issues that affect children with developmental delay who are three years of age or older.

(b) The strategy must include plans to:

(1) incorporate, strengthen, and expand similar existing local efforts;

(2) incorporate and coordinate screening services currently provided through a public agency;

(3) establish a liaison with primary referral sources, including hospitals, physicians, public health facilities, and day-care facilities, to encourage referrals of children with developmental delay; and

(4) provide active leadership in addressing issues affecting the effectiveness of services for children with developmental delay, including issues such as the provision of respite care and development of incentives to encourage provision of respite care by providers of services authorized under this chapter.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 235 (S.B. 761), art. 4, § 4(a), effective September 1, 1983; am. Acts 1985, 69th Leg., ch. 931 (H.B. 2091), art. 12, § 1, effective September 1, 1985; am. Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 13, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 33 (H.B. 1503), § 7, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.313, effective April 2, 2015.

Sec. 73.009. Referral for Services.

(a) The department shall develop and the executive commissioner shall establish policies concerning services described by this section. A child under three years of age and the child's family may be referred for services described by this section if the child is:

- (1) identified as having a developmental delay;
- (2) suspected of having a developmental delay; or
- (3) considered at risk of developmental delay.

(b) For each child referred, the department shall ensure the performance of

appropriate medical or developmental screening or evaluation, and if such screening services or evaluation services are not available, the department shall ensure that

the child is referred to a public or private program that can meet the child's needs.

(c) Services under this section shall be provided in a manner that minimizes intrusion into family privacy.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 235 (S.B. 761), art. 4, § 4(a), effective September 1, 1983; am. Acts 1985, 69th Leg., ch. 931 (H.B. 2091), art. 12, § 1, effective September 1, 1985; am. Acts 1993, 73rd Leg., ch. 747 (H.B. 1510), § 32, effective September 1, 1993; am. Acts 1997, 75th Leg., ch. 923

(S.B. 305), § 14, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.314, effective April 2, 2015.

Sec. 73.010. Eligibility for Services.

A child is eligible for services under this chapter if the child:

- (1) is under three years of age; and
- (2) is documented as having developmental delay or has a medically diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 235 (S.B. 761), art. 4, § 4(a), effective September 1, 1983; am. Acts 1985, 69th Leg., ch. 931 (H.B. 2091), art. 12, § 1, effective September 1, 1985; am. Acts 1993, 73rd Leg., ch. 747 (H.B. 1510), § 33, effective September 1, 1993; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 6.57, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 15, effective September 1, 1997.

Sec. 73.011. Provider Selection.

(a) The department shall select providers of services authorized under this chapter on a best value basis in a manner that:

- (1) maximizes federal, private, and local sources of funding; and
- (2) promotes competition when possible.

(b) The department shall determine best value as required by Subsection (a) when the department initially awards a contract to a provider and when the department considers renewal of a provider's contract.

(c) In determining whether a provider will provide best value to the department, the department shall consider:

- (1) the past performance of the provider;
- (2) the quality of the provider's services;
- (3) the cost of the provider's services;
- (4) the ability of the provider to maximize federal, private, and local sources of funding;
- (5) the ability of the provider to comply with state and federal program requirements;
- (6) the availability of the provider to deliver required services; and
- (7) any other relevant factor.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 33 (H.B. 1503), § 8, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.315, effective April 2, 2015.

Sec. 73.012. Monitoring [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 20, effective September 1, 1997.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 235 (S.B. 761), art. 4, § 4(a), effective September 1, 1983; am. Acts 1985, 69th Leg., ch. 931 (H.B. 2091), art. 12, § 1, effective September 1, 1985; am. Acts 1993, 73rd Leg., ch. 747 (H.B. 1510), § 35, effective September 1, 1993.

Sec. 73.013. Intervention Services [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 20, effective September 1, 1997.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 235 (S.B. 761), art. 4, § 4(a), effective September 1, 1983; am. Acts 1985, 69th Leg., ch. 931 (H.B. 2091), art. 12, § 1, effective September 1, 1985; am. Acts 1993, 73rd Leg., ch. 747 (H.B. 1510), § 36, effective September 1, 1993.

Sec. 73.014. Report [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 20, effective September 1, 1997.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 235 (S.B. 761), art. 4, § 4(a), effective September 1, 1983; am. Acts 1985, 69th Leg., ch. 931 (H.B. 2091), art. 12, § 1, effective September 1, 1985; am. Acts 1993, 73rd Leg., ch. 747 (H.B. 1510), § 37, effective September 1, 1993.

Sec. 73.015. New Program Strategy [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 20, effective September 1, 1997.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 235 (S.B. 761), art. 4, § 4(a), effective September 1, 1983; am. Acts 1985, 69th Leg., ch. 931 (H.B. 2091), art. 12, § 1, effective September 1, 1985; am. Acts 1993, 73rd Leg., ch. 747 (H.B. 1510), § 37, effective September 1, 1993.

Sec. 73.016. Grant Request for Program [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 20, effective September 1, 1997.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 235 (S.B. 761), art. 4, § 4(a), effective September 1, 1983; am. Acts 1985, 69th Leg., ch. 931 (H.B. 2091), art. 12, § 1, effective September 1, 1985.

Sec. 73.017. Approval Criteria [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 20, effective September 1, 1997.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 235 (S.B. 761), art. 4, § 4(a), effective September 1, 1983; am. Acts 1985, 69th Leg., ch. 931 (H.B. 2091), art. 12, § 1, effective September 1, 1985.

Sec. 73.018. Program Approval [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 20, effective September 1, 1997.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 235 (S.B. 761), art. 4, § 4(a), effective September 1, 1983; am. Acts 1985, 69th Leg., ch. 931 (H.B. 2091), art. 12, § 1, effective September 1, 1985; am. Acts 1993, 73rd Leg., ch. 747 (H.B. 1510), § 38, effective September 1, 1993.

Sec. 73.019. Program Standards [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 20, effective September 1, 1997.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 235 (S.B. 761), art. 4, § 4(a), effective September 1, 1983; am. Acts 1985, 69th Leg., ch. 931 (H.B. 2091), art. 12, § 1, effective September 1, 1985; am. Acts 1993, 73rd Leg., ch. 747 (H.B. 1510), § 39, effective September 1, 1993.

Sec. 73.020. Council Guidelines [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 20, effective September 1, 1997.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 235 (S.B. 761), art. 4, § 4(a), effective September 1, 1983; am. Acts 1985, 69th Leg., ch. 931 (H.B. 2091), art. 12, § 1, effective September 1, 1985.

Sec. 73.021. Program Monitoring [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 20, effective September 1, 1997.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 235 (S.B. 761), art. 4, § 4(a), effective September 1, 1983; am. Acts 1985, 69th Leg., ch. 931 (H.B. 2091), art. 12, § 1, effective September 1, 1985; am. Acts 1993, 73rd Leg., ch. 747 (H.B. 1510), § 40, effective September 1, 1993.

Sec. 73.022. Finances.

(a) The executive commissioner shall:

(1) ensure compliance with requirements necessary to obtain federal funds in the maximum amount and the most advantageous proportions possible for programs funded under this chapter; and

(2) seek funding in a manner that maximizes the total amount of money available from federal, private, and local sources for programs funded under this chapter.

(a-1) The department shall:

(1) apply for, receive, administer, and spend federal and state funds for Part C, Individuals with Disabilities Education Act (IDEA) (20 U.S.C. Section 1431 et seq.), and its subsequent amendments, dealing with infants and toddlers from birth to age three with developmental delay and their families; and

(2) authorize and account for the classification and spending of maintenance of effort and carryover funds from all sources in carrying out the programs funded under this chapter.

(b) All money paid to the department under this chapter shall be deposited in the state treasury and may be used only for the administration of this chapter.

(c) to (e) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(64), effective April 02, 2015]

(f) [Repealed by Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), § 25(117), effective June 17, 2011.]

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 813 (S.B. 417), § 6.09, effective September 1, 1989; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 6.58, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 16, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 33 (H.B. 1503), § 9, effective September 1, 1999; am. Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), § 25(117), effective June 17, 2011; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 4.316, 4.465(a)(64), effective April 2, 2015.

Sec. 73.023. Application of Sunset Act. [Repealed]

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 17, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 33 (H.B. 1503), § 10, effective September 1, 1999; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(65), effective April 2, 2015.

Sec. 73.024. Application of Open Meetings Law, Open Records Law, And Administrative Procedure Law to Advisory Committee.

The advisory committee is subject to the requirements of the open meetings law, Chapter 551, Government Code, the open records law, Chapter 552, Government Code, and Chapter 2001, Government Code.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 923 (S.B. 305), § 18, effective September 1, 1997; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.317, effective April 2, 2015.

TITLE 7

REHABILITATION OF INDIVIDUALS WITH DISABILITIES

Chapter	
111.	Rehabilitation Services for Certain Individuals with Disabilities
112.	Developmental Disabilities [Expires September 1, 2027]
114.	Autism and Pervasive Developmental Disorders

CHAPTER 111

Rehabilitation Services for Certain Individuals with Disabilities

Subchapter	
A.	General Provisions
B.	Administrative Provisions
C.	Powers and Duties of Department
D.	Vocational Rehabilitation Services [Renumbered]

Subchapter A

General Provisions

Section	
111.001.	Purpose.
111.002.	Definitions.
111.003 to 111.010.	[Reserved].

Sec. 111.001. Purpose.

It is the policy of the State of Texas to provide rehabilitation and related services to eligible individuals with disabilities so that they may prepare for and engage in a gainful occupation or achieve maximum personal independence.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1993, 73rd Leg., ch. 142 (S.B. 407), § 2, effective May 17, 1993.

Sec. 111.002. Definitions.

In this chapter:

(1) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(92), effective April 2, 2015.]

(2) "Commissioner" means the commissioner of assistive and rehabilitative services.

(2-a) "Department" means the Department of Assistive and Rehabilitative Services.

(2-b) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Individual with a disability" means any individual, except one whose disability is of a visual nature, who has a physical or mental impairment which constitutes a substantial impediment to employment, or to achieving maximum personal independence, but which is of a nature that rehabilitation services may be expected to enable the individual to engage in a gainful occupation or enable the individual to achieve a greater level of self-care and independent living.

(4) "Substantial impediment to employment" means a physical or mental impairment in light of attendant medical, psychological, vocational, educational, or other

related factors that impedes an individual's occupational performance by preventing the individual from obtaining, retaining, or preparing for a gainful occupation consistent with the individual's capacities and abilities.

(5) "Rehabilitation services" means any equipment, supplies, goods, or services necessary to enable an individual with a disability to engage in a gainful occupation or to achieve maximum personal independence. To enable an individual with a disability to engage in a gainful occupation or achieve maximum personal independence, the department may engage in or contract for activities, including but not limited to:

(A) evaluation of rehabilitation potential, including diagnostic and related services incidental to the determination of eligibility for services and the nature and scope of services to be provided;

(B) counseling and guidance;

(C) physical and mental restoration services necessary to correct or substantially modify a physical or mental condition that is stable or slowly progressive;

(D) training;

(E) maintenance for additional costs incurred while participating in rehabilitation services;

(F) transportation;

(G) placement in suitable employment;

(H) postemployment services necessary to maintain suitable employment;

(I) obtaining occupational licenses, including any license, permit, or other written authority required by a state, city, or other governmental unit to be obtained in order to enter an occupation or small business, and providing tools, equipment, initial stocks, goods, and supplies; and

(J) providing other equipment, supplies, services, or goods that can reasonably be expected to benefit an individual with a disability in terms of employment in a gainful occupation or achievement of maximum personal independence.

(6) "Vocational rehabilitation program" means a program that provides rehabilitation services required to enable an individual with a disability to engage in a gainful occupation.

(7) [Repealed by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.116(b), effective September 1, 2003 and Acts 2003, 78th Leg., ch. 210 (H.B. 3124), § 2, effective September 1, 2003.]

(8) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(92), effective April 2, 2015.]

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1983, 68th Leg., ch. 77 (S.B. 33), § 1, effective January 1, 1984; am. Acts 1985, 69th Leg., ch. 603 (S.B. 118), § 23, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 1052 (S.B. 298), § 2.09, effective September 1, 1987; am. Acts 1993, 73rd Leg., ch. 142 (S.B. 407), § 3, effective May 17, 1993; am. Acts 1999, 76th Leg., ch. 393 (H.B. 1402), § 1, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.116(b), effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 210 (H.B. 3124), § 2, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 4.378, 4.465(a)(92), effective April 2, 2015.

Secs. 111.003 to 111.010. [Reserved for expansion].

Subchapter B

Administrative Provisions

Section
 111.011. Texas Rehabilitation Commission. [Repealed]
 111.012. Sunset Provision. [Repealed]
 111.013. Composition of Board; Appointment; Qualifications; Terms. [Repealed]
 111.0131. Removal of Board Members. [Repealed]
 111.0132. Training of Board Members. [Repealed]
 111.014. Meetings. [Repealed]
 111.015. Per Diem and Expenses. [Repealed]
 111.016. Rehabilitation Council of Texas. [Repealed]
 111.0161. Advice of Advisory Committees.
 111.017. Commissioner. [Repealed]
 111.018. General Duties of Executive Commissioner and Commissioner Relating to Rehabilitation Services for Certain Individuals with Disabilities.
 111.019. Planning.
 111.020. Administrative Units; Personnel. [Repealed]
 111.0205. Work Incentives and Supplemental Security Income (SSI).
 111.021. Reports.
 111.022. Disbursement of Funds.
 111.023. Other Duties.
 111.024. Delegation to Employees. [Repealed]
 111.025. Restrictions on Board Membership and Employment. [Repealed]
 111.026. Public Interest Information; Complaints. [Repealed]
 111.027 to 111.050. [Reserved].

Sec. 111.011. Texas Rehabilitation Commission. [Repealed]

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(93), effective April 2, 2015.

Sec. 111.012. Sunset Provision. [Repealed]

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1985, 69th Leg., ch. 479 (S.B. 813), § 215, effective September 1, 1985; am. Acts 1985, 69th Leg., ch. 603 (S.B. 118), § 22, effective September 1, 1985; am. Acts 1991, 72nd Leg., 1st C.S., ch. 17 (H.B. 222), § 4.09, effective November 12, 1991; am. Acts 1999, 76th Leg., ch. 393 (H.B. 1402), § 2, effective September 1, 1999; am. Acts 2011, 82nd Leg., ch. 1232 (S.B. 652), § 2.16, effective June 17, 2011; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(93), effective April 2, 2015.

Sec. 111.013. Composition of Board; Appointment; Qualifications; Terms. [Repealed]

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1985, 69th Leg., ch. 603 (S.B. 118), § 1, effective September 1, 1985; am. Acts 1999, 76th Leg., ch. 393 (H.B. 1402), § 3, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 1170 (S.B. 287), § 39.01, effective September 1, 2003; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(93), effective April 2, 2015.

Sec. 111.0131. Removal of Board Members. [Repealed]

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 603 (S.B. 118), § 2, effective September 1, 1985; am. Acts 1999, 76th Leg., ch. 393 (H.B. 1402), § 4, effective September 1, 1999; Repealed by

Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(93), effective April 2, 2015.

Sec. 111.0132. Training of Board Members. [Repealed]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 393 (H.B. 1402), § 5, effective September 1, 1999; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(93), effective April 2, 2015.

Sec. 111.014. Meetings. [Repealed]

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1985, 69th Leg., ch. 603 (S.B. 118), § 3, effective September 1, 1985; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(93), effective April 2, 2015.

Sec. 111.015. Per Diem and Expenses. [Repealed]

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1985, 69th Leg., ch. 603 (S.B. 118), § 4, effective September 1, 1985; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(93), effective April 2, 2015.

Sec. 111.016. Rehabilitation Council of Texas. [Repealed]

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1985, 69th Leg., ch. 603 (S.B. 118), § 5, effective September 1, 1985; am. Acts 1993, 73rd Leg., ch. 142 (S.B. 407), § 4, effective May 17, 1993; am. Acts 1999, 76th Leg., ch. 393 (H.B. 1402), § 6, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.379, effective April 2, 2015; Repealed by Acts 2015, 84th Leg., ch. 1138 (S.B. 208), § 30(3), effective September 1, 2015.

Sec. 111.0161. Advice of Advisory Committees.

(a) Each advisory committee established by law or rule to advise the department under this chapter or Subchapter F, Chapter 117, shall report to and advise the commissioner and executive commissioner on the committee's activities and the results of the committee's work. For the purpose of performing its advisory functions, each committee shall work with the commissioner, the department's staff, and the executive commissioner.

(b) The executive commissioner shall adopt rules to implement this section.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 393 (H.B. 1402), § 7, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.380, effective April 2, 2015.

Sec. 111.017. Commissioner. [Repealed]

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 8.146, effective September 1, 1995; am. Acts 1999, 76th Leg., ch. 393 (H.B. 1402), § 8, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 1460, § 2.14, effective September 1, 1999; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(94), effective April 2, 2015.

Sec. 111.018. General Duties of Executive Commissioner and Commissioner Relating to Rehabilitation Services for Certain Individuals with Disabilities.

(a) The executive commissioner shall:

(1) adopt policies and rules to effectively carry out the purposes of this chapter and Subchapter F, Chapter 117; and

(2) supervise the commissioner's administration of this chapter and Subchapter F, Chapter 117.

(b) In carrying out his or her duties under this chapter and Subchapter F, Chapter 117, the commissioner shall, with the approval of the executive commissioner, implement policies addressing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations relating to this chapter or Subchapter F, Chapter 117, as necessary to carry out the purposes of this chapter and Subchapter F, Chapter 117.

(c) to (h) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(95), effective April 2, 2015.]

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1985, 69th Leg., ch. 603 (S.B. 118), § 6, effective September 1, 1985; am. Acts 1999, 76th Leg., ch. 393 (H.B. 1402), § 9, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 4.381, 4.382, 4.465(a)(95), effective April 2, 2015.

Sec. 111.019. Planning.

The commissioner shall make long-range and intermediate plans for the scope and development of the program and make decisions regarding the allocation of resources in carrying out the plans.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1999, 76th Leg., ch. 393 (H.B. 1402), § 10, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.383, effective April 2, 2015.

Sec. 111.020. Administrative Units; Personnel. [Repealed]

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1993, 73rd Leg., ch. 142 (S.B. 407), § 5, effective May 17, 1993; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(96), effective April 2, 2015.

Sec. 111.0205. Work Incentives and Supplemental Security Income (SSI).

The department shall employ staff at the department's central office to:

(1) train counselors to understand and use work incentives in relation to services under this chapter or Subchapter F, Chapter 117; and

(2) review cases to ensure that department clients receiving services under this chapter or Subchapter F, Chapter 117, are informed of the availability of and assisted in obtaining work incentives and Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.).

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 655 (H.B. 1863), § 6.03, effective September 1, 1995; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.384, effective April 2, 2015.

Sec. 111.021. Reports.

(a) The commissioner shall prepare and submit to the executive commissioner annual reports of activities and expenditures under this chapter and Subchapter F, Chap-

ter 117, and, prior to each regular session of the legislature, estimates of funds required for carrying out the purposes of this chapter and Subchapter F, Chapter 117.

(c) The department shall post on the Internet in an accessible format the reports required under this section and any other agency performance data relating to this chapter or Subchapter F, Chapter 117, required to be reported to this state or the federal government. If a report or performance data contains confidential information, the department shall remove the confidential information before posting the report or performance data.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1985, 69th Leg., ch. 603 (S.B. 118), § 7, effective September 1, 1985; am. Acts 1999, 76th Leg., ch. 393 (H.B. 1402), § 11, effective September 1, 1999; am. Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), § 25(122), effective June 17, 2011; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.385, effective April 2, 2015.

Sec. 111.022. Disbursement of Funds.

The department shall make certification for disbursement, in accordance with regulations, of funds available for carrying out the purposes of this chapter or Subchapter F, Chapter 117.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1999, 76th Leg., ch. 393 (H.B. 1402), § 12, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.386, effective April 2, 2015.

Sec. 111.023. Other Duties.

The executive commissioner shall take other action as necessary or appropriate to carry out the purposes of this chapter or Subchapter F, Chapter 117.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1 § 1, effective September 1, 1979; am. Acts 1999, 76th Leg., ch. 393 (H.B. 1402), § 13, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.387, effective April 2, 2015.

Sec. 111.024. Delegation to Employees. [Repealed]

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1999, 76th Leg., ch. 393 (H.B. 1402), § 14, effective September 1, 1999; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(97), effective April 2, 2015.

Sec. 111.025. Restrictions on Board Membership and Employment. [Repealed]

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 603 (S.B. 118), § 8, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 167 (S.B. 892), § 2.19(19), effective September 1, 1987; am. Acts 1999, 76th Leg., ch. 393 (H.B. 1402), § 15, effective September 1, 1999; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(98), effective April 2, 2015.

Sec. 111.026. Public Interest Information; Complaints. [Repealed]

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 603 (S.B. 118), § 9, effective September 1, 1985; am. Acts 1999, 76th Leg., ch. 393 (H.B. 1402), § 16, effective September 1, 1999; Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(99), effective April 2, 2015.

Secs. 111.027 to 111.050. [Reserved for expansion].

Subchapter C

Powers and Duties of Department

Section	
111.0505.	Commissioner's Powers and Duties; Effect of Conflict with Other Law.
111.051.	Department As Principal Authority.
111.0511.	Service Delivery by Texas Workforce Commission.
111.052.	General Functions of Department Relating to Rehabilitation Services for Certain Individuals with Disabilities.
111.052A.	Coordination with State Agencies [Repealed].
111.0525.	Coordination with State Agencies.
111.053.	Cooperation with the Federal Government.
111.054.	Obtaining Federal Funds.
111.055.	Finances.
111.0551.	Provision of Medical Services [Repealed].
111.0552.	Rates for Medical Services [Repealed].
111.0553.	Procurement Methods.
111.056.	Gifts and Donations.
111.057.	Unlawful Use of Lists of Names.
111.058.	Specialized Training for Certain Employees [Renumbered].
111.0581.	Criminal History Record Information [Renumbered].
111.059.	Subrogation.
111.060.	Comprehensive Rehabilitation Account.
111.061.	Contract Payment. [Repealed]
111.062 to 111.069.	[Reserved].

Sec. 111.0505. Commissioner's Powers and Duties; Effect of Conflict with Other Law.

To the extent a power or duty given to the commissioner by this chapter, or another law relating to rehabilitation services for individuals with disabilities, conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1460 (H.B. 2641), § 2.15, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.389, effective April 2, 2015.

Sec. 111.051. Department As Principal Authority.

The department is the principal authority in the state on rehabilitation of individuals with disabilities. All other state agencies engaged in rehabilitation activities and related services to individuals with disabilities shall coordinate those activities and services with the department.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1993, 73rd Leg., ch. 142 (S.B. 407), § 6, effective May 17, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.390, effective April 2, 2015.

Sec. 111.0511. Service Delivery by Texas Workforce Commission.

The Texas Workforce Commission has primary responsibility for providing vocational rehabilitation services and other services and programs under Subtitle C, Title 4, Labor Code, notwithstanding Section 111.051 and subject to receipt of any required federal approval to administer those services and programs. A power or duty under this chapter, including rulemaking authority, of the department, the commissioner, or the executive commissioner that is applicable to those services or programs is a power or duty of the Texas Workforce Commission with respect to

those services or programs. All other state agencies engaged in vocational rehabilitation services or related services or programs shall coordinate those activities with the Texas Workforce Commission.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1138 (S.B. 208), § 7, effective September 1, 2016.

Sec. 111.052. General Functions of Department Relating to Rehabilitation Services for Certain Individuals with Disabilities.

(a) The department shall, to the extent of resources available and priorities established by the executive commissioner, provide rehabilitation services directly or through public or private resources to individuals determined by the department to be eligible for the services under a vocational rehabilitation program or other program established to provide rehabilitation services.

(b) In carrying out the purposes of this chapter and Subchapter F, Chapter 117, the department may:

- (1) cooperate with other departments, agencies, political subdivisions, and institutions, both public and private, in providing the services authorized by this chapter and Subchapter F, Chapter 117, to eligible individuals, in studying the problems involved, and in planning, establishing, developing, and providing necessary or desirable programs, facilities, and services, including those jointly administered with state agencies;
- (2) enter into reciprocal agreements with other states;
- (3) establish or construct rehabilitation facilities and workshops, contract with or provide grants to agencies, organizations, or individuals as necessary to implement this chapter and Subchapter F, Chapter 117, make contracts or other arrangements with public and other nonprofit agencies, organizations, or institutions for the establishment of workshops and rehabilitation facilities, and operate facilities for carrying out the purposes of this chapter and Subchapter F, Chapter 117;
- (4) conduct research and compile statistics relating to the provision of services to or the need for services by individuals with disabilities;
- (5) provide for the establishment, supervision, management, and control of small business enterprises to be operated by individuals with significant disabilities where their operation will be improved through the management and supervision of the department;
- (6) contract with schools, hospitals, private industrial firms, and other agencies and with doctors, nurses, technicians, and other persons for training, physical restoration, transportation, and other rehabilitation services; and
- (7) assess the statewide need for services necessary to prepare students with disabilities for a successful transition to employment, establish collaborative relationships with each school district with education service centers to the maximum extent possible within available resources, and develop strategies to assist vocational rehabilitation counselors in identifying and reaching students in need of transition planning.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1983, 68th Leg.,

ch. 77 (S.B. 33), § 2, effective January 1, 1984; am. Acts 1993, 73rd Leg., ch. 142 (S.B. 407), § 7, effective May 17, 1993; am. Acts 1999, 76th Leg., ch. 393 (H.B. 1402), § 17, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.116(a), effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 210 (H.B. 3124), § 1, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.391, effective April 2, 2015.

Sec. 111.052A. Coordination with State Agencies [Repealed].

Repealed by Acts 1993, 73rd Leg., ch. 142 (S.B. 407), § 8, effective May 17, 1993.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 1052 (S.B. 298), § 2.10, effective September 1, 1987.

Sec. 111.0525. Coordination with State Agencies.

(a) [Repealed by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.116(b), effective September 1, 2003 and Acts 2003, 78th Leg., ch. 210 (H.B. 3124), § 2, effective September 1, 2003.]

(b) The department shall enter into an agreement with the Department of Aging and Disability Services and the Department of State Health Services to reduce duplication and fragmentation of employment services by defining each agency's role and responsibilities for shared client populations.

(c) The department shall establish a formal referral process with the Texas Workforce Commission to ensure that appropriate vocational rehabilitation clients are referred to and receive services provided by the Texas Workforce Commission or local workforce development boards.

(d) [Repealed by Acts 2007, 80th Leg., ch. 268 (S.B. 10), § 32(f)(8), effective September 1, 2008.]

HISTORY: am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.116(b), 2.132, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 210 (H.B. 3124), § 2, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1325 (H.B. 3588), § 13.10, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 281 (H.B. 2702), § 4.08, effective June 14, 2005; am. Acts 2007, 80th Leg., ch. 268 (S.B. 10), § 32(f), effective September 1, 2008; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.392, effective April 2, 2015.

Sec. 111.053. Cooperation with the Federal Government.

(a) The department shall make agreements, arrangements, or plans to cooperate with the federal government in carrying out the purposes of this chapter and Subchapter F, Chapter 117, or of any federal statutes pertaining to rehabilitation, and to this end may adopt methods of administration that are found by the federal government to be necessary, and that are not contrary to existing state laws, for the proper and efficient operation of the agreements, arrangements, or plans for rehabilitation.

(b) To the extent resources are made available by the federal government, the department may make agreements, arrangements, or plans to cooperate with the federal government in carrying out the purposes of any federal statute pertaining to the disability determination function under the Social Security Act and to this end shall adopt methods of administration that are found by the federal government to be necessary to the disability determination function and that are not contrary to existing state laws.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1983, 68th Leg., ch. 77 (S.B. 33), § 3, effective January 1, 1984; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.393, effective April 2, 2015.

Sec. 111.054. Obtaining Federal Funds.

The department may comply with any requirements necessary to obtain federal funds relating to this chapter or Subchapter F, Chapter 117, in the maximum amount and most advantageous proportion possible.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.394, effective April 2, 2015.

Sec. 111.055. Finances.

(a) All money paid to the department under this chapter or Subchapter F, Chapter 117, shall be deposited in the state treasury.

(b) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.465(a)(100), effective April 2, 2015.]

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1985, 69th Leg., ch. 603 (S.B. 118), § 10, effective September 1, 1985; am. Acts 1989, 71st Leg., ch. 584 (H.B. 2519), § 17, effective September 1, 1989; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 4.395, 4.465(a)(100), effective April 2, 2015.

Sec. 111.0551. Provision of Medical Services [Repealed].

Repealed by Acts 2005, 79th Leg., ch. 211 (H.B. 1912), § 2, effective September 1, 2005.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 393 (H.B. 1402), § 19, effective September 1, 1999.

Sec. 111.0552. Rates for Medical Services [Repealed].

Repealed by Acts 2005, 79th Leg., ch. 211 (H.B. 1912), § 2, effective September 1, 2005.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 393 (H.B. 1402), § 20, effective September 1, 1999.

Sec. 111.0553. Procurement Methods.

(a) The executive commissioner shall adopt and the department shall implement in relation to this chapter and Subchapter F, Chapter 117, agency-wide procurement procedures to:

- (1) ensure compliance with the best-value purchasing requirements of Section 2155.144(c), Government Code;
- (2) document that a best-value review of vendors has occurred;
- (3) document the reasons for selecting a vendor;
- (4) negotiate price discounts with high-volume vendors;
- (5) consolidate purchases with other agencies, including the Department of State Health Services and the comptroller, to achieve best value; and
- (6) provide effective public notification to potential vendors of planned department purchases.

(b) Nothing in this section shall be construed to limit the department's ability to procure goods and services from persons with disabilities.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 393 (H.B. 1402), § 21, effective September 1, 1999; am. Acts 2007, 80th Leg., ch. 937 (H.B. 3560), § 1.96, effective September 1, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.396, effective April 2, 2015.

Sec. 111.056. Gifts and Donations.

The department may receive and use gifts and donations for carrying out the purposes of this chapter and Subchapter F, Chapter 117. No person may receive payment for solicitation of any funds.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.397, effective April 2, 2015.

Sec. 111.057. Unlawful Use of Lists of Names.

(a) Except for purposes directly connected with the administration of health and human service programs and in accordance with regulations, it is unlawful for a person to solicit, disclose, receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of any list of, names of, or any information directly or indirectly derived from records concerning persons applying for or receiving health and human services.

(b) The department is authorized to provide client and other information to and receive client and other information from any state agency for the purpose of increasing and enhancing services to clients and improving agency operations under this chapter and Subchapter F, Chapter 117, except where federal law or regulations preclude such sharing.

(c) The executive commissioner shall adopt rules to carry out the purposes of this section.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1993, 73rd Leg., ch. 142 (S.B. 407), § 9, effective May 17, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.398, effective April 2, 2015.

Sec. 111.058. Specialized Training for Certain Employees [Renumbered].

Renumbered to Tex. Hum. Res. Code § 117.033 by Acts 2013, 83rd Leg., ch. 391 (S.B. 128), § 2, effective June 14, 2013.

Sec. 111.0581. Criminal History Record Information [Renumbered].

Renumbered to Tex. Hum. Res. Code § 117.034 by Acts 2013, 83rd Leg., ch. 391 (S.B. 128), § 2, effective June 14, 2013.

Sec. 111.059. Subrogation.

(a) In furnishing a person rehabilitation services, including medical care services, under this chapter or Subchapter F, Chapter 117, the department is subrogated to the person's right of recovery from:

- (1) personal insurance;
- (2) another person for personal injury caused by the other person's negligence or wrongdoing; or
- (3) any other source.

(b) The department's right of subrogation is limited to the cost of the services provided.

(c) The commissioner may totally or partially waive the department's right of subrogation when the commissioner

finds that enforcement would tend to defeat the purpose of rehabilitation.

(d) The executive commissioner may adopt rules for the enforcement of the department's right of subrogation.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 77 (S.B. 33), § 4, effective January 1, 1984; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.399, effective April 2, 2015.

Sec. 111.060. Comprehensive Rehabilitation Account.

(a) The comprehensive rehabilitation account is an account in the general revenue fund. Money in the account is derived from court costs collected under Section 133.102, Local Government Code. Money in the account may be appropriated only to the department for the purposes provided by Section 111.052.

(b) The comptroller, on requisition by the department, shall draw a warrant on the account for the amount specified in that requisition for a use authorized in Section 111.052, except that the total of warrants issued during a state fiscal year may not exceed the amount appropriated for that fiscal year. At the end of each state fiscal year, the comptroller shall transfer to the general revenue fund any unexpended balance in the comprehensive rehabilitation account that exceeds \$1.5 million.

(c) The court costs remitted to the comptroller and deposited in the general revenue fund pursuant to this section are dedicated to the department.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 101 (S.B. 195), § 2, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 142 (S.B. 407), § 11, effective May 17, 1993; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.117, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 25 (S.B. 187), §§ 1, 2, effective May 9, 2005; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.400, effective April 2, 2015.

Sec. 111.061. Contract Payment. [Repealed]

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 928 (S.B. 487), § 1, effective January 1, 1998; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.401, effective April 2, 2015; Repealed by Acts 2015, 84th Leg., ch. 1138 (S.B. 208), § 30(4), effective September 1, 2015.

Secs. 111.062 to 111.069. [Reserved for expansion].

Subchapter D

Vocational Rehabilitation Services [Renumbered]

Section	
111.070.	Provision of Services. [Renumbered]
111.071.	Training and Supervision of Counselors. [Renumbered]
111.072.	Client Orientation Materials. [Renumbered]
111.073.	Transition Planning [Repealed].
111.081.	Authority [Repealed].
111.082.	Administration [Repealed].
111.083.	Participant Contributions [Repealed].
111.084.	Standards [Repealed].
111.085.	Quarterly Payments [Repealed].
111.086.	Funds, Rules, and Regulations [Repealed].

Sec. 111.070. Provision of Services. [Renumbered]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 393 (H.B. 1402), § 23, effective September 1, 1999; Renumbered to Tex. Hum. Res.

Code § 117.152 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.402, effective April 2, 2015.

Sec. 111.071. Training and Supervision of Counselors. [Renumbered]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 393 (H.B. 1402), § 23, effective September 1, 1999; Renumbered to Tex. Hum. Res. Code § 117.153 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.402, effective April 2, 2015.

Sec. 111.072. Client Orientation Materials. [Renumbered]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 393 (H.B. 1402), § 23, effective September 1, 1999; Renumbered to Tex. Hum. Res. Code § 117.154 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.402, effective April 2, 2015.

Sec. 111.073. Transition Planning [Repealed].

Repealed by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.116(b), effective September 1, 2003 and Acts 2003, 78th Leg., ch. 210 (H.B. 3124), § 2, effective September 1, 2003.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 393 (H.B. 1402), § 23, effective September 1, 1999.

Sec. 111.081. Authority [Repealed].

Repealed by Acts 1983, 68th Leg., ch. 77 (S.B. 33), § 5, effective January 1, 1984.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979.

Sec. 111.082. Administration [Repealed].

Repealed by Acts 1983, 68th Leg., ch. 77 (S.B. 33), § 5, effective January 1, 1984.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979.

Sec. 111.083. Participant Contributions [Repealed].

Repealed by Acts 1983, 68th Leg., ch. 77 (S.B. 33), § 5, effective January 1, 1984.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979.

Sec. 111.084. Standards [Repealed].

Repealed by Acts 1983, 68th Leg., ch. 77 (S.B. 33), § 5, effective January 1, 1984.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979.

Sec. 111.085. Quarterly Payments [Repealed].

Repealed by Acts 1983, 68th Leg., ch. 77 (S.B. 33), § 5, effective January 1, 1984.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979.

Sec. 111.086. Funds, Rules, and Regulations [Repealed].

Repealed by Acts 1983, 68th Leg., ch. 77 (S.B. 33), § 5, effective January 1, 1984.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979.

CHAPTER 112

**Developmental Disabilities
[Expires September 1, 2027]**

Subchapter A. General Provisions [Expires September 1, 2027]

Section	
112.001.	[Expires September 1, 2027] Definitions.
112.002.	[Expires September 1, 2027] Purpose and Legislative Findings.
112.003 to 112.010.	[Reserved].

Subchapter B. Texas Council for Developmental Disabilities [Expires September 1, 2027]

112.011.	[Expires September 1, 2027] Establishment.
112.0111.	[Expires September 1, 2027] Definition.
112.012.	[Expires September 1, 2027] Members.
112.013.	[Expires September 1, 2027] Terms.
112.014.	[Expires September 1, 2027] Vacancies.
112.015.	[Expires September 1, 2027] Expenses.
112.016.	[Expires September 1, 2027] Officers.
112.0161.	[Expires September 1, 2027] Conflicts of Interest.
112.0162.	[Expires September 1, 2027] Removal of Council Member.
112.0163.	[Expires September 1, 2027] Council Member Training.
112.017.	[Expires September 1, 2027] Bylaws.
112.018.	[Expires September 1, 2027] Designated State Agency.
112.019.	[Expires September 1, 2027] State Plan for Developmental Disabilities.
112.020.	[Expires September 1, 2027] Additional Council Powers and Duties.
112.0201.	[Expires September 1, 2027] Complaints.
112.021.	[Expires September 1, 2027] Protection and Advocacy of Individual Rights.
112.022.	[Expires September 1, 2027] Executive Director.
112.0221.	[Expires September 1, 2027] Equal Employment Opportunity Policy.
112.023.	[Expires September 1, 2027] Sunset Provision.
112.024 to 112.040.	[Reserved].

Subchapter C. Prevention of Developmental Disabilities [Expires September 1, 2027]

112.041.	[Expires September 1, 2027] Purpose and Policy.
112.042.	[Expires September 1, 2027] Definitions.
112.0421.	[Expires September 1, 2017] Applicability and Expiration of Certain Provisions.
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112.0431.	[Expires September 1, 2027] Administration of Subchapter; Certain References.
112.044.	[Expires September 1, 2027] Duties.
112.045.	[Expires September 1, 2017] Executive Committee.
112.0451.	[Expires September 1, 2017] Conflict of Interest.
112.0452.	[Expires September 1, 2017] Removal of Executive Committee Member.
112.0453.	[Expires September 1, 2017] Executive Committee Member Training.
112.0454.	[Expires September 1, 2017] Public Access.
112.046.	[Expires September 1, 2017] Board of Advisors.
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Section	
112.0471.	[Expires September 1, 2017] Qualifications and Standards of Conduct.
112.0472.	[Expires September 1, 2017] Equal Employment Opportunity Policies.
112.048.	[Expires September 1, 2027] Prevention Programs for Targeted Developmental Disabilities.
112.049.	[Expires September 1, 2027] Evaluation.
112.050.	[Expires September 1, 2027] Grants and Other Funding.
112.051.	[Expires September 1, 2027] Reports to Legislature.
112.052.	Sunset Provision [Repealed].

Subchapter A

General Provisions

[Expires September 1, 2027]

Sec. 112.001. [Expires September 1, 2027] Definitions.

In this chapter:

(1) "Council" means the Texas Council for Developmental Disabilities.

(2) "Designated state agency" means the executive agency designated by the governor to provide administrative support and fiscal management services to the council in accordance with this chapter and federal law.

(3) "Developmental disability" means a severe, chronic disability as defined by applicable federal developmental disability laws.

(4) "Applicable federal developmental disability laws" refers to the various Acts of Congress providing for assistance and services to persons with developmental disabilities and codified as 42 U.S.C. Section 15001 et seq.

(5) "Protection and advocacy system" means the system established in this state under the applicable federal developmental disabilities laws for the purpose of advocating for and protecting the rights of persons with developmental disabilities.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 970 (H.B. 1985), § 1, effective August 29, 1983; am. Acts 1985, 69th Leg., ch. 603 (S.B. 118), § 11, 12, effective September 1, 1985; am. Acts 1999, 76th Leg., ch. 79 (H.B. 1610), § 1, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.403, effective April 2, 2015.

Sec. 112.002. [Expires September 1, 2027] Purpose and Legislative Findings.

(a) The purpose of this chapter is to establish a developmental disabilities program that assures compliance with applicable federal developmental disability laws.

(b) The legislature finds that persons with developmental disabilities have a right to appropriate treatment, services, and habilitation for their disabilities within the funds available for those purposes and that the treatment, services, and habilitation for a person with developmental disabilities must be designed to maximize the developmental potential of the person and must be provided in the setting that is least restrictive of the person's personal liberty.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 970 (H.B. 1985), § 1, effective August 29, 1983; am. Acts 1985, 69th Leg., ch. 603 (S.B. 118), § 13, effective September 1, 1985.

Secs. 112.003 to 112.010. [Reserved for expansion].

Subchapter B

Texas Council for Developmental Disabilities
[Expires September 1, 2027]

Sec. 112.011. [Expires September 1, 2027] Establishment.

The Texas Council for Developmental Disabilities is established.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 970 (H.B. 1985), § 1, effective August 29, 1983; am. Acts 1999, 76th Leg., ch. 79 (H.B. 1610), § 4, effective September 1, 1999.

Sec. 112.0111. [Expires September 1, 2027] Definition.

In this subchapter, "executive director" means the executive director of the council.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 79 (H.B. 1610), § 4, effective September 1, 1999.

Sec. 112.012. [Expires September 1, 2027] Members.

The members of the council shall be appointed by the governor in accordance with applicable federal developmental disability laws. The governor may appoint as many members to the council as is determined appropriate for the council to accomplish its purposes but must appoint, in total membership, an odd number of members to the council. Appointments to the council shall be made without regard to:

- (1) the race, color, sex, religion, age, or national origin of the appointees; or
- (2) the disability of the appointees, except as required by applicable federal developmental disability laws.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 970 (H.B. 1985), § 1, effective August 29, 1983; am. Acts 1985, 69th Leg., ch. 264 (S.B. 351), § 28, effective August 26, 1985; am. Acts 1985, 69th Leg., ch. 603 (S.B. 118), § 14, effective September 1, 1985; am. Acts 1985, 69th Leg., ch. 793 (S.B. 195), § 22, effective September 1, 1985; am. Acts 1999, 76th Leg., ch. 79 (H.B. 1610), § 4, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 1170 (S.B. 287), § 9.01, effective September 1, 2003.

Sec. 112.013. [Expires September 1, 2027] Terms.

(a) Members of the council appointed by the governor serve for staggered terms of six years with the term of one-third or approximately one-third of the members expiring on February 1 of each odd-numbered year.

(b) A person may not serve on the council more than two consecutive six-year terms.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 970 (H.B. 1985), § 1, effective August 29, 1983; am. Acts 2003, 78th Leg., ch. 1170 (S.B. 287), § 9.02, effective September 1, 2003.

Sec. 112.014. [Expires September 1, 2027] Vacancies.

(a) A position on the council becomes vacant if:

- (1) a member resigns from the council by providing written notice to the chair; or
- (2) a member ceases to be a resident of this state.

(b) If a position on the council becomes vacant, the chair shall provide written notice to the governor requesting a new appointment to fill the remainder of the member's term.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 970 (H.B. 1985), § 1, effective August 29, 1983; am. Acts 1999, 76th Leg., ch. 79 (H.B. 1610), § 2, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.404, effective April 2, 2015.

Sec. 112.015. [Expires September 1, 2027] Expenses.

(a) Council members appointed under Section 112.012 serve without salary but are entitled to reimbursement for actual expenses incurred in performing their duties, including travel, meals, lodging, and telephone long-distance charges.

(b) Members of the council who have a disability and who, because of the disability, require special aids or travel companions are entitled to reimbursement for those costs.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 970 (H.B. 1985), § 1, effective August 29, 1983; am. Acts 1999, 76th Leg., ch. 79 (H.B. 1610), § 4, effective September 1, 1999.

Sec. 112.016. [Expires September 1, 2027] Officers.

(a) The governor shall designate a member of the council to be the presiding officer.

(b) The presiding officer serves in that capacity at the will of the governor.

(c) A representative of a state agency may not serve as chair or vice-chair.

(d) The council shall meet quarterly in regular session and on call by the chair when necessary for the transaction of council business.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 970 (H.B. 1985), § 1, effective August 29, 1983; am. Acts 1985, 69th Leg., ch. 603 (S.B. 118), § 15, effective September 1, 1985.

Sec. 112.0161. [Expires September 1, 2027] Conflicts of Interest.

(a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the council and may not be a council employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of developmental disabilities; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of developmental disabilities.

(c) Unless otherwise required by applicable federal developmental disability laws, a person may not be a member of the council or act as the general counsel to the

council 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 council.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 79 (H.B. 1610), § 4, effective September 1, 1999.

Sec. 112.0162. [Expires September 1, 2027] Removal of Council Member.

(a) It is a ground for removal from the council that a member:

(1) does not have at the time of taking office the qualifications required by applicable federal developmental disability laws;

(2) is ineligible for membership under Section 112.0161;

(3) fails to discharge the member's duties for a substantial part of the member's term; or

(4) is absent from more than half of the regularly scheduled council meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the council.

(b) The validity of an action of the council is not affected by the fact that it is taken when a ground for removal of a council member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the council 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 executive director shall notify the next highest ranking officer of the council, who shall then notify the governor and the attorney general that a potential ground for removal exists.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 79 (H.B. 1610), § 4, effective September 1, 1999.

Sec. 112.0163. [Expires September 1, 2027] Council Member Training.

(a) A person who is appointed to and qualifies for office as a member of the council may not vote, deliberate, or be counted as a member in attendance at a meeting of the council 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 council;

(2) the programs operated by the council;

(3) the role and functions of the designated state agency and council under this chapter and applicable federal developmental disability laws;

(4) the rules of the council, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the council;

(6) the results of the most recent formal audit of the council;

(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 council or the Texas Ethics Commission.

(c) A person appointed to the council 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.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 79 (H.B. 1610), § 4, effective September 1, 1999.

Sec. 112.017. [Expires September 1, 2027] Bylaws.

The council may adopt bylaws and policies consistent with this chapter and applicable state or federal law.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 970 (H.B. 1985), § 1, effective August 29, 1983; am. Acts 1985, 69th Leg., ch. 603 (S.B. 118), § 16, effective September 1, 1985.

Sec. 112.018. [Expires September 1, 2027] Designated State Agency.

(a) The governor shall designate, by executive order, a state agency to provide administrative support to the council and receive federal and state funds appropriated for the council. In accordance with federal law, the governor may select one of the following to serve as the designated state agency:

(1) the council;

(2) a state agency that does not provide or pay for services made available to persons with developmental disabilities;

(3) a state agency that provides or pays for services made available to persons with developmental disabilities if the state agency was designated by the governor under this section before June 30, 1994, and the governor has not changed the designation;

(4) a state office, including the office of the governor;

or

(5) a state planning office.

(b) The designated state agency shall receive, deposit, and disburse funds for the council in accordance with this chapter, applicable federal developmental disability laws, and the purposes and priorities established by the council in the state plan developed under Section 112.019.

(c) The designated state agency, in accordance with state law and procedures, shall provide for fiscal control and fund-accounting procedures necessary to assure the proper disbursement of and accounting for funds available to the council.

(d) Unless the council is serving as the designated state agency, the council shall enter into a memorandum of understanding with the designated state agency that delineates the roles and responsibilities of the designated state agency under this chapter.

(e) The designated state agency may adopt rules as necessary to implement the agency's duties under this

chapter and applicable federal developmental disability laws.

(f) A designated state agency may not assign duties to staff of the council unless the council is serving as the designated state agency.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 970 (H.B. 1985), § 1, effective August 29, 1983; am. Acts 1985, 69th Leg., ch. 603 (S.B. 118), § 17, effective September 1, 1985; am. Acts 1999, 76th Leg., ch. 79 (H.B. 1610), § 4, effective September 1, 1999.

Sec. 112.019. [Expires September 1, 2027] State Plan for Developmental Disabilities.

(a) The council shall develop and submit the state plan for persons with developmental disabilities. The plan must conform to applicable federal developmental disability laws.

(b) Unless the council is serving as the designated state agency, the council shall consult with the designated state agency before submitting the state plan required by this section solely to:

(1) obtain appropriate assurances with respect to the plan as required by federal law; and

(2) ensure that the plan is consistent with state law.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 970 (H.B. 1985), § 1, effective August 29, 1983; am. Acts 1985, 69th Leg., ch. 603 (S.B. 118), § 18, effective September 1, 1985; am. Acts 1999, 76th Leg., ch. 79 (H.B. 1610), § 4, effective September 1, 1999.

Sec. 112.020. [Expires September 1, 2027] Additional Council Powers and Duties.

(a) In addition to powers and duties derived by the council from applicable federal developmental disability laws or other provisions of this chapter, the council shall:

(1) undertake at the request of the governor and the legislature activities appropriate to the achievement of legislative and executive functions relating to persons with developmental disabilities or other disabling conditions;

(2) submit to the governor, legislature, and other appropriate state and federal authorities periodic reports on the council's responsibilities and performance;

(3) develop and implement policies that clearly separate the policymaking responsibilities of the council and the management responsibilities of the executive director and the staff of the council; and

(4) develop and implement policies that provide the public with a reasonable opportunity to appear before the council and to speak on any issue under the jurisdiction of the council.

(b) The council may:

(1) adopt rules as necessary to implement the council's duties and responsibilities under this chapter and applicable federal developmental disability laws;

(2) approve and execute an annual budget for council activities under this chapter that is consistent with applicable federal developmental disability laws; and

(3) contract with or provide grants to agencies, organizations, or individuals as necessary to implement council activities under this chapter.

HISTORY: Enacted by Acts 1983, 68th Leg., ch. 970 (H.B. 1985), § 1, effective August 29, 1983; am. Acts 1985, 69th Leg., ch. 603

(S.B. 118), § 19, effective September 1, 1985; am. Acts 1999, 76th Leg., ch. 79 (H.B. 1610), § 4, effective September 1, 1999.

Sec. 112.0201. [Expires September 1, 2027] Complaints.

(a) The council shall maintain a file on each written complaint filed with the council. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the council;
- (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 council closed the file without taking action other than to investigate the complaint.

(b) The council shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the council's policies and procedures relating to complaint investigation and resolution.

(c) The council, at least quarterly and 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.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 79 (H.B. 1610), § 4, effective September 1, 1999.

Sec. 112.021. [Expires September 1, 2027] Protection and Advocacy of Individual Rights.

The protection and advocacy system shall have access to records as required by the provisions of the applicable federal disability laws.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 603 (S.B. 118), § 20, effective September 1, 1985.

Sec. 112.022. [Expires September 1, 2027] Executive Director.

(a) The council shall hire an executive director in accordance with 42 U.S.C. Section 15025 and its subsequent amendments to carry out the policies and activities established by the council.

(b) The executive director shall hire and supervise necessary staff who will be responsible solely for carrying out activities designated by the council and consistent with:

- (1) applicable federal developmental disability laws; and
- (2) this chapter.

(c) The executive director or the executive director's designee shall provide to members of the council and to council employees, as often as necessary, information regarding the requirements for office or employment under this subchapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 79 (H.B. 1610), § 4, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.405, effective April 2, 2015.

Sec. 112.0221. [Expires September 1, 2027] Equal Employment Opportunity Policy.

(a) The executive director or the executive director'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.

(b) 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 council to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the council's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the Texas Workforce Commission civil rights division for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 79 (H.B. 1610), § 4, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.406, effective April 2, 2015.

Sec. 112.023. [Expires September 1, 2027] Sunset Provision.

The Texas Council for Developmental Disabilities is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished and this chapter expires September 1, 2027.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 729 (H.B. 1585), § 36, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 167 (S.B. 892), §§ 2.20(34), 5.01(a)(28), effective September 1, 1987 (renumbered from Sec. 112.021); am. Acts 1991, 72nd Leg., 1st C.S., ch. 17 (H.B. 222), § 4.10, effective November 12, 1991; Acts 1999, 76th Leg., ch. 79 (H.B. 1610), § 4, effective September 1, 1999; am. Acts 2005, 79th Leg., ch. 1227 (H.B. 1116), § 2.03, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 928 (H.B. 3249), § 3.05, effective June 15, 2007; am. Acts 2009, 81st Leg., 1st C.S., ch. 2 (S.B. 2), § 2.11, effective July 10, 2009; am. Acts 2011, 82nd Leg., ch. 1232 (S.B. 652), § 2.17, effective June 17, 2011; am. Acts 2015, 84th Leg., ch. 99 (H.B. 1679), § 1, effective May 23, 2015.

Secs. 112.024 to 112.040. [Reserved for expansion].

Subchapter C

*Prevention of Developmental Disabilities
[Expires September 1, 2027]*

Sec. 112.041. [Expires September 1, 2027] Purpose and Policy.

(a) [Expires September 1, 2017] The purpose of this Act is to minimize the economic and human losses in Texas caused by preventable disabilities through the establishment of a joint private-public initiative called the Office for the Prevention of Developmental Disabilities.

(b) The legislature finds there is a strong need for a unified, comprehensive prevention effort in the State of Texas. Many state agencies, as well as private organizations and local public agencies, are involved in prevention activities that can reduce the incidence and severity of developmental disabilities. However, a coordinated state-wide plan that identifies and consolidates research findings and prevention activities has yet to be developed.

(c) The legislature further finds that by establishing a mechanism by which prevention activities can be better coordinated and needed prevention programs can be initiated, the State of Texas will be making an important investment in Texas's future.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1209 (S.B. 1527), § 1, effective September 1, 1989.

Sec. 112.042. [Expires September 1, 2027] Definitions.

In this subchapter:

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

(1-a) "Developmental disability" means a severe, chronic disability that:

(A) is attributable to a mental or physical impairment or to a combination of a mental and physical impairment;

(B) is manifested before a person reaches the age of 22;

(C) is likely to continue indefinitely;

(D) results in substantial functional limitations in three or more major life activities, including:

- (i) self-care;
- (ii) receptive and expressive language;
- (iii) learning;
- (iv) mobility;
- (v) self-direction;
- (vi) capacity for independent living; and
- (vii) economic sufficiency; and

(E) reflects the person's needs for a combination and sequence of special interdisciplinary or generic care, treatment, or other lifelong or extended services that are individually planned and coordinated.

(1-b) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(2) "Executive committee" means the executive committee of the Office for the Prevention of Developmental Disabilities.

(3) "Office" means the Office for the Prevention of Developmental Disabilities.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1209 (S.B. 1527), § 1, effective September 1, 1989; am. Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.21(b), effective September 1, 2015.

Sec. 112.0421. [Expires September 1, 2017] Applicability and Expiration of Certain Provisions.

(a) Sections 112.041(a), 112.043, 112.045, 112.0451, 112.0452, 112.0453, 112.0454, 112.046, 112.047, 112.0471, and 112.0472 apply only until the date the executive commissioner begins to administer this subchapter and the commission assumes the duties and functions of the

Office for the Prevention of Developmental Disabilities in accordance with Section 112.0431.

(b) On the date the provisions listed in Subsection (a) cease to apply, the executive committee under Section 112.045 and the board of advisors under Section 112.046 are abolished.

(c) This section and Sections 112.041(a), 112.043, 112.045, 112.0451, 112.0452, 112.0453, 112.0454, 112.046, 112.047, 112.0471, and 112.0472 expire on the last day of the period prescribed by Section 531.02001(2), Government Code.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.21(c), effective September 1, 2015.

Sec. 112.043. [Expires September 1, 2017] Office for the Prevention of Developmental Disabilities; Administrative Attachment.

(a) The Office for the Prevention of Developmental Disabilities is administratively attached to the Health and Human Services Commission.

(b) The Health and Human Services Commission shall:

(1) provide administrative assistance, services, and materials to the office;

(2) accept, deposit, and disburse money made available to the office;

(3) accept gifts and grants on behalf of the office from any public or private entity;

(4) pay the salaries and benefits of the executive director and staff of the office;

(5) reimburse the travel expenses and other actual and necessary expenses of the executive committee, executive director, and staff of the office incurred in the performance of a function of the office, as provided by the General Appropriations Act;

(6) apply for and receive on behalf of the office any appropriations, gifts, or other money from the state or federal government or any other public or private entity, subject to limitations and conditions prescribed by legislative appropriation;

(7) provide the office with adequate computer equipment and support; and

(8) provide the office with adequate office space and permit the executive committee to meet in facilities of the commission.

(c) The executive director and staff of the office are employees of the office and not employees of the Health and Human Services Commission.

HISTORY: Enacted Acts 1989, 71st Leg., ch. 1209 (S.B. 1527), § 1, effective September 1, 1989; am. Acts 1999, 76th Leg., ch. 751 (H.B. 1151), § 1, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.407, effective April 2, 2015.

Sec. 112.0431. [Expires September 1, 2027] Administration of Subchapter; Certain References.

(a) Notwithstanding any other provision in this subchapter, the executive commissioner shall administer this subchapter beginning on the date specified in the transition plan under Section 531.0204, Government Code, and the commission shall perform the duties and functions of the Office for the Prevention of Developmental Disabilities in the organizational form the executive commissioner determines appropriate.

(b) Following the assumption of the administration of this subchapter by the executive commissioner and the duties and functions by the commission in accordance with Subsection (a):

(1) a reference in this subchapter to the office, the Office for the Prevention of Developmental Disabilities, or the executive committee of that office means the commission, the division or other organizational unit within the commission designated by the executive commissioner, or the executive commissioner, as appropriate; and

(2) a reference in any other law to the Office for the Prevention of Developmental Disabilities has the meaning assigned by Subdivision (1).

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.21(c), effective September 1, 2015.

Sec. 112.044. [Expires September 1, 2027] Duties.

The office shall:

(1) educate the public and attempt to promote sound public policy regarding the prevention of developmental disabilities;

(2) identify, collect, and disseminate information and data concerning the causes, frequency of occurrence, and preventability of developmental disabilities;

(3) work with appropriate divisions within the commission, state agencies, and other entities to develop a coordinated long-range plan to effectively monitor and reduce the incidence or severity of developmental disabilities;

(4) promote and facilitate the identification, development, coordination, and delivery of needed prevention services;

(5) solicit, receive, and spend grants and donations from public, private, state, and federal sources;

(6) identify and encourage establishment of needed reporting systems to track the causes and frequencies of occurrence of developmental disabilities;

(7) develop, operate, and monitor programs created under Section 112.048 addressing the prevention of specific targeted developmental disabilities;

(8) monitor and assess the effectiveness of divisions within the commission and of state agencies in preventing developmental disabilities;

(9) recommend the role each division within the commission and each state agency should have with regard to prevention of developmental disabilities;

(10) facilitate coordination of state agency prevention services and activities within the commission and among appropriate state agencies; and

(11) encourage cooperative, comprehensive, and complementary planning among public, private, and volunteer individuals and organizations engaged in prevention activities, providing prevention services, or conducting related research.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1209 (S.B. 1527), § 1, effective September 1, 1989; am. Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.21(d), effective September 1, 2015.

Sec. 112.045. [Expires September 1, 2017] Executive Committee.

(a) The executive committee is the governing body of the office.

(b) The executive committee is composed of nine members who have expertise in the field of developmental disabilities, of which three are appointed by the governor, three are appointed by the lieutenant governor, and three are appointed by the speaker of the house of representatives. Appointments to the executive committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(c) The members serve for staggered six-year terms, with the terms of three members expiring February 1 of each odd-numbered year. Executive committee members receive no compensation but are entitled to reimbursement of actual and necessary expenses incurred in the performance of their duties.

(d) The governor shall designate a member of the executive committee as the presiding officer of the executive committee to serve in that capacity at the will of the governor.

(e) The executive committee shall meet at least quarterly and shall adopt bylaws for the conduct of the meetings.

(f) Any actions taken by the executive committee must be approved by a majority vote of the members present.

(g) The executive committee shall establish policies and procedures to implement this subchapter.

HISTORY: Enacted Acts 1989, 71st Leg., ch. 1209 (S.B. 1527), § 1, effective September 1, 1989; am. Acts 1995, 74th Leg., ch. 557 (S.B. 89), § 1, effective September 1, 1995; am. Acts 1999, 76th Leg., ch. 751 (H.B. 1151), § 2, effective September 1, 1999.

Sec. 112.0451. [Expires September 1, 2017] Conflict of Interest.

A person may not be a member of the executive committee or act as the general counsel to the executive committee or the office 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 office.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 751 (H.B. 1151), § 3, effective September 1, 1999.

Sec. 112.0452. [Expires September 1, 2017] Removal of Executive Committee Member.

(a) It is a ground for removal from the executive committee that a member:

(1) does not have at the time of taking office the qualifications required by Section 112.045;

(2) does not maintain during service on the executive committee the qualifications required by Section 112.045;

(3) is ineligible for membership under Section 112.045 or 112.0451;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled executive committee meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the executive committee.

(b) The validity of an action of the executive committee is not affected by the fact that it is taken when a ground for removal of an executive committee member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the executive 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 executive director shall notify the next highest ranking officer of the executive committee, who shall then notify the governor and the attorney general that a potential ground for removal exists.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 751 (H.B. 1151), § 3, effective September 1, 1999.

Sec. 112.0453. [Expires September 1, 2017] Executive Committee Member Training.

(a) A person who is appointed to and qualifies for office as a member of the executive committee may not vote, deliberate, or be counted as a member in attendance at a meeting of the executive 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 office and the executive committee;
- (2) the programs operated by the office;
- (3) the role and functions of the office;
- (4) the rules of the office with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the office;
- (6) the results of the most recent formal audit of 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 office or the Texas Ethics Commission.

(c) A person appointed to the executive 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.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 751 (H.B. 1151), § 3, effective September 1, 1999.

Sec. 112.0454. [Expires September 1, 2017] Public Access.

The executive committee shall develop and implement policies that provide the public with a reasonable opportunity to appear before the executive committee and to speak on any issue under the jurisdiction of the office.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 751 (H.B. 1151), § 3, effective September 1, 1999.

Sec. 112.046. [Expires September 1, 2017] Board of Advisors.

(a) The executive committee may appoint a board of advisors composed of the following persons:

- (1) representatives of government agencies that are responsible for prevention services for specified targeted disabilities and that contract with the office to provide those services;
- (2) representatives of consumer groups, foundations, or corporations that contract for or donate to the office for prevention services for specific targeted disabilities;
- (3) private citizens who volunteer services or donate to the office for prevention services for specific targeted disabilities; and
- (4) other persons whose assistance the executive committee considers necessary to implement the purposes of this subchapter.

(b) The board of advisors may serve on task forces, solicit donations and grants, and perform any other duties assigned by the executive committee.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1209 (S.B. 1527), § 1, effective September 1, 1989.

Sec. 112.047. [Expires September 1, 2017] Executive Director.

(a) The executive committee may hire an executive director to serve as the chief executive officer of the office and to perform the administrative duties of the office.

(b) The executive director serves at the will of the executive committee.

(c) The executive director may hire staff within guidelines established by the executive committee.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1209 (S.B. 1527), § 1, effective September 1, 1989.

Sec. 112.0471. [Expires September 1, 2017] Qualifications and Standards of Conduct.

The executive director or the executive director's designee shall provide to members of the executive committee and to employees of the office, as often as necessary, information regarding the requirements for office or employment under this subchapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 751 (H.B. 1151), § 3, effective September 1, 1999.

Sec. 112.0472. [Expires September 1, 2017] Equal Employment Opportunity Policies.

(a) The executive director 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.

(b) 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 office to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the office's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

- (1) be updated annually;
- (2) be reviewed by the Texas Workforce Commission civil rights division for compliance with Subsection (b)(1); and
- (3) be filed with the governor's office.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 751 (H.B. 1151), § 3, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.408, effective April 2, 2015.

Sec. 112.048. [Expires September 1, 2027] Prevention Programs for Targeted Developmental Disabilities.

(a) The executive committee shall establish guidelines for:

- (1) selecting targeted disabilities;
- (2) assessing prevention services needs; and
- (3) reviewing plans, budgets, and operations for programs under this section.

(b) The executive committee shall plan and implement prevention programs for specifically targeted developmental disabilities.

(c) A program under this section:

- (1) must include a plan designed to reduce the incidence of a specifically targeted disability;
- (2) must include a budget for implementing a plan;
- (3) must be funded through:
 - (A) contracts for services from participating agencies;
 - (B) grants and gifts from private persons and consumer and advocacy organizations; and
 - (C) foundation support; and
- (4) must be approved by the executive committee.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1209 (S.B. 1527), § 1, effective September 1, 1989; am. Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.21(e), effective September 1, 2015.

Sec. 112.049. [Expires September 1, 2027] Evaluation.

(a) The office shall identify or encourage the establishment of needed statistical bases for each targeted group against which the office can measure how effectively a program under Section 112.048 is reducing the frequency or severity of a targeted developmental disability.

(b) The executive committee shall regularly monitor and evaluate the results of programs under Section 112.048.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1209 (S.B. 1527), § 1, effective September 1, 1989; am. Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.21(e), effective September 1, 2015.

Sec. 112.050. [Expires September 1, 2027] Grants and Other Funding.

(a) The executive committee may apply for and distribute private, state, and federal funds to implement prevention policies set by the executive committee.

(b) The executive committee shall establish criteria for application and review of funding requests and account-

ability standards for recipients. The executive committee may adjust its criteria as necessary to meet requirements for federal funding.

(c) The executive committee may not submit a legislative appropriation request for general revenue funds for purposes of this subchapter.

(d) In addition to funding under Subsection (a), the office may accept and solicit gifts, donations, and grants of money from public and private sources, including the federal government, local governments, and private entities, to assist in financing the duties and functions of the office. The commission shall support office fund-raising efforts authorized by this subsection. Funds raised under this subsection may only be spent in furtherance of a duty or function of the office or in accordance with rules applicable to the office.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1209 (S.B. 1527), § 1, effective September 1, 1989; am. Acts 2015, 84th Leg., ch. 837 (S.B. 200), §§ 1.21(f), 1.21(g), effective September 1, 2015.

Sec. 112.051. [Expires September 1, 2027] Reports to Legislature.

The office shall submit by February 1 of each odd-numbered year biennial reports to the legislature detailing findings of the office and the results of programs under Section 112.048 and recommending improvements in the delivery of developmental disability prevention services.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1209 (S.B. 1527), § 1, effective September 1, 1989; am. Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.21(h), effective September 1, 2015.

Sec. 112.052. Sunset Provision [Repealed].

Repealed by Acts 2001, 77th Leg., ch. 97 (S.B. 301), § 1, effective September 1, 2001.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1209 (S.B. 1527), § 1, effective September 1, 1989; am. Acts 1991, 72nd Leg., 1st C.S., ch. 17 (H.B. 222), § 4.11, effective November 12, 1991; am. Acts 1999, 76th Leg., ch. 751 (H.B. 1151), § 4, effective September 1, 1999.

CHAPTER 114

Autism and Pervasive Developmental Disorders

Section	
114.001.	Short Title. [Expired]
114.002.	Definitions.
114.0021.	Applicability and Expiration of Certain Provisions. [Expired]
114.003.	Council. [Expired]
114.0031.	Administration of Chapter; Certain References.
114.004.	Staff Support. [Expired]
114.005.	Advisory Task Force. [Expires September 1, 2017]
114.006.	State Plan.
114.007.	Duties. [Expires September 1, 2017]
114.008.	Report.
114.009.	Program Guidelines.
114.010.	Funding Requests for Programs.
114.011.	Approval Criteria.
114.012.	Fees for Services.
114.013.	Coordination of Resources for Individuals with Autism Spectrum Disorders.

Sec. 114.001. Short Title. [Expired]

This chapter may be cited as the Texas Council on Autism and Pervasive Developmental Disorders Act of 1987.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 956 (S.B. 257), § 9.01, effective September 1, 1987; am. Acts 2005, 79th Leg., ch. 838 (S.B. 882), § 2, effective September 1, 2005.

Sec. 114.002. Definitions.

In this chapter:

(1) "Autism and other pervasive developmental disorders" means a subclass of mental disorders characterized by distortions in the development of multiple basic psychological functions that are involved in the development of social skills and language, as defined by the Diagnostic and Statistical Manual (DSM-5), 5th Edition.

(1-a) "Commission" means the Health and Human Services Commission.

(2) "Council" means the Texas Council on Autism and Pervasive Developmental Disorders.

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

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 956 (S.B. 257), § 9.01, effective September 1, 1987; am. Acts 2005, 79th Leg., ch. 838 (S.B. 882), § 3, effective September 1, 2005; am. Acts 2013, 83rd Leg., ch. 536 (S.B. 519), § 1, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.22(b), effective September 1, 2015.

Sec. 114.0021. Applicability and Expiration of Certain Provisions. [Expired]

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.22(c), effective September 1, 2015.

Sec. 114.003. Council. [Expired]

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 956 (S.B. 257), § 9.01, effective September 1, 1987; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 6.65, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 78 (S.B. 361), § 1, effective September 1, 2001; am. Acts 2005, 79th Leg., ch. 838 (S.B. 882), § 4, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 838 (S.B. 882), § 5, effective September 1, 2005.

Sec. 114.0031. Administration of Chapter; Certain References.

(a) Notwithstanding any other provision in this chapter, the executive commissioner shall administer this chapter beginning on the date specified in the transition plan under Section 531.0204, Government Code, and the commission shall perform the duties and functions of the Texas Council on Autism and Pervasive Developmental Disorders in the organizational form the executive commissioner determines appropriate.

(b) Following the assumption of the administration of this chapter by the executive commissioner and the duties and functions by the commission in accordance with Subsection (a):

(1) a reference in this chapter to the council, the Texas Council on Autism and Pervasive Developmental Disorders, or an agency represented on the council means the commission, the division or other organiza-

tional unit within the commission designated by the executive commissioner, or the executive commissioner, as appropriate; and

(2) a reference in any other law to the Texas Council on Autism and Pervasive Developmental Disorders has the meaning assigned by Subdivision (1).

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.22(c), effective September 1, 2015.

Sec. 114.004. Staff Support. [Expired]

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 956 (S.B. 257), § 9.01, effective September 1, 1987; am. Acts 2001, 77th Leg., ch. 78 (S.B. 361), § 2, effective September 1, 2001; am. Acts 2005, 79th Leg., ch. 838 (S.B. 882), § 6, effective September 1, 2005.

Sec. 114.005. Advisory Task Force. [Expires September 1, 2017]

(a) The council shall establish an advisory task force composed of professionals, advocacy groups, and family members of persons with autism or other pervasive developmental disorders. The council shall appoint as many members to the task force as the council considers necessary to assist the council in performing its duties.

(b) The chair of the council shall appoint the chair of the task force, and the task force shall meet and serve in accordance with council rules. The council may divide the task force into regional committees to assist the council in community level program planning and implementation.

(c) A member of the task force may be appointed or removed without cause by a majority vote of the public members of the council present at a council meeting.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 956 (S.B. 257), § 9.01, effective September 1, 1987; am. Acts 2005, 79th Leg., ch. 838 (S.B. 882), § 7, effective September 1, 2005.

Sec. 114.006. State Plan.

(a) The council shall develop a state plan to provide services to persons with autism or other pervasive developmental disorders to ensure that:

(1) the needs of those persons and their families are addressed statewide and that all available resources are coordinated to meet those needs;

(2) within existing resources, the full range of services that are available through existing state agencies is offered to those persons throughout their lives to the maximum extent possible;

(3) personnel training needs are assessed statewide and strategies are developed to meet those needs;

(4) incentives are offered to private sources to encourage the sources to maintain present commitments and to assist in developing new programs; and

(5) a procedure for reviewing individual complaints about services provided under this chapter is implemented.

(b) The council shall make written recommendations on the implementation of this chapter. If the council considers a recommendation that will affect another state agency, the council shall seek the advice and assistance of the agency before taking action on the recommendation. On approval of the governing body of the agency, each agency affected by a council recommendation shall implement the recommendation. If an agency does not have

sufficient funds to implement a recommendation, the agency shall request funds for that purpose in its next budget proposal.

(c) [Repealed by Acts 2001, 77th Leg., ch. 78 (S.B. 361), § 3, effective September 1, 2001.]

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 956 (S.B. 257), § 9.01, effective September 1, 1987; am. Acts 2001, 77th Leg., ch. 78 (S.B. 361), § 3, effective September 1, 2001; am. Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.22(d), effective September 1, 2015.

Sec. 114.007. Duties. [Expires September 1, 2017]

(a) [Expired.]

(b) The council with input from people with autism and other pervasive developmental disorders, their families, and related advocacy organizations shall address contemporary issues affecting services available to persons with autism or other pervasive developmental disorders in this state, including:

- (1) successful intervention and treatment strategies, including transitioning;
- (2) personnel preparation and continuing education;
- (3) referral, screening, and evaluation services;
- (4) day care, respite care, or residential care services;
- (5) vocational and adult training programs;
- (6) public awareness strategies;
- (7) contemporary research;
- (8) early identification strategies;
- (9) family counseling and case management; and
- (10) recommendations for monitoring autism service programs.

(c) The council with input from people with autism and other pervasive developmental disorders, their families, and related advocacy organizations shall advise the legislature on legislation that is needed to develop further and to maintain a statewide system of quality intervention and treatment services for all persons with autism or other pervasive developmental disorders. The council may develop and recommend legislation to the legislature or comment on pending legislation that affects those persons.

(d) The council shall identify and monitor apparent gaps in services currently available from various state agencies for persons with autism or other pervasive developmental disorders and shall advocate improvements on behalf of those persons.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 956 (S.B. 257), § 9.01, effective September 1, 1987; am. Acts 2005, 79th Leg., ch. 838 (S.B. 882), § 8, effective September 1, 2005; am. Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.22(e), effective September 1, 2015.

Sec. 114.008. Report.

(a) Not later than November 1 of each even-numbered year, the council shall:

- (1) prepare a report summarizing requirements the council identifies and recommendations for providing additional or improved services to persons with autism or other pervasive developmental disorders; and
- (2) deliver the report to the governor, the lieutenant governor, and the speaker of the house of representatives.

(b) The council shall develop a strategy for establishing new programs to meet the requirements identified

through the council's review and assessment and from input from people with autism and related pervasive developmental disorders, their families, and related advocacy organizations.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 956 (S.B. 257), § 9.01, effective September 1, 1987; am. Acts 2005, 79th Leg., ch. 838 (S.B. 882), § 9, effective September 1, 2005; am. Acts 2013, 83rd Leg., ch. 1312 (S.B. 59), § 73, effective September 1, 2013; am. Acts 2019, 86th Leg., ch. 573 (S.B. 241), § 1.39, effective September 1, 2019.

Sec. 114.009. Program Guidelines.

The council shall develop specific program guidelines for:

- (1) instructional or treatment options;
- (2) frequency and duration of services;
- (3) ratio of staff to affected persons;
- (4) staff composition and qualifications;
- (5) eligibility determination; and
- (6) other program features designed to ensure the provision of quality services.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 956 (S.B. 257), § 9.01, effective September 1, 1987.

Sec. 114.010. Funding Requests for Programs.

(a) A public or private service provider may apply for available funds to provide a program of intervention services for eligible persons with autism or other pervasive developmental disorders in areas of identified needs.

(b) To apply for funds, a person must submit a grant request to the council.

(c) The council shall adopt rules governing the submission and processing of funding requests.

(d) [Expired]

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 956 (S.B. 257), § 9.01, effective September 1, 1987; am. Acts 2005, 79th Leg., ch. 838 (S.B. 882), § 10, effective September 1, 2005.

Sec. 114.011. Approval Criteria.

(a) The council shall review each request for program funding on a competitive basis and shall consider:

- (1) the extent to which the program would meet identified needs;
- (2) the cost of initiating the program, if applicable;
- (3) whether other funding sources are available;
- (4) the proposed cost of the services to the client or the client's family; and
- (5) the assurance of quality services.

(b) The council may not approve a funding request for a new program unless the service provider agrees to:

- (1) operate and maintain the program within the guidelines established by the council;
- (2) develop for each person with autism or other pervasive developmental disorders an individualized developmental plan that:
 - (A) includes family participation and periodic review and reevaluation; and
 - (B) is based on a comprehensive developmental evaluation conducted by an interdisciplinary team;
- (3) provide services to meet the unique needs of each person with autism or other pervasive developmental

disorders as indicated by the person’s individualized developmental plan; and

(4) develop a method in accordance with rules adopted by the council and approved by the council to respond to individual complaints relating to services provided by the program.

(c) The council shall develop with the Health and Human Services Commission and any agency designated by the commission procedures for allocating available funds to programs approved under this section.

(d) This chapter does not affect the existing authority of a state agency to provide services to a person with autism or other pervasive developmental disorders if the person meets the eligibility criteria established by this chapter. The council may modify the program standards if the council considers the modifications necessary for a particular program.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 956 (S.B. 257), § 9.01, effective September 1, 1987; am. Acts 2005, 79th Leg., ch. 838 (S.B. 882), § 11, effective September 1, 2005.

Sec. 114.012. Fees for Services.

(a) A service provider may charge a fee for services that is based on the client’s or family’s ability to pay. The fee must be used to offset the cost of providing or securing the services. If a service provider charges a fee, the provider must charge a separate fee for each type of service. In determining a client’s or family’s ability to pay for services, the provider must consider the availability of financial assistance or other benefits for which the client or family may be eligible.

(b) A state agency may charge a fee for services provided by the agency under this chapter that is based on the client’s or family’s ability to pay.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 956 (S.B. 257), § 9.01, effective September 1, 1987.

Sec. 114.013. Coordination of Resources for Individuals with Autism Spectrum Disorders.

(a) The commission shall coordinate resources for individuals with autism and other pervasive developmental disorders and their families. In coordinating those resources, the commission shall consult with appropriate state agencies.

(b) As part of coordinating resources under Subsection (a), the commission shall:

(1) collect and distribute information and research regarding autism and other pervasive developmental disorders;

(2) conduct training and development activities for persons who may interact with an individual with autism or another pervasive developmental disorder in the course of their employment, including school, medical, and law enforcement personnel, and personnel of the Department of Family and Protective Services;

(3) coordinate with local entities that provide services to an individual with autism or another pervasive developmental disorder; and

(4) provide support for families affected by autism and other pervasive developmental disorders.

(c) The commission shall ensure that training and development activities under this section are:

(1) evidenced-based;

(2) applicable to the professional role of each type of personnel to be trained under Subsection (b)(2); and

(3) instructive regarding means of effectively communicating and engaging with individuals with limited social or verbal abilities.

(d) At least once every five years, in consultation with an institution of higher education, the commission shall revise the materials and methods for the training and development activities to be provided under Subsection (b)(2).

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 177 (H.B. 1574), § 1, effective September 1, 2009; am. Acts 2019, 86th Leg., ch. 368 (H.B. 1386), § 1, effective September 1, 2019.

TITLE 8

RIGHTS AND RESPONSIBILITIES OF PERSONS WITH DISABILITIES

CHAPTER 123

Community Homes for Persons with Disabilities

Section	Short Title.
123.001.	Definition.
123.002.	Zoning and Restriction Discrimination
123.003.	Against Community Homes Prohibited.
123.004.	Qualification As Community Home.
123.005.	Required Services.
123.006.	Limitation on Number of Residents.
123.007.	Licensing Requirements.
123.008.	Location Requirement.
123.009.	Limitation on Number of Motor Vehicles.
123.010.	Ensuring Safety of Residents.

Sec. 123.001. Short Title.

This chapter may be cited as the Community Homes for Persons With Disabilities Act.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 12.01(a), effective August 26, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.430, effective April 2, 2015.

Sec. 123.002. Definition.

In this chapter, “person with a disability” means a person whose ability to care for himself or herself, perform manual tasks, learn, work, walk, see, hear, speak, or breathe is substantially limited because the person has:

(1) an orthopedic, visual, speech, or hearing impairment;

(2) Alzheimer’s disease;

(3) pre-senile dementia;

(4) cerebral palsy;

(5) epilepsy;

(6) muscular dystrophy;

(7) multiple sclerosis;

(8) cancer;

(9) heart disease;

(10) diabetes;

(11) an intellectual disability;

(12) autism; or

(13) mental illness.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 12.01(a), effective August 26, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.431, effective April 2, 2015.

Sec. 123.003. Zoning and Restriction Discrimination Against Community Homes Prohibited.

(a) The use and operation of a community home that meets the qualifications imposed under this chapter is a use by right that is authorized in any district zoned as residential.

(b) A restriction, reservation, exception, or other provision in an instrument created or amended on or after September 1, 1985, that relates to the transfer, sale, lease, or use of property may not prohibit the use of the property as a community home.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 12.01(a) effective August 26, 1991.

Sec. 123.004. Qualification As Community Home.

To qualify as a community home, an entity must comply with Sections 123.005 through 123.008 and be:

- (1) a community-based residential home operated by:
 - (A) the Department of Aging and Disability Services;
 - (B) a community center organized under Subchapter A, Chapter 534, Health and Safety Code, that provides services to persons with disabilities;
 - (C) an entity subject to the Texas Nonprofit Corporation Law as described by Section 1.008(d), Business Organizations Code; or
 - (D) an entity certified by the Department of Aging and Disability Services as a provider under the ICF-IID medical assistance program; or
- (2) an assisted living facility licensed under Chapter 247, Health and Safety Code, provided that the exterior structure retains compatibility with the surrounding residential dwellings.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 16, (S.B. 232), § 12.01(a) effective August 26, 1991; am. Acts 1997, 75th Leg., ch. 491 (S.B. 725), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 233 (S.B. 93), § 6, effective September 1, 1999; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.432, effective April 2, 2015.

Sec. 123.005. Required Services.

A community home shall provide the following services to persons with disabilities who reside in the home:

- (1) food and shelter;
- (2) personal guidance;
- (3) care;
- (4) habilitation services; and
- (5) supervision.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 12.01(a), effective August 26, 1991.

Sec. 123.006. Limitation on Number of Residents.

(a) Not more than six persons with disabilities and two supervisors may reside in a community home at the same time.

(b) The limitation on the number of persons with disabilities applies regardless of the legal relationship of those persons to one another.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 12.01(a), effective August 26, 1991.

Sec. 123.007. Licensing Requirements.

A community home must meet all applicable licensing requirements.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 12.01(a), effective August 26, 1991.

Sec. 123.008. Location Requirement.

A community home may not be established within one-half mile of an existing community home.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 12.01(a), effective August 26, 1991.

Sec. 123.009. Limitation on Number of Motor Vehicles.

Except as otherwise provided by municipal ordinance, the residents of a community home may not keep for the use of the residents of the home, either on the premises of the home or on a public right-of-way adjacent to the home, motor vehicles in numbers that exceed the number of bedrooms in the home.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 12.01(a), effective August 26, 1991.

Sec. 123.010. Ensuring Safety of Residents.

The Department of Aging and Disability Services shall make every reasonable effort to ensure the safety of residents of a community home operated by or under the regulatory jurisdiction of the department and the residents of a neighborhood that is affected by the location of the community home.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 646 (S.B. 160), § 14, effective August 30, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.433, effective April 2, 2015.

TITLE 10

JUVENILE BOARDS, JUVENILE PROBATION DEPARTMENTS, AND FAMILY SERVICES OFFICES

SUBTITLE A

JUVENILE PROBATION SERVICES

CHAPTER 142

Juvenile Probation Departments and Personnel

Section
142.001.
142.007.

Definition.
Post-Discharge Services.

Sec. 142.001. Definition.

In this chapter, "juvenile probation services" means:

- (1) services provided by or under the direction of a juvenile probation officer in response to an order issued by a juvenile court and under the court's direction, including:

- (A) protective services;
 - (B) prevention of delinquent conduct and conduct indicating a need for supervision;
 - (C) diversion;
 - (D) deferred prosecution;
 - (E) foster care;
 - (F) counseling;
 - (G) supervision; and
 - (H) diagnostic, correctional, and educational services; and
- (2) services provided by a juvenile probation department that are related to the operation of a preadjudication or post-adjudication juvenile facility.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 352 (S.B. 1104), § 1, effective September 1, 1989; am. Acts 1997, 75th Leg., ch. 1394 (H.B. 1917), § 7, effective September 1, 1997.

Sec. 142.007. Post-Discharge Services.

(a) For purposes of this section, “post-discharge services” means community-based services offered after a child is discharged from probation to support the child’s vocational, educational, behavioral, or other goals and to provide continuity for the child as the child transitions out of juvenile probation services. The term includes:

- (1) behavioral health services;
- (2) mental health services;
- (3) substance abuse services;
- (4) mentoring;
- (5) job training; and
- (6) educational services.

(b) Provided that existing resources are available, a juvenile board or juvenile probation department may provide post-discharge services to a child for not more than six months after the date the child is discharged from probation, regardless of the age of the child on that date.

(c) A juvenile board or juvenile probation department may not require a child to participate in post-discharge services.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 435 (S.B. 1548), § 1, effective September 1, 2017.

SUBTITLE B

JUVENILE BOARDS AND FAMILY SERVICES OFFICES

CHAPTER 152

Juvenile Boards

Subchapter A

General Provisions

Section	
152.0007.	Duties.
152.0010.	Advisory Council.
152.00162.	Determinate Sentence Parole.
152.00163.	Child with Mental Illness or Intellectual Disability.
152.00164.	Examination Before Discharge.
152.00165.	Transfer of Certain Children Serving Determinate Sentences for Mental Health Services.

Sec. 152.0007. Duties.

(a) The juvenile board shall:

- (1) establish a juvenile probation department and employ a chief probation officer who meets the standards set by the Texas Juvenile Justice Department; and
- (2) adopt a budget and establish policies, including financial policies, for juvenile services within the jurisdiction of the board.

(b) The board may establish guidelines for the initial assessment of a child by the juvenile probation department. The guidelines shall provide a means for assessing a child’s mental health status, family background, and level of education. The guidelines shall assist the probation department in determining whether a comprehensive psychological evaluation of the child should be conducted. The board shall require that probation department personnel use assessment information compiled by the child’s school, if the information is available, before conducting a comprehensive psychological evaluation of the child. The board may adopt all or part of the Texas Juvenile Justice Department’s minimum standards for assessment under Section 221.002 in complying with this subsection.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 352 (S.B. 1104), § 1, effective September 1, 1989; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 73, effective January 1, 1996; am. Acts 2001, 77th Leg., ch. 1297 (H.B. 1118), § 64, effective September 1, 2001; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 3.016, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 734 (H.B. 1549), § 126, effective September 1, 2015.

Sec. 152.0010. Advisory Council.

(a) A juvenile board may appoint an advisory council consisting of the number of citizen members determined appropriate by the board. To the extent available in the county, the advisory council may include:

- (1) a prosecuting attorney as defined by Section 51.02, Family Code;
- (2) a mental health professional;
- (3) a medical health professional; and
- (4) a representative of the education community.

(b) Council members serve terms as specified by the board.

(c) The juvenile board shall fill any vacancies on the advisory council.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 352 (S.B. 1104), § 1, effective September 1, 1989; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 74, effective January 1, 1996; am. Acts 2001, 77th Leg., ch. 1297 (H.B. 1118), § 66, effective September 1, 2001.

Sec. 152.00162. Determinate Sentence Parole.

(a) Not later than the 90th day before the date the juvenile board or local juvenile probation department transfers a person to the custody of the Texas Department of Criminal Justice for release on parole supervision under Section 152.0016(g) or 152.00161(e), the juvenile board or local juvenile probation department shall submit to the Texas Department of Criminal Justice all pertinent information relating to the person, including:

- (1) the juvenile court judgment;
- (2) the circumstances of the person’s offense;
- (3) the person’s previous social history and juvenile court records;

(4) the person's physical and mental health record;

(5) a record of the person's conduct, employment history, and attitude while committed to the department;

(6) a record of the sentence time served by the person at the juvenile board or local juvenile probation department as a result of a commitment under Section 54.04011(c)(2), Family Code, and in a juvenile detention facility in connection with the conduct for which the person was adjudicated; and

(7) any written comments or information provided by the juvenile board or local juvenile probation department, local officials, family members of the person, victims of the offense, or the general public.

(b) The juvenile board or local juvenile probation department shall provide instruction for parole officers of the Texas Department of Criminal Justice relating to juvenile programs provided by the juvenile board or local juvenile probation departments and the Texas Department of Criminal Justice shall enter into a memorandum of understanding relating to the administration of this subsection.

(c) The Texas Department of Criminal Justice shall grant credit for sentence time served by a person in the custody of a juvenile board or local juvenile probation department and in a juvenile detention facility, as recorded by the board or department under Subsection (a)(6), in computing the person's eligibility for parole and discharge from the Texas Department of Criminal Justice.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 854 (S.B. 1149), § 10, effective September 1, 2015.

Sec. 152.00163. Child with Mental Illness or Intellectual Disability.

(a) A juvenile board or local juvenile probation department shall accept a child with a mental illness or an intellectual disability who is committed to the custody of the board or department.

(b) Unless a child is committed to the custody of a juvenile board or local juvenile probation department under a determinate sentence under Section 54.04011(c)(2), Family Code, the juvenile board or local juvenile probation department shall discharge a child with a mental illness or an intellectual disability from its custody if:

(1) the child has completed the minimum length of stay for the child's committing offense; and

(2) the juvenile board or local juvenile probation department determines that the child is unable to progress in the rehabilitation programs provided by the juvenile board or local juvenile probation department because of the child's mental illness or intellectual disability.

(c) If a child who is discharged from the custody of a juvenile board or local juvenile probation department under Subsection (b) as a result of mental illness is not receiving court-ordered mental health services, the child's discharge is effective on the earlier of:

(1) the date the court enters an order regarding an application for mental health services filed under Section 152.00164(b); or

(2) the 30th day after the date the application is filed.

(d) If a child who is discharged from the custody of a juvenile board or local juvenile probation department under Subsection (b) as a result of mental illness is receiving court-ordered mental health services, the child's discharge is effective immediately. If the child is receiving mental health services outside the child's home county, the juvenile board or local juvenile probation department shall notify the mental health authority located in that county of the discharge not later than the 30th day after the date that the child's discharge is effective.

(e) If a child who is discharged from the custody of a juvenile board or local juvenile probation department under Subsection (b) as a result of an intellectual disability is not receiving intellectual disability services, the child's discharge is effective on the 30th day after the date that the referral is made under Section 152.00164(c).

(f) If a child who is discharged from the custody of a juvenile board or local juvenile probation department under Subsection (b) as a result of an intellectual disability is receiving intellectual disability services, the child's discharge is effective immediately.

(g) If a child with a mental illness or an intellectual disability is discharged from the custody of a juvenile board or local juvenile probation department under Subsection (b), the child is eligible to receive continuity of care services from the Texas Correctional Office on Offenders with Medical or Mental Impairments under Chapter 614, Health and Safety Code.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 854 (S.B. 1149), § 10, effective September 1, 2015.

Sec. 152.00164. Examination Before Discharge.

(a) A juvenile board or local juvenile probation department shall establish a system that identifies children with mental illnesses or intellectual disabilities who are in the custody of the juvenile board or local juvenile probation department.

(b) Before a child who is identified as having a mental illness is discharged from the custody of the juvenile board or local juvenile probation department under Section 152.00163(b), the juvenile board or local juvenile probation department shall arrange for a psychiatrist to examine the child. The juvenile board or local juvenile probation department shall refer a child requiring outpatient psychiatric treatment to the appropriate mental health authority. For a child requiring inpatient psychiatric treatment, the juvenile board or local juvenile probation department shall file a sworn application for court-ordered mental health services, as provided in Subchapter C, Chapter 574, Health and Safety Code, if:

(1) the child is not receiving court-ordered mental health services; and

(2) the psychiatrist who examined the child determines that the child has a mental illness and the child meets at least one of the criteria listed in Section 574.034 or 574.0345, Health and Safety Code.

(c) Before a child who is identified as having an intellectual disability under Chapter 593, Health and Safety Code, is discharged from the custody of a juvenile board or local juvenile probation department under Sec-

tion 152.00163(b), the department shall refer the child for intellectual disability services if the child is not receiving intellectual disability services.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 854 (S.B. 1149), § 10, effective September 1, 2015; am. Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 24, effective September 1, 2019.

Sec. 152.00165. Transfer of Certain Children Serving Determinate Sentences for Mental Health Services.

(a) A juvenile board or local juvenile probation department may petition the juvenile court that entered the order of commitment for a child for the initiation of mental health commitment proceedings if the child is committed to the custody of the juvenile board or local juvenile probation department under a determinate sentence under Section 54.04011(c)(2), Family Code.

(b) A petition made by a juvenile board or local juvenile probation department shall be treated as a motion under Section 55.11, Family Code, and the juvenile court shall proceed in accordance with Subchapter B, Chapter 55, Family Code.

(c) A juvenile board or local juvenile probation department shall cooperate with the juvenile court in any proceeding under this section.

(d) The juvenile court shall credit to the term of the child’s commitment to a juvenile board or local juvenile probation department any time the child is committed to an inpatient mental health facility.

(e) A child committed to an inpatient mental health facility as a result of a petition filed under this section may not be released from the facility on a pass or furlough.

(f) If the term of an order committing a child to an inpatient mental health facility is scheduled to expire before the end of the child’s sentence and another order committing the child to an inpatient mental health facility is not scheduled to be entered, the inpatient mental health facility shall notify the juvenile court that entered the order of commitment committing the child to a juvenile board or local juvenile probation department. The juvenile court may transfer the child to the custody of the juvenile board or local juvenile probation department, transfer the child to the Texas Department of Criminal Justice, or release the child under supervision, as appropriate.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 854 (S.B. 1149), § 10, effective September 1, 2015.

TITLE 11

AGING, COMMUNITY-BASED, AND LONG-TERM CARE SERVICES

CHAPTER 161

**Department of Aging and Disability Services
[Expires September 1, 2027]**

Subchapter A. General Provisions

Section
161.001. [Expires September 1, 2027] Definitions.
161.002. Agency. [Repealed]

Section
161.003. [Expires September 1, 2027] Sunset Provision.
161.004 to 161.020. [Reserved].

Subchapter B. Administrative Provisions

161.021. Aging and Disability Services Council. [Repealed]
161.022. Appointments. [Repealed]
161.023. Training Program for Council Members. [Repealed]
161.024. Terms. [Repealed]
161.025. Vacancy. [Repealed]
161.026. Presiding Officer; Other Officers; Meetings. [Repealed]
161.027. Reimbursement for Expenses. [Repealed]
161.028. Public Interest Information and Complaints. [Repealed]
161.029. Public Access and Testimony. [Repealed]
161.030. Policymaking and Management Responsibilities. [Repealed]
161.031. Annual Report [Repealed].
161.032. Offices. [Repealed]
161.033 to 161.050. [Reserved].

Subchapter C. Personnel

161.051. Commissioner. [Repealed]
161.0515. [Expires September 1, 2027] Assistant Commissioner For State Supported Living Centers.
161.052. Personnel. [Repealed]
161.053. Information About Qualifications and Standards of Conduct. [Repealed]
161.054. Merit Pay. [Repealed]
161.0541. [Expires September 1, 2027] Maintenance of Merit System.
161.055. Career Ladder. [Repealed]
161.056. Equal Employment Opportunity Policy. [Repealed]
161.057. [Expires September 1, 2027] Criminal Background Checks.
161.058 to 161.070. [Reserved].

**Subchapter D. Powers and Duties of Department
[Expires September 1, 2027]**

161.071. [Expires September 1, 2027] General Powers and Duties of Department.
161.0711. Contracting and Auditing Authority; Delegation. [Repealed]
161.0712. Management and Direction by Executive Commissioner. [Repealed]
161.072. Information Regarding Complaints. [Repealed]
161.073. [Expires September 1, 2027] Rules.
161.074. [Expires September 1, 2027] Competitive Grant Program.
161.075. [Expires September 1, 2027] Immunity for Area Agencies on Aging and Agency Employees and Volunteers.
161.076. [Expires September 1, 2027] On-Site Surveys of Certain Providers.
161.077. [Expires September 1, 2027] Investigation Database.
161.078. [Expires September 1, 2027] Eligibility for Deaf-Blind with Multiple Disabilities Waiver Program.
161.079. [Expires September 1, 2027] Informal Caregiver Services.
161.080. [Expires September 1, 2027] Contracts for Services for Individuals with Developmental Disabilities.
161.081. [Expires September 1, 2027] Long-Term Care Medicaid Waiver Programs: Streamlining and Uniformity.
161.082. [Expires September 1, 2027] Long-Term

Section	Care Medicaid Waiver Programs: Utilization Review.
161.083.	[Expires September 1, 2027] Corrections Medication Aides.
161.084.	[Expires September 1, 2027] Medicaid Service Options Public Education Initiative.
161.085.	[Expires September 1, 2027] Interest List Reporting.
161.086.	[Expires September 1, 2027] Electronic Visit Verification System.
161.087.	[Expires September 1, 2027] Gifts and Grants.
161.088.	Trauma-Informed Care Training.
161.089.	Administrative Penalties. [Expires September 1, 2027]
161.0891.	[Expires September 1, 2023] Amelioration Process.
161.0892.	Informal Dispute Resolution.

Subchapter D-1. Administration of Medication for Clients with Intellectual and Developmental Disabilities [Expires September 1, 2027]

161.091.	[Expires September 1, 2027] Definitions.
161.092.	[Expires September 1, 2027] Applicability.
161.093.	[Expires September 1, 2027] Administration of Medication.
161.094.	[Expires September 1, 2027] Department Duties.
161.095.	[Expires September 1, 2027] Liability.
161.096.	[Expires September 1, 2027] Conflict with Other Law.

Subchapter E. Guardianship Services [Expires September 1, 2027]

161.101.	[Expires September 1, 2027] Guardianship Services.
161.102.	[Expires September 1, 2027] Referral to Guardianship Program, Court, or Other Person.
161.103.	[Expires September 1, 2027] Contract for Guardianship Services.
161.104.	[Expires September 1, 2027] Quality Assurance Program.
161.105.	[Expires September 1, 2027] Oath.
161.106.	[Expires September 1, 2027] Guardianship Powers and Duties.
161.107.	[Expires September 1, 2027] Exemption from Guardianship Bonds, Certain Costs, Fees, and Expenses.
161.108.	[Expires September 1, 2027] Successor Guardian.
161.109.	[Expires September 1, 2027] Access to Records or Documents.
161.110.	[Expires September 1, 2027] Legal Representation of Department.
161.111.	[Expires September 1, 2027] Confidentiality and Disclosure of Information.
161.112.	[Expires September 1, 2027] Indemnification for Legal Expenses.
161.113.	[Expires September 1, 2027] Immunity.
161.114.	[Expires September 1, 2027] Use of Volunteers.
161.115 to 161.150.	[Reserved].

Subchapter F. Lifespan Respite Services Program [Expires September 1, 2027]

161.151.	[Expires September 1, 2027] Definitions.
161.152.	[Expires September 1, 2027] Lifespan Respite Services Program.
161.153.	[Expires September 1, 2027] Eligibility.
161.154.	[Expires September 1, 2027] Respite Services Contracts.
161.155.	[Expires September 1, 2027] Respite Services Coordinator Functions.

Section	
161.156.	[Expires September 1, 2027] Rules.
161.157 to 161.250.	[Reserved].

Subchapter G. Legislative Committee On Aging [Expires September 1, 2027]

161.251.	[Expires September 1, 2027] Definitions.
161.252.	[Expires September 1, 2027] Legislative Committee on Aging Established.
161.253.	[Expires September 1, 2027] Composition of Committee; Presiding Officer.
161.254.	[Expires September 1, 2027] Committee Powers and Duties.
161.255.	[Expires September 1, 2027] Report.
161.256 to 161.300.	[Reserved].

Subchapter H. Certain Initiatives Relating to Aging [Expires September 1, 2027]

161.301.	[Expires September 1, 2027] Definition.
161.302.	[Expires September 1, 2027] Contract to Provide Outreach and Input Relating to Aging Population.
161.303.	[Expires September 1, 2027] Establishment and Administration of Fund.
161.304.	[Expires September 1, 2027] Use of Fund.

Subchapter I. Fall Prevention Awareness [Expires September 1, 2027]

161.351.	[Expires September 1, 2027] Legislative Findings.
161.352.	[Expires September 1, 2027] Fall Prevention Awareness Week.
161.353.	[Expires September 1, 2027] Fall Prevention Policy.

Subchapter A

General Provisions

Sec. 161.001. [Expires September 1, 2027] Definitions.

In this chapter:

- (1) "Commission" means the Health and Human Services Commission.
- (2) "Commissioner" means the commissioner of aging and disability services.
- (3) "Council" means the Aging and Disability Services Council.
- (4) "Department" means the Department of Aging and Disability Services.
- (5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.13A, effective September 1, 2003.

Sec. 161.002. Agency. [Repealed]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.13A, effective September 1, 2003; Repealed by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.23(e)(1), effective September 1, 2017.

Sec. 161.003. [Expires September 1, 2027] Sunset Provision.

Unless the commission is continued in existence as provided by Chapter 325, Government Code, after the review required by Section 531.004, Government Code,

this chapter expires on the date the commission is abolished under that section.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.13A, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 928 (H.B. 3249), § 3.08, effective June 15, 2007; am. Acts 2009, 81st Leg., 1st C.S., ch. 2 (S.B. 2), § 2.15, effective July 10, 2009; am. Acts 2011, 82nd Leg., ch. 1232 (S.B. 652), § 2.21, effective June 17, 2011; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.440, effective April 2, 2015; am. Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 4.06, effective September 1, 2015.

Secs. 161.004 to 161.020. [Reserved for expansion].

Subchapter B

Administrative Provisions

Sec. 161.021. Aging and Disability Services Council. [Repealed]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.13A, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.441, effective April 2, 2015; Repealed by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.23(c)(28), effective September 1, 2016.

Sec. 161.022. Appointments. [Repealed]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.13A, effective September 1, 2003; Repealed by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.23(c)(29), effective September 1, 2016.

Sec. 161.023. Training Program for Council Members. [Repealed]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.13A, effective September 1, 2003; Repealed by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.23(c)(30), effective September 1, 2016.

Sec. 161.024. Terms. [Repealed]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.13A, effective September 1, 2003; Repealed by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.23(c)(31), effective September 1, 2016.

Sec. 161.025. Vacancy. [Repealed]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.13A, effective September 1, 2003; Repealed by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.23(c)(32), effective September 1, 2016.

Sec. 161.026. Presiding Officer; Other Officers; Meetings. [Repealed]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.13A, effective September 1, 2003; Repealed by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.23(c)(33), effective September 1, 2016.

Sec. 161.027. Reimbursement for Expenses. [Repealed]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.13A, effective September 1, 2003; Repealed by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.23(c)(34), effective September 1, 2016.

Sec. 161.028. Public Interest Information and Complaints. [Repealed]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.13A, effective September 1, 2003; Repealed by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.23(c)(35), effective September 1, 2016.

Sec. 161.029. Public Access and Testimony. [Repealed]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.13A, effective September 1, 2003; Repealed by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.23(c)(36), effective September 1, 2016.

Sec. 161.030. Policymaking and Management Responsibilities. [Repealed]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.13A, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.442, effective April 2, 2015; Repealed by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.23(c)(37), effective September 1, 2016.

Sec. 161.031. Annual Report [Repealed].

Repealed by Acts 2011, 82nd Leg., ch. 1050 (S.B. 71), § 23(13), effective September 1, 2011 and by Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), § 25(125), effective June 17, 2011.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.13A, effective September 1, 2003.

Sec. 161.032. Offices. [Repealed]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.13A, effective September 1, 2003; Repealed by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.23(e)(2), effective September 1, 2017.

Secs. 161.033 to 161.050. [Reserved for expansion].

Subchapter C

Personnel

Sec. 161.051. Commissioner. [Repealed]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.13A, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.443, effective April 2, 2015; Repealed by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.23(e)(3), effective September 1, 2017.

Sec. 161.0515. [Expires September 1, 2027] Assistant Commissioner For State Supported Living Centers.

(a) The commissioner shall employ an assistant commissioner for state supported living centers. The assistant commissioner must be selected based on education, training, experience, and demonstrated ability.

(b) The assistant commissioner reports directly to the commissioner.

(c) The assistant commissioner shall supervise the operation of the state supported living centers. As part of that duty, the assistant commissioner shall:

(1) verify that quality health and medical services are being provided in state supported living centers;

(2) verify and certify employee qualifications for employees of a state supported living center; and

(3) work with the commissioner to create administrative guidelines for proper implementation of federal and state statutory law and judicial decisions.

(d) The assistant commissioner shall coordinate with the appropriate staff of the Department of State Health Services to ensure that the ICF-IID component of the Rio Grande State Center implements and enforces state law and rules that apply to the operation of state supported living centers.

(e) The assistant commissioner shall consult with the appropriate staff at the Department of State Health Services to ensure that an individual with a dual diagnosis of mental illness and an intellectual disability who is a resident of a state supported living center or the ICF-IID component of the Rio Grande State Center is provided with appropriate care and treatment.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 36, effective June 11, 2009; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 4.444, 4.445, effective April 2, 2015.

Sec. 161.052. Personnel. [Repealed]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.13A, effective September 1, 2003; Repealed by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.23(e)(4), effective September 1, 2017.

Sec. 161.053. Information About Qualifications and Standards of Conduct. [Repealed]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.13A, effective September 1, 2003; Repealed by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.23(e)(5), effective September 1, 2017.

Sec. 161.054. Merit Pay. [Repealed]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.13A, effective September 1, 2003; Repealed by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.23(e)(6), effective September 1, 2017.

161.0541. [Expires September 1, 2027] Maintenance of Merit System.

The merit system established as provided by Section 161.054 may be maintained in conjunction with other state agencies that are required by federal law to operate under a merit system.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.006, effective April 2, 2015 (renumbered from Sec. 21.007).

Sec. 161.055. Career Ladder. [Repealed]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.13A, effective September 1, 2003; Repealed by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.23(e)(7), effective September 1, 2017.

Sec. 161.056. Equal Employment Opportunity Policy. [Repealed]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.13A, effective September 1, 2003; am. Acts 2015, 84th Leg.,

ch. 1 (S.B. 219), § 4.446, effective April 2, 2015; Repealed by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.23(e)(8), effective September 1, 2017.

Sec. 161.057. [Expires September 1, 2027] Criminal Background Checks.

(a) In this section, “eligible person” means a person whose criminal history record information the department is entitled to obtain from the Department of Public Safety under Section 411.13861, Government Code.

(b) The department may obtain criminal history record information regarding an eligible person as provided by Section 411.13861, Government Code. Criminal history record information obtained under Section 411.13861 is subject to the restrictions and requirements of that section.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1209 (S.B. 1540), § 4, effective June 19, 2015.

Secs. 161.058 to 161.070. [Reserved for expansion].

Subchapter D

*Powers and Duties of Department
[Expires September 1, 2027]*

Sec. 161.071. [Expires September 1, 2027] General Powers and Duties of Department.

The department is responsible for administering human services programs for the aging and persons with disabilities, including:

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

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

(3) providing and coordinating programs and services for persons with disabilities, including programs for the treatment, rehabilitation, or benefit of persons with developmental disabilities or an intellectual disability;

(4) operating state facilities for the housing, treatment, rehabilitation, or benefit of persons with disabilities, including state supported living centers for persons with an intellectual disability;

(5) serving as the state unit on aging required by the federal Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and its subsequent amendments, including performing the general functions under Section 101A.052 to ensure:

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

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

(C) fostering of the state and community infrastructure and capacity to serve older residents of this state; and

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

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

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

(8) performing all licensing and enforcement activities related to intermediate care facilities for persons with an intellectual disability under Chapter 252, Health and Safety Code;

(9) performing all licensing and enforcement activities and functions related to home and community support services agencies under Chapter 142, Health and Safety Code; and

(10) serving as guardian of the person or estate, or both, for an incapacitated individual as provided by Subchapter E of this chapter and Title 3, Estates Code.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.13A, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 3.03, effective September 1, 2005; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.447, effective April 2, 2015.

Sec. 161.0711. Contracting and Auditing Authority; Delegation. [Repealed]

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.448, effective April 2, 2015; Repealed by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.23(e)(9), effective September 1, 2017.

Sec. 161.0712. Management and Direction by Executive Commissioner. [Repealed]

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.448, effective April 2, 2015; Repealed by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.23(e)(10), effective September 1, 2017.

Sec. 161.072. Information Regarding Complaints. [Repealed]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.13A, effective September 1, 2003; Repealed by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 1.23(e)(11), effective September 1, 2017.

Sec. 161.073. [Expires September 1, 2027] Rules.

The executive commissioner may adopt rules reasonably necessary for the department to administer this chapter, consistent with the memorandum of understanding under Section 531.0055(k), Government Code, between the commissioner and the executive commissioner, as adopted by rule.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 1.13A, effective September 1, 2003.

Sec. 161.074. [Expires September 1, 2027] Competitive Grant Program.

(a) The department shall establish a competitive grant program that promotes innovation in the delivery of aging

and disability services and improves the quality of life for individuals receiving those services.

(b) A grant awarded by the department under the program shall be used to:

(1) test innovative practices in the provision of aging and disability services; or

(2) disseminate information regarding innovative practices being used to provide aging and disability services.

(c) The department shall request proposals for the award of a grant under the program. The department shall evaluate the proposals and award a grant based on a proposal's academic soundness, quantifiable effectiveness, and potentially positive impact on the delivery of aging and disability services.

(d) A grant awarded under Subsection (b)(1) must be made to an institution of higher education working in cooperation with a private entity that has committed resources to the project described in the proposal.

(e) A grant recipient may use grant money received under this section only to pay for activities directly related to the purpose of the grant program as described by Subsection (b) and may not use grant money for fees or advertising.

(f) The department shall establish procedures to administer the grant program, including a procedure for the submission of a proposal and a procedure to be used by the department to evaluate a proposal.

(g) The department shall enter into a contract that includes performance requirements with each grant recipient. The department shall monitor and enforce the terms of the contract. The contract must authorize the department to recoup grant money from a grant recipient for failure of the grant recipient to comply with the terms of the contract.

(h) The department shall post on its website a summary of each grant awarded under this section.

(i) The legislature may appropriate money described by Sections 142.0174, 242.0695, 247.0458, and 252.069, Health and Safety Code, including unexpended and unobligated amounts collected during a previous state fiscal biennium, to fund the grant program authorized by this section.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 786 (S.B. 52), § 5, effective September 1, 2005.

Sec. 161.075. [Expires September 1, 2027] Immunity for Area Agencies on Aging and Agency Employees and Volunteers.

(a) In this section:

(1) "Area agency on aging" means an agency described by 42 U.S.C. Section 3002(6) and through which the department ensures the implementation of services and volunteer opportunities for older persons in this state as provided by Section 161.071(5)(A).

(2) "Texas nonprofit organization" means a nonprofit corporation:

(A) that is organized under the Texas Nonprofit Corporation Law as described by Section 1.008(d), Business Organizations Code; and

(B) the funding of which is managed by an organization that is exempt from federal income tax under

Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) of that code.

(3) "Volunteer" means a person who:

(A) renders services for or on behalf of an area agency on aging under the supervision of an area agency on aging employee; and

(B) does not receive compensation that exceeds the authorized expenses the person incurs in performing those services.

(b) An area agency on aging that conducts an election on behalf of a Texas nonprofit organization is not civilly or criminally liable for any act or omission, including an act or omission relating to verifying the qualifications of candidates and determining and reporting election results, that relates to a duty or responsibility with respect to conducting the election if the agency acted in good faith and within the scope of the agency's authority.

(c) An area agency on aging employee or volunteer who performs an act related to the conduct of an election described by Subsection (b) is not civilly or criminally liable for the act or any omission that relates to a duty or responsibility with respect to conducting the election if the person acted in good faith and within the scope of the person's authority.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 594 (H.B. 41), § 12, effective September 1, 2007; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.449, effective April 2, 2015.

Sec. 161.076. [Expires September 1, 2027] On-Site Surveys of Certain Providers.

At least every 12 months, the department shall conduct an unannounced on-site survey in each group home, other than a foster home, at which a Home and Community-based Services (HCS) provider provides services.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 37, effective June 11, 2009.

Sec. 161.077. [Expires September 1, 2027] Investigation Database.

(a) The department, in consultation with the Department of Family and Protective Services, shall develop and maintain an electronic database to collect and analyze information regarding the investigation and prevention of abuse, neglect, and exploitation of individuals with an intellectual disability who reside in a publicly or privately operated intermediate care facility for persons with an intellectual disability or in a group home, other than a foster home, at which a Home and Community-based Services (HCS) provider provides services and the results of regulatory investigations or surveys performed by the department regarding those facilities or providers.

(b) The information collected in the database regarding investigations must be detailed, be easily retrievable, and include information relating to abuse, neglect, and exploitation investigations performed by either department and regulatory investigations performed by the department that are capable of being sorted by home, provider, and facility.

(c) The database must facilitate the entry of required information and the sharing of information between the department and the Department of Family and Protective

Services. At a minimum, the database must include the following information regarding investigations of abuse, neglect, or exploitation:

(1) the number of allegations of abuse, neglect, or exploitation received relating to a facility or group home, other than a foster home; and

(2) the number of allegations relating to a facility or group home, other than a foster home, substantiated through an investigation.

(d) Each allegation involving a unique individual in a facility or group home, other than a foster home, is considered a separate allegation for purposes of Subsection (c).

(e) The department shall ensure that information related to findings concerning failure to comply with regulatory standards directly related to the prevention of abuse, neglect, or exploitation in a facility or group home, other than a foster home, is collected and stored in the database and may be disaggregated by home, provider, and facility.

(f) The department and the Department of Family and Protective Services may not release or distribute information in the database in a form that contains personally identifiable information related to an individual in a facility or group home or to a victim of abuse, neglect, or exploitation.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 37, effective June 11, 2009; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.450, effective April 2, 2015.

Sec. 161.078. [Expires September 1, 2027] Eligibility for Deaf-Blind with Multiple Disabilities Waiver Program.

(a) Subject to the availability of funds appropriated for that purpose, the department shall provide home-based and community-based services under the deaf-blind with multiple disabilities waiver program without regard to a person's age if the person applies for and is otherwise eligible to receive services under the waiver program.

(b) Subsection (a) does not prevent the department from establishing an age requirement with respect to other programs or services offered to persons who are deaf-blind with multiple disabilities, including the summer outdoor training program for individuals who are deaf-blind with multiple disabilities established under Section 22.036(c).

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 269 (S.B. 37), § 1, effective May 18, 2009; am. Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 27.001(35), effective September 1, 2011, (renumbered from Sec. 161.076); am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.451, effective April 2, 2015.

Sec. 161.079. [Expires September 1, 2027] Informal Caregiver Services.

(a) In this section:

(1) "Area agency on aging" has the meaning assigned by Section 161.075.

(2) "Local entity" means an area agency on aging or other entity that provides services and support for older persons or persons with disabilities and their caregivers.

(b) The department shall coordinate with area agencies on aging and, to the extent considered feasible by the department, may coordinate with other local entities to coordinate public awareness outreach efforts regarding the role of informal caregivers in long-term care situations, including efforts to raise awareness of support services available in this state for informal caregivers.

(c) The department shall perform the following duties to assist a local entity with outreach efforts under this section:

(1) expand an existing department website to provide a link through which a local entity may post and access best practices information regarding informal caregiver support; and

(2) create a document template that a local entity may adapt as necessary to reflect resources available to informal caregivers in the area supported by the entity.

(d) The department shall create or modify a form to be included in the functional eligibility determination process for long-term care benefits for older persons under the Medicaid program and, to the extent considered feasible by the department, may include a form in systems for other long-term care support services. The department shall use the form to identify informal caregivers for the purpose of enabling the department to refer the caregivers to available support services. The form may be based on an existing form, may include optional questions for an informal caregiver, or may include questions from similar forms used in other states.

(e) The department shall coordinate with area agencies on aging and, to the extent considered feasible by the department, may coordinate with other local entities to develop and implement a protocol to evaluate the needs of certain informal caregivers. The protocol must:

(1) provide guidance on the type of caregivers who should receive an assessment; and

(2) include the use of a standardized assessment tool that may be based on similar tools used in other states, including the Tailored Caregiver Assessment and Referral process.

(f) The department shall require area agencies on aging and, to the extent considered feasible by the department, other local entities to use the protocol and assessment tool under Subsection (e) and report the data gathered from the assessment tool to the department.

(g) The department shall analyze the data reported under Subsection (f) and collected from the form under Subsection (d) and shall submit a report not later than December 1 of each even-numbered year to the governor and the Legislative Budget Board that summarizes the data analysis.

(g-1) [Expired pursuant to Acts 2009, 81st Leg., ch. 726 (S.B. 271), § 1, January 1, 2013.]

(h) The department shall use the data analyzed under Subsection (g) to:

(1) evaluate the needs of assessed informal caregivers;

(2) measure the effectiveness of certain informal caregiver support interventions;

(3) improve existing programs;

(4) develop new services as necessary to sustain informal caregivers; and

(5) determine the effect of informal caregiving on employment and employers.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 726 (S.B. 271), § 1, effective June 29, 2009; am. Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 27.001(36), effective September 1, 2011, (renumbered from Sec. 161.076); am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.452, effective April 2, 2015.

Sec. 161.080. [Expires September 1, 2027] Contracts for Services for Individuals with Developmental Disabilities.

(a) A person that provides services to individuals with developmental disabilities may contract with a state supported living center for the center to provide services and resources to support those individuals.

(b) Notwithstanding any other law, a state supported living center may provide nonresidential services to support an individual if

the provision of services to the individual does not interfere with the provision of services to a resident of the state supported living center.

(c) The executive commissioner by rule shall establish:

(1) a list of services a state supported living center may provide under a contract described by Subsection (a); and

(2) procedures for the commission to create, maintain, and amend as needed a schedule of fees that a state supported living center may charge for a service included in the list described by Subdivision (1).

(d) In creating a schedule of fees, the commission shall:

(1) use the reimbursement rate for the applicable service under the Medicaid program; or

(2) modify that rate with a written justification for the modification and after holding a public hearing on the issue of the modification.

(e) Notwithstanding Subsection (c), a state supported living center, based on negotiations between the center and a managed care organization, as defined by Section 533.001, Government Code, may charge a fee for a service other than the fee provided by the schedule of fees created by the commission under this section.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 904 (H.B. 748), § 1, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 27.001(37), effective September 1, 2011 (renumbered from Sec. 161.077); am. Acts 2013, 83rd Leg., ch. 320 (H.B. 1760), § 1, effective June 14, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.453, effective April 2, 2015; am. Acts 2017, 85th Leg., ch. 300 (S.B. 547), § 1, effective May 29, 2017.

Sec. 161.081. [Expires September 1, 2027] Long-Term Care Medicaid Waiver Programs: Streamlining and Uniformity.

(a) In this section, "Section 1915(c) waiver program" has the meaning assigned by Section 531.001, Government Code.

(b) The department, in consultation with the commission, shall streamline the administration of and delivery of services through Section 1915(c) waiver programs. In implementing this subsection, the department, subject to Subsection (c), may consider implementing the following streamlining initiatives:

(1) reducing the number of forms used in administering the programs;

(2) revising program provider manuals and training curricula;

(3) consolidating service authorization systems;

(4) eliminating any physician signature requirements the department considers unnecessary;

(5) standardizing individual service plan processes across the programs;

(6) if feasible:

(A) concurrently conducting program certification and billing audit and review processes and other related audit and review processes;

(B) streamlining other billing and auditing requirements;

(C) eliminating duplicative responsibilities with respect to the coordination and oversight of individual care plans for persons receiving waiver services; and

(D) streamlining cost reports and other cost reporting processes; and

(7) any other initiatives that will increase efficiencies in the programs.

(c) The department shall ensure that actions taken under Subsection (b) do not conflict with any requirements of the commission under Section 531.0218, Government Code.

(d) The department and the commission shall jointly explore the development of uniform licensing and contracting standards that would:

(1) apply to all contracts for the delivery of Section 1915(c) waiver program services;

(2) promote competition among providers of those program services; and

(3) integrate with other department and commission efforts to streamline and unify the administration and delivery of the program services, including those required by this section or Section 531.0218, Government Code.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 759 (S.B. 705), § 1, effective June 19, 2009; am. Acts 2011, 82nd Leg., 1st C.S., ch. 7 (S.B. 7), § 1.06, effective September 28, 2011; am. Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 27.001(38), effective September 1, 2011, (renumbered from Sec. 161.077.

Sec. 161.082. [Expires September 1, 2027] Long-Term Care Medicaid Waiver Programs: Utilization Review.

(a) In this section, "Section 1915(c) waiver program" has the meaning assigned by Section 531.001, Government Code.

(b) The department shall perform a utilization review of services in all Section 1915(c) waiver programs. The utilization review must include, at a minimum, reviewing program recipients' levels of care and any plans of care for those recipients that exceed service level thresholds established in the applicable waiver program guidelines.

HISTORY: Enacted by Acts 2011, 82nd Leg., 1st C.S., ch. 7 (S.B. 7), § 1.06(b), effective September 28, 2011.

Sec. 161.083. [Expires September 1, 2027] Corrections Medication Aides.

(a) The executive commissioner shall establish:

(1) minimum standards and procedures for the approval of corrections medication aide training programs,

including curricula, developed under Section 501.1485, Government Code;

(2) minimum requirements for the issuance, denial, renewal, suspension, and revocation of a permit to a corrections medication aide, including the payment of an application or renewal fee in an amount necessary to cover the costs incurred by the department in administering this section; and

(3) the acts and practices that are within and outside the scope of a permit issued under this section.

(b) Not later than the 90th day after receipt of an application for approval of a corrections medication aide training program developed under Section 501.1485, Government Code, the department shall:

(1) approve the program, if the program meets the minimum standards and procedures established under Subsection (a)(1); or

(2) provide notice to the Texas Department of Criminal Justice that the program is not approved and include in the notice a description of the actions that are required for the program to be approved.

(c) The department shall issue a permit to or renew the permit of an applicant who meets the minimum requirements established under Subsection (a)(2). The department shall coordinate with the Texas Department of Criminal Justice in the performance of the department's duties and functions under this subsection.

HISTORY: Enacted by Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), § 65.06, effective September 28, 2011.

Sec. 161.084. [Expires September 1, 2027] Medicaid Service Options Public Education Initiative.

(a) In this section, "Section 1915(c) waiver program" has the meaning assigned by Section 531.001, Government Code.

(b) The department, in cooperation with the commission, shall educate the public on:

(1) the availability of home and community-based services under a Medicaid state plan program, including the primary home care and community attendant services programs, and under a Section 1915(c) waiver program; and

(2) the various service delivery options available under the Medicaid program, including the consumer direction models available to recipients under Section 531.051, Government Code.

(c) The department may coordinate the activities under this section with any other related activity.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1057 (S.B. 222), § 3, effective September 1, 2011.

Sec. 161.085. [Expires September 1, 2027] Interest List Reporting.

The department shall post on the department's Internet website historical data, categorized by state fiscal year, on the percentages of individuals who elect to receive services under a program for which the department maintains an interest list once their names reach the top of the list.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1057 (S.B. 222), § 3, effective September 1, 2011.

Sec. 161.086. [Expires September 1, 2027] Electronic Visit Verification System.

If it is cost-effective, the department shall implement an electronic visit verification system under appropriate programs administered by the department under the Medicaid program that allows providers to electronically verify and document basic information relating to the delivery of services, including:

- (1) the provider's name;
- (2) the recipient's name;
- (3) the date and time the provider begins and ends the delivery of services; and
- (4) the location of service delivery.

HISTORY: Enacted by Acts 2011, 82nd Leg., 1st C.S., ch. 7 (S.B. 7), § 1.07, effective September 28, 2011.

Sec. 161.087. [Expires September 1, 2027] Gifts and Grants.

(a) The department may accept gifts and grants of money, personal property, and real property from public or private sources to expand and improve the human services programs for the aging and persons with disabilities available in this state.

(b) The department shall use a gift or grant of money, personal property, or real property 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.

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

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 320 (H.B. 1760), § 2, effective June 14, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.454, effective April 2, 2015.

Sec. 161.088. Trauma-Informed Care Training.

(a) The department shall develop or adopt trauma-informed care training for employees who work directly with individuals with intellectual and developmental disabilities in state supported living centers and intermediate care facilities. The executive commissioner by rule shall require new employees to complete the training before working with individuals with intellectual and developmental disabilities.

(b) The training required under this section may be provided through an Internet website.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 796 (H.B. 2789), § 1, effective September 1, 2015; Enacted by Acts 2015, 84th Leg., ch. 826 (H.B. 4001), § 15, effective September 1, 2015; Enacted by Acts 2015, 84th Leg., ch. 1200 (S.B. 1385), § 1, effective September 1, 2015.

Sec. 161.089. Administrative Penalties. [Expires September 1, 2027]

(a) This section applies to the following waiver programs established under Section 1915(c), Social Security Act (42 U.S.C. Section 1396n(c)), and administered by the commission to serve persons with an intellectual or developmental disability:

- (1) the home and community-based services (HCS) waiver program; and

(2) the Texas home living (TxHmL) waiver program.

(b) The commission may assess and collect an administrative penalty against a provider who participates in a program to which this section applies for a violation of a law or rule relating to the program. If the commission assesses an administrative penalty against a provider for a violation of a law or rule, the commission may not impose a payment hold against or otherwise withhold contract payments from the provider for the same violation of a law or rule.

(c) After consulting with appropriate stakeholders, the executive commissioner shall develop and adopt rules regarding the imposition of administrative penalties under this section. The rules must:

(1) specify the types of violations that warrant imposition of an administrative penalty;

(2) establish a schedule of progressive administrative penalties in accordance with the relative type, frequency, and seriousness of a violation;

(3) prescribe reasonable amounts to be imposed for each violation giving rise to an administrative penalty, subject to Subdivision (4);

(4) authorize the imposition of an administrative penalty in an amount not to exceed \$5,000 for each violation;

(5) provide that a provider commits a separate violation each day the provider continues to violate the law or rule;

(6) ensure standard and consistent application of administrative penalties throughout the state; and

(7) provide for an administrative appeals process to adjudicate claims and appeals relating to the imposition of an administrative penalty under this section that is in accordance with Chapter 2001, Government Code.

(d) In determining the types of violations that warrant imposition of an administrative penalty and in establishing the schedule of progressive administrative penalties and penalty amounts under Subsection (c), the executive commissioner must consider:

(1) the seriousness of a violation, including:

(A) the nature, circumstances, extent, and gravity of the violation; and

(B) the hazard to the health or safety of recipients resulting from the violation;

(2) the provider's history of previous violations;

(3) whether the provider:

(A) had prior knowledge of the violation, including whether the provider identified the violation through the provider's internal quality assurance process; and

(B) made any efforts to mitigate or correct the identified violation;

(4) the penalty amount necessary to deter future violations; and

(5) any other matter justice may require.

(e) Except as provided by Subsection (f), the executive commissioner by rule shall provide to a provider who has implemented a plan of correction a reasonable period of time following the date the commission sends notice to the provider of the violation to correct the violation before the commission may assess an administrative penalty. The period may not be less than 45 days.

(f) The commission may assess an administrative penalty without providing a reasonable period of time to a provider to correct the violation if the violation:

(1) represents a pattern of violation that results in actual harm;

(2) is widespread in scope and results in actual harm;

(3) is widespread in scope and constitutes a potential for actual harm;

(4) constitutes an immediate threat to the health or safety of a recipient;

(5) substantially limits the provider's ability to provide care; or

(6) is a violation in which a provider:

(A) wilfully interferes with the work of a representative of the commission or the enforcement of a law relating to a program to which this section applies;

(B) fails to pay a penalty assessed by the commission under this section not later than the 10th day after the date the assessment of the penalty becomes final, subject to Section 161.0891; or

(C) fails to submit a plan of correction not later than the 10th day after the date the provider receives a statement of the violation.

(g) Notwithstanding any other provision of this section, an administrative penalty ceases to be incurred on the date a violation is corrected.

(h) In this section:

(1) "Actual harm" means a negative outcome that compromises a recipient's physical, mental, or emotional well-being.

(2) "Immediate threat to the health or safety of a recipient" means a situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of a recipient.

(3) "Pattern of violation" means repeated, but not pervasive, failures of a provider to comply with a law relating to a program to which this section applies that:

(A) result in a violation; and

(B) are found throughout the services provided by the provider or that affect or involve the same recipients or provider employees or volunteers.

(4) "Recipient" means a person served by a program to which this section applies.

(5) "Widespread in scope" means a violation of a law relating to a program to which this section applies that:

(A) is pervasive throughout the services provided by the provider; or

(B) represents a systemic failure by the provider that affects or has the potential to affect a large portion of or all of the recipients.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 826 (H.B. 4001), § 15, effective September 1, 2015; Enacted by Acts 2015, 84th Leg., ch. 1200 (S.B. 1385), § 1, effective September 1, 2015; Renumbered from Tex. Hum. Res. Code § 161.088 by Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 24.001(29), effective September 1, 2017; Renumbered from Tex. Hum. Res. Code § 161.088 by Acts 2017, 85th Leg., ch. 487 (H.B. 2590), § 1, effective September 1, 2017.

Sec. 161.0891. [Expires September 1, 2023] Amelioration Process.

(a) In lieu of demanding payment of an administrative penalty assessed under Section 161.089, the commission may, in accordance with this section, allow the provider subject to the penalty to use, under the supervision of the commission, any portion of the amount of the penalty to

ameliorate the violation or to improve services in the waiver program in which the provider participates.

(b) The commission shall offer amelioration to a provider under this section not later than the 10th day after the date the provider receives from the commission a final notification of the assessment of an administrative penalty that is sent to the provider after an informal dispute resolution process but before an administrative hearing.

(c) A provider to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the provider receives the offer of amelioration from the commission. In submitting the plan, the provider must agree to waive the provider's right to an administrative hearing if the commission approves the plan.

(d) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the waiver program in which the provider participates that will improve services to or quality of care for recipients under the program;

(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 for recipients under the waiver program;

(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.

(e) The commission may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of a law or rule relating to the waiver program in which the provider participates.

(f) The commission shall approve or deny an amelioration plan not later than the 45th day after the date the commission receives the plan. On approval of a provider's plan, the commission or the State Office of Administrative Hearings, as appropriate, shall deny a pending request for a hearing submitted by the provider.

(g) The commission may not offer amelioration to a provider:

(1) more than three times in a two-year period;

(2) more than one time in a two-year period for the same or similar violation; or

(3) for a violation that resulted in hazard to the health or safety of a recipient, including serious harm or death, or that substantially limits the provider's ability to provide care.

(h) This section expires September 1, 2023.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 487 (H.B. 2590), § 2, effective September 1, 2017.

Sec. 161.0892. Informal Dispute Resolution.

(a) The executive commissioner 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 of the commission against a provider participating in a waiver program described by Section 161.089. The informal dispute resolution process must require:

(1) a provider participating in a waiver program described by Section 161.089 to request informal dispute resolution not later than the 10th calendar day after the date of notification by the commission of the violation of a law or rule relating to the program; and

(2) the commission to complete the process not later than the 30th calendar day after the date of receipt of a request from a provider for informal dispute resolution.

(b) As part of the informal dispute resolution process established under this section, the commission shall contract with an appropriate disinterested person to adjudicate disputes between a provider participating in a waiver program described by Section 161.089 and the commission concerning a statement of violations prepared by the commission. Section 2009.053, Government Code, does not apply to the selection of an appropriate disinterested person under this subsection. The person with whom the commission contracts shall adjudicate all disputes described by this subsection.

(c) The executive commissioner shall adopt rules to adjudicate claims in contested cases.

(d) The commission may not delegate its responsibility to administer the informal dispute resolution process established by this section to another state agency.

HISTORY: Enacted by Acts 2017, 85th Leg., ch. 487 (H.B. 2590), § 2, effective September 1, 2017.

Subchapter D-1

Administration of Medication for Clients with Intellectual and Developmental Disabilities [Expires September 1, 2027]

Sec. 161.091. [Expires September 1, 2027] Definitions.

In this subchapter:

(1) "Administration of medication" means:

(A) removing a unit or dose of medication from a previously dispensed, properly labeled container;

(B) verifying the medication with the medication order;

(C) giving the proper medication in the proper dosage to the proper client at the proper time by the proper administration route; and

(D) recording the time of administration and dosage administered.

(2) "Client" means a person with an intellectual and developmental disability who is receiving services from a facility or program listed in Section 161.092.

(3) "Unlicensed person" means an individual not licensed as a health care provider who provides services at or for a facility or program listed in Section 161.092, including:

(A) a nurse aide, orderly, assistant, attendant, technician, home health aide, medication aide with a permit issued by a state agency, or other individual who provides personal health care-related services;

(B) a person who is monetarily compensated to perform certain health-related tasks and functions in a complementary or assistive role to a licensed nurse who provides direct client care or performs common nursing functions;

(C) a person who performs those tasks and functions as a volunteer but does not qualify as a friend providing gratuitous nursing care of the sick under Section 301.004, Occupations Code; or

(D) a person who is a professional nursing student who provides care for monetary compensation and not as part of a formal educational program.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 677 (S.B. 1857), § 1, effective June 17, 2011.

Sec. 161.092. [Expires September 1, 2027] Applicability.

This subchapter applies only to administration of medication provided to certain persons with intellectual and developmental disabilities who are served:

(1) in a small facility with not less than one and not more than eight beds that is licensed or certified under Chapter 252, Health and Safety Code;

(2) in a medium facility with not less than 9 and not more than 13 beds that is licensed or certified under Chapter 252, Health and Safety Code; or

(3) by one of the following Section 1915(c) waiver programs administered by the department to serve persons with intellectual and developmental disabilities:

(A) the Home and Community-Based Services waiver program; or

(B) the Texas Home Living waiver program.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 677 (S.B. 1857), § 1, effective June 17, 2011; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.455, effective April 2, 2015.

Sec. 161.093. [Expires September 1, 2027] Administration of Medication.

(a) Notwithstanding other law, an unlicensed person may provide administration of medication to a client without the requirement that a registered nurse delegate or oversee each administration if:

(1) the medication is:

(A) an oral medication;

(B) a topical medication; or

(C) a metered dose inhaler;

(2) the medication is administered to the client for a stable or predictable condition;

(3) the client has been personally assessed by a registered nurse initially and in response to significant changes in the client's health status, and the registered nurse has determined that the client's health status permits the administration of medication by an unlicensed person; and

(4) the unlicensed person has been:

(A) trained by a registered nurse or licensed vocational nurse under the direction of a registered nurse regarding proper administration of medication; or

(B) determined to be competent by a registered nurse or licensed vocational nurse under the direction of a registered nurse regarding proper administration of medication, including through a demonstration of proper technique by the unlicensed person.

(b) The administration of medication other than the medications described by Subsection (a)(1) is subject to the rules of the Texas Board of Nursing regarding the delega-

tion of nursing tasks to unlicensed persons in independent living environments such as the facilities and programs listed in Section 161.092.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 677 (S.B. 1857), § 1, effective June 17, 2011.

Sec. 161.094. [Expires September 1, 2027] Department Duties.

(a) The department shall ensure that:

(1) administration of medication by an unlicensed person under this subchapter is reviewed at least annually and after any significant change in a client's condition by a registered nurse or a licensed vocational nurse under the supervision of a registered nurse; and

(2) a facility or program listed in Section 161.092 has policies to ensure that the determination of whether an unlicensed person may provide administration of medication to a client under Section 161.093 may be made only by a registered nurse.

(b) The department shall verify that:

(1) each client is assessed to identify the client's needs and abilities regarding the client's medications;

(2) the administration of medication by an unlicensed person to a client is performed only by an unlicensed person who is authorized to perform that administration under Section 161.093; and

(3) the administration of medication to each client is performed in such a manner as to ensure the greatest degree of independence, including the use of an adaptive or assistive aid, device, or strategy as allowed under program rules.

(c) The department shall enforce this subchapter.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 677 (S.B. 1857), § 1, effective June 17, 2011.

Sec. 161.095. [Expires September 1, 2027] Liability.

(a) A registered nurse performing a client assessment required under Section 161.093, or a registered nurse or licensed vocational nurse training an unlicensed person or determining whether an unlicensed person is competent to perform administration of medication under Section 161.093, may be held accountable or civilly liable only in relation to whether the nurse properly:

(1) performed the assessment;

(2) conducted the training; and

(3) determined whether the unlicensed person is competent to provide administration of medication to clients.

(b) The Texas Board of Nursing may take disciplinary action against a registered nurse or licensed vocational nurse under this subchapter only in relation to whether:

(1) the registered nurse properly performed the client assessment required by Section 161.093;

(2) the registered nurse or licensed vocational nurse properly trained the unlicensed person in the administration of medication; and

(3) the registered nurse or licensed vocational nurse properly determined whether an unlicensed person is competent to provide administration of medication to clients.

(c) A registered nurse or licensed vocational nurse may not be held accountable or civilly liable for the acts or

omissions of an unlicensed person performing administration of medication.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 677 (S.B. 1857), § 1, effective June 17, 2011.

Sec. 161.096. [Expires September 1, 2027] Conflict with Other Law.

This subchapter controls to the extent of a conflict with other law.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 677 (S.B. 1857), § 1, effective June 17, 2011.

Subchapter E

Guardianship Services
[Expires September 1, 2027]

Sec. 161.101. [Expires September 1, 2027] Guardianship Services.

(a) The department shall file an application under Section 1101.001 or 1251.003, Estates Code, to be appointed guardian of the person or estate, or both, of a minor referred to the department under Section 48.209(a)(1) for guardianship services if the department determines:

(1) that the minor, because of a mental or physical condition, will be substantially unable to provide for the minor's own food, clothing, or shelter, to care for the minor's own physical health, or to manage the individual's own financial affairs when the minor becomes an adult; and

(2) that a less restrictive alternative to guardianship is not available for the minor.

(b) The department shall conduct a thorough assessment of the conditions and circumstances of an elderly person or person with a disability referred to the department under Section 48.209(a)(2) for guardianship services to determine whether a guardianship is appropriate for the individual or whether a less restrictive alternative is available for the individual. In determining whether a guardianship is appropriate, the department may consider the resources and funds available to meet the needs of the elderly person or person with a disability. The executive commissioner shall adopt rules for the administration of this subsection.

(c) Subject to Subsection (c-1), if after conducting an assessment of an elderly person or person with a disability under Subsection (b) the department determines that:

(1) guardianship is appropriate for the elderly person or person with a disability, the department shall:

(A) file an application under Section 1101.001 or 1251.003, Estates Code, to be appointed guardian of the person or estate, or both, of the individual; or

(B) if the department determines that an alternative person or program described by Section 161.102 is available to serve as guardian, refer the individual to that person or program as provided by that section; or

(2) a less restrictive alternative to guardianship is available for the elderly person or person with a disability, the department shall pursue the less restrictive

alternative instead of taking an action described by Subdivision (1).

(c-1) Not later than the 70th day after the date the department receives a referral under Section 48.209(a)(2) for guardianship services, the department shall make the determination required by Subsection (c) and, if the department determines that guardianship is appropriate and that the department should serve as guardian, file the application to be appointed guardian under Section 1101.001 or 1251.003, Estates Code. If the department determines that an alternative person or program described by Section 161.102 is available to serve as guardian, the department shall refer the elderly person or person with a disability to that alternative person or program in a manner that would allow the alternative person or program sufficient time to file, not later than the 70th day after the date the department received the referral, an application to be appointed guardian.

(c-2) With the approval of the Department of Family and Protective Services, the department may extend, by not more than 30 days, a period prescribed by Subsection (c-1) if the extension is:

(1) made in good faith, including any extension for a person or program described by Section 161.102 that intends to file an application to be appointed guardian; and

(2) in the best interest of the elderly person or person with a disability.

(d) The department may not be required by a court to file an application for guardianship, and except as provided by Subsection (f) and Section 1203.108(b), Estates Code, the department may not be appointed as permanent guardian for any individual unless the department files an application to serve or otherwise agrees to serve as the individual's guardian of the person or estate, or both.

(e) A guardianship created for an individual as a result of an application for guardianship filed under Subsection (a) may not take effect before the individual's 18th birthday.

(f) On appointment by a probate court under Section 1203.108(b), Estates Code, the department shall serve as the successor guardian of the person or estate, or both, of a ward described by that section.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 3.04, effective September 1, 2005; am. Acts 2009, 81st Leg., ch. 726 (S.B. 271), § 2, effective June 19, 2009; am. Acts 2009, 81st Leg., ch. 935 (H.B. 3112), § 1, effective September 1, 2009; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.456, effective April 2, 2015.

Sec. 161.102. [Expires September 1, 2027] Referral to Guardianship Program, Court, or Other Person.

(a) If the department becomes aware of a guardianship program, private professional guardian, or other person willing and able to provide the guardianship services that would otherwise be provided by the department to an individual referred to the department by the Department of Family and Protective Services under Section 48.209, the department shall refer the individual to that person or program for guardianship services.

(b) If requested by a court, the department shall notify the court of any referral made to the department by the Department of Family and Protective Services relating to

any individual who is domiciled or found in a county where the requesting court has probate jurisdiction and who may be appropriate for a court-initiated guardianship proceeding under Chapter 1102, Estates Code. In making a referral under this subsection and if requested by the court, the department shall, to the extent allowed by law, provide the court with all relevant information in the department's records relating to the individual. The court, as part of this process, may not require the department to:

(1) perform the duties of a guardian ad litem or court investigator as prescribed by Chapter 1102, Estates Code; or

(2) gather additional information not contained in the department's records.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 3.04, effective September 1, 2005; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.457, effective April 2, 2015.

Sec. 161.103. [Expires September 1, 2027] Contract for Guardianship Services.

If appropriate, the department may contract with a political subdivision of this state, a guardianship program as defined by Section 1002.016, Estates Code, a private agency, or another state agency for the provision of guardianship services under this section.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 3.04, effective September 1, 2005; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), 4.458, effective April 2, 2015.

Sec. 161.104. [Expires September 1, 2027] Quality Assurance Program.

The department shall develop and implement a quality assurance program for guardianship services provided by or on behalf of the department. If the department enters into a contract with a political subdivision, guardianship program, private agency, or other state agency under Section 161.103, the department shall establish a monitoring system as part of the quality assurance program to ensure the quality of guardianship services for which the department contracts under that section.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 3.04, effective September 1, 2005.

Sec. 161.105. [Expires September 1, 2027] Oath.

A representative of the department shall take the oath required by the Estates Code on behalf of the department if the department is appointed guardian of the person or estate, or both, of a ward under Title 3 of that code.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 3.04, effective September 1, 2005; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.459, effective April 2, 2015.

Sec. 161.106. [Expires September 1, 2027] Guardianship Powers and Duties.

In serving as guardian of the person or estate, or both, for an incapacitated individual, the department has all the powers granted and duties prescribed to a guardian under Title 3, Estates Code, or any other applicable law.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 3.04, effective September 1, 2005; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.460, effective April 2, 2015.

Sec. 161.107. [Expires September 1, 2027] Exemption from Guardianship Bonds, Certain Costs, Fees, and Expenses.

(a) The department or a political subdivision of this state or state agency with which the department contracts under Section 161.103 is not required to post a bond or pay any cost or fee associated with a bond otherwise required by the Estates Code in guardianship matters.

(b) The department is not required to pay any cost or fee otherwise imposed for court proceedings or other services, including:

- (1) a filing fee or fee for issuance of service of process imposed by Section 51.317, 51.318(b)(2), or 51.319, Government Code;
- (2) a court reporter service fee imposed by Section 51.601, Government Code;
- (3) a judicial fund fee imposed by Section 51.702, Government Code;
- (4) a judge's fee imposed by Section 25.0008 or 25.0029, Government Code;
- (5) a cost or security fee imposed by Section 53.051, 53.052, 1053.051, or 1053.052, Estates Code; or
- (6) a fee imposed by a county officer under Section 118.011 or 118.052, Local Government Code.

(c) The department may not be required to pay fees associated with the appointment of a guardian ad litem or attorney ad litem.

(d) A political subdivision of this state or state agency with which the department contracts under Section 161.103 is not required to pay any cost or fee otherwise required by the Estates Code.

(e) If the department is appointed guardian, the department is not liable for funding services provided to the department's ward, including long-term care or burial expenses.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 3.04, effective September 1, 2005; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.461, effective April 2, 2015.

Sec. 161.108. [Expires September 1, 2027] Successor Guardian.

The department shall review each of the department's pending guardianship cases at least annually to determine whether a more suitable person, including a guardianship program or private professional guardian, is willing and able to serve as successor guardian for a ward of the department. If the department becomes aware of any person's willingness and ability to serve as successor guardian, the department shall notify the court in which the guardianship is pending as required by Section 1203.151, Estates Code.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 3.04, effective September 1, 2005; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.462, effective April 2, 2015.

Sec. 161.109. [Expires September 1, 2027] Access to Records or Documents.

(a) The department shall have access to all of the records and documents concerning an individual who is referred for guardianship services or to whom guardianship services are provided under this subchapter that are

necessary to the performance of the department's duties under this subchapter, including:

- (1) client-identifying information; and
- (2) medical, psychological, educational, financial, and residential information.

(b) The department is exempt from the payment of a fee otherwise required or authorized by law to obtain a financial or medical record, including a mental health record, from any source if the request for a record is related to an assessment for guardianship services conducted by the department or the provision of guardianship services by the department.

(c) If the department cannot obtain access to a record or document that is necessary to properly perform a duty under this subchapter, the department may petition the probate court or the statutory or constitutional court having probate jurisdiction for access to the record or document.

(d) The court with probate jurisdiction shall, on good cause shown, order the person or entity who denied access to a record or document to allow the department to have access to the record or document under the terms and conditions prescribed by the court.

(e) A person or entity is entitled to notice of and a hearing on the department's petition for access as described by this section.

(f) Access to, or disclosure of, a confidential record or other confidential information under this section does not constitute a waiver of confidentiality for other purposes or as to other persons.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 3.04, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 599 (S.B. 220), § 3, effective September 1, 2011.

Sec. 161.110. [Expires September 1, 2027] Legal Representation of Department.

(a) Except as provided by Subsection (b), (c), or (f), the prosecuting attorney representing the state in criminal cases in the county court shall represent the department in any proceeding under this subchapter unless the representation would be a conflict of interest.

(b) If the attorney representing the state in criminal cases in the county court is unable to represent the department in an action under this subchapter because of a conflict of interest, the attorney general shall represent the department in the action.

(c) If the attorney general is unable to represent the department in an action under this subchapter, the attorney general shall deputize an attorney who has contracted with the department under Subsection (d) or an attorney employed by the department under Subsection (e) to represent the department in the action.

(d) Subject to the approval of the attorney general, the department may contract with a private attorney to represent the department in an action under this subchapter.

(e) The department may employ attorneys to represent the department in an action under this subchapter.

(f) In a county having a population of more than 2.8 million, the prosecuting attorney representing the state in civil cases in the county court shall represent the department in any proceeding under this subchapter unless the representation would be a conflict of interest. If such

attorney is unable to represent the department in an action under this subchapter because of a conflict of interest, the attorney general shall represent the department in the action.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 3.04, effective September 1, 2005.

Sec. 161.111. [Expires September 1, 2027] Confidentiality and Disclosure of Information.

(a) All files, reports, records, communications, or working papers used or developed by the department in the performance of duties relating to the assessment for or the provision of guardianship services to an individual referred for guardianship services under this subchapter are confidential and not subject to disclosure under Chapter 552, Government Code.

(b) Confidential information may be disclosed only for a purpose consistent with this subchapter, as required by other state or federal law, or as necessary to enable the department to exercise its powers and duties as guardian of the person or estate, or both, of an individual.

(c) A court may order disclosure of confidential information only if:

(1) a motion is filed with the court requesting release of the information and a hearing on that request;

(2) notice of the hearing is served on the department and each interested party; and

(3) the court determines after the hearing and an in camera review of the information that disclosure is essential to the administration of justice and will not endanger the life or safety of any individual who:

(A) is being assessed by the department for guardianship services under this subchapter;

(B) is a ward of the department; or

(C) provides services to a ward of the department.

(d) The executive commissioner shall establish a policy and procedures for the exchange of information with another state agency or governmental entity, including a court, with a local guardianship program to which an individual is referred for services, or with any other entity who provides services to a ward of the department, as necessary for the department, state agency, governmental entity, or other entity to properly execute its respective duties and responsibilities to provide guardianship services or other needed services to meet the needs of the ward under this subchapter or other law. An exchange of information under this subsection does not constitute a release for purposes of waiving the confidentiality of the information exchanged.

(e) To the extent consistent with department policies and procedures, the department on request may release confidential information in the record of an individual who is assessed by the department or is a former ward of the department to:

(1) the individual;

(2) the individual's guardian; or

(3) an executor or administrator of the individual's estate.

(f) Before releasing confidential information under Subsection (e), the department shall edit the information to protect the identity of the reporter to the Department of Family and Protective Services and to protect any other

individual whose life or safety may be endangered by the release. A release of information under Subsection (e) does not constitute a release for purposes of waiving the confidentiality of the information released.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 3.04, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 599 (S.B. 220), § 4, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.463, effective April 2, 2015.

Sec. 161.112. [Expires September 1, 2027] Indemnification for Legal Expenses.

If a present or former employee of the department who was involved in activities related to the provision of guardianship services under this subchapter is criminally prosecuted for conduct related to the person's misfeasance or nonfeasance in the course and scope of the person's employment and is found not guilty after a trial or appeal or if the complaint or indictment is dismissed without a plea of guilty or nolo contendere being entered, the department may indemnify the person or the person's estate for the reasonable attorney's fees incurred in defense of the prosecution up to a maximum of \$10,000.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 3.04, effective September 1, 2005.

Sec. 161.113. [Expires September 1, 2027] Immunity.

(a) In this section, "volunteer" means a person who:

(1) renders services for or on behalf of the department under the supervision of a department employee; and

(2) does not receive compensation that exceeds the authorized expenses the person incurs in performing those services.

(b) A department employee or an authorized volunteer who performs a department duty or responsibility under this subchapter is immune from civil or criminal liability for any act or omission that relates to the duty or responsibility if the person acted in good faith and within the scope of the person's authority.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 3.04, effective September 1, 2005.

Sec. 161.114. [Expires September 1, 2027] Use of Volunteers.

(a) In this section, "volunteer" has the meaning assigned by Section 161.113.

(b) The department shall encourage the involvement of volunteers in guardianships in which the department serves as guardian of the person or estate, or both. To encourage that involvement, the department shall identify issues and tasks with which a volunteer could assist the department in a guardianship, subject to Subsection (c).

(c) A volunteer may provide life enrichment activities, companionship, transportation services, and other services to or for the ward in a guardianship, except the volunteer may not provide services that would require the volunteer to be certified under Section 155.102, Government Code.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 599 (S.B. 220), § 5, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 42 (S.B. 966), § 2.27, effective September 1, 2014.

Secs. 161.115 to 161.150. [Reserved for expansion].*Subchapter F**Lifespan Respite Services Program
[Expires September 1, 2027]***Sec. 161.151. [Expires September 1, 2027] Definitions.**

In this subchapter:

(1) "Chronic serious health condition" means a health condition that:

(A) requires periodic treatment by a health care provider, including a nurse as authorized by Chapter 301, Occupations Code, or a physician assistant as authorized by Chapter 204, Occupations Code; and

(B) continues over an extended period, including recurring episodes of a single underlying health condition such as asthma, diabetes, epilepsy, or multiple sclerosis.

(2) "Respite services" means support services, including in-home services or day activity and health services, that are provided for the purpose of temporarily giving relief to a primary caregiver who provides care to an individual with a chronic serious health condition or disability.

(3) "Respite services coordinator" means a community-based organization or local governmental entity with which the department enters into a contract to facilitate access to respite services under Section 161.154.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 330 (H.B. 802), § 1, effective September 1, 2009; am. Acts 2015, 84th Leg., ch. 1231 (S.B. 1999), § 18, effective June 19, 2015.

Sec. 161.152. [Expires September 1, 2027] Lifespan Respite Services Program.

The department shall implement the lifespan respite services program to promote the provision of respite services through contracts with eligible community-based organizations or local governmental entities.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 330 (H.B. 802), § 1, effective September 1, 2009.

Sec. 161.153. [Expires September 1, 2027] Eligibility.

(a) A person is eligible to participate in the program if the person:

(1) is the primary caregiver for a person who:

(A) is related to the caregiver within the second degree of consanguinity or affinity;

(B) has a chronic serious health condition or disability;

(C) requires assistance with one or more activities of daily living; and

(D) is not eligible for or not able to participate in any other existing program that provides respite services; and

(2) meets criteria specified in rules adopted by the executive commissioner.

(b) The executive commissioner may not specify criteria that limit a person's eligibility based on the type of chronic

serious health condition or disability of the person receiving care.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 330 (H.B. 802), § 1, effective September 1, 2009.

Sec. 161.154. [Expires September 1, 2027] Respite Services Contracts.

(a) The department shall contract with at least three eligible community-based organizations or local governmental entities selected by the department to:

(1) provide respite services; and

(2) facilitate access to respite services.

(b) The department may award a contract under this section only after issuing a request for proposals for the contract.

(c) A community-based organization or local governmental entity is eligible to contract under this section only if the organization or entity has experience in and an existing procedure for:

(1) coordinating support services for multiple groups of persons who need support services, including persons with a physical or intellectual disability and elderly persons;

(2) connecting caregivers with respite services providers;

(3) maintaining and providing information regarding available respite services; and

(4) conducting public awareness activities regarding available respite services.

(d) The department shall include in each contract with a respite services coordinator provisions requiring the coordinator to:

(1) subject to the availability of money, provide vouchers for respite services to caregivers participating in the program who are not eligible for respite services provided through other programs; and

(2) connect caregivers participating in the program with available respite services.

(e) The department shall provide each community-based organization or local governmental entity with which the department contracts under this subchapter with:

(1) technical assistance; and

(2) policy and program development support.

(f) The department shall monitor a contractor's performance under a contract entered into under this subchapter using clearly defined and measurable performance objectives.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 330 (H.B. 802), § 1, effective September 1, 2009.

Sec. 161.155. [Expires September 1, 2027] Respite Services Coordinator Functions.

A respite services coordinator under contract with the department shall:

(1) maintain information regarding respite services providers;

(2) build partnerships with respite services providers; and

(3) implement public awareness activities regarding respite services.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 330 (H.B. 802), § 1, effective September 1, 2009.

Sec. 161.156. [Expires September 1, 2027] Rules.

The executive commissioner shall adopt rules necessary to implement this subchapter.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 330 (H.B. 802), § 1, effective September 1, 2009.

Secs. 161.157 to 161.250. [Reserved for expansion].

Subchapter G

*Legislative Committee On Aging
[Expires September 1, 2027]*

Sec. 161.251. [Expires September 1, 2027] Definitions.

In this subchapter:

(1) "Committee" means the Legislative Committee on Aging.

(2) "Health and human services agency" has the meaning assigned by Section 531.001, Government Code.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 318 (H.B. 610), § 1, effective September 1, 2009.

Sec. 161.252. [Expires September 1, 2027] Legislative Committee on Aging Established.

The Legislative Committee on Aging is established to:

(1) study issues relating to the aging population of Texas, including issues related to the health care, income, transportation, housing, education, and employment needs of that population; and

(2) make recommendations to address those issues.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 318 (H.B. 610), § 1, effective September 1, 2009.

Sec. 161.253. [Expires September 1, 2027] Composition of Committee; Presiding Officer.

(a) The committee is composed of:

(1) two members of the senate appointed by the lieutenant governor;

(2) two members of the house of representatives appointed by the speaker of the house of representatives; and

(3) two public members appointed by the governor.

(b) A member of the committee serves at the pleasure of the appointing official.

(c) The lieutenant governor and the speaker of the house of representatives shall appoint the presiding officer of the committee on an alternating basis. The presiding officer shall serve a two-year term expiring February 1 of each odd-numbered year.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 318 (H.B. 610), § 1, effective September 1, 2009.

Sec. 161.254. [Expires September 1, 2027] Committee Powers and Duties.

(a) The committee shall:

(1) meet at least biannually at the call of the presiding officer;

(2) conduct a continuing study of issues relating to the aging population, including issues that are affected by the demographic and geographic diversity of the aging population in this state;

(3) analyze the availability of, and unmet needs for, state and local services for the aging population; and

(4) request reports and other information relating to the aging population as necessary from the executive commissioner, the department, other health and human services agencies, the attorney general, and any other state agency.

(b) The executive commissioner, the department, other health and human services agencies, the attorney general, and any other applicable state agency shall fully cooperate with the committee in performing the committee's duties under this subchapter.

(c) The committee may issue process, in accordance with Section 301.024, Government Code, to compel attendance of witnesses and the production of books, records, documents, and instruments required by the committee.

(d) The committee shall use the existing staff resources of the senate and the house of representatives to assist the committee in performing its duties under this section.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 318 (H.B. 610), § 1, effective September 1, 2009.

Sec. 161.255. [Expires September 1, 2027] Report.

(a) The committee shall report to the standing committees of the senate and the house of representatives having jurisdiction of issues related to the needs of the aging population not later than November 15 of each even-numbered year.

(b) The report must include:

(1) a summary of the hearings and studies conducted by the committee during the preceding year;

(2) a statement of findings based on the hearings and studies conducted by the committee; and

(3) recommendations, if any, for legislation.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 318 (H.B. 610), § 1, effective September 1, 2009.

Secs. 161.256 to 161.300. [Reserved for expansion].

Subchapter H

*Certain Initiatives Relating to Aging
[Expires September 1, 2027]*

Sec. 161.301. [Expires September 1, 2027] Definition.

In this subchapter, "fund" means the Chris Kyker Endowment for Seniors Fund established under this subchapter.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 318 (H.B. 610), § 1, effective September 1, 2009.

Sec. 161.302. [Expires September 1, 2027] Contract to Provide Outreach and Input Relating to Aging Population.

(a) The executive commissioner may contract with an entity to:

(1) conduct local forums throughout this state to solicit input on and discuss policies regarding aging-related issues, including issues that are affected by the demographic and geographic diversity of the aging population in this state;

(2) provide analysis, education, and research services with respect to aging-related issues; and

(3) identify problems encountered by the aging population in this state and develop and recommend to the executive commissioner and the legislature solutions to those problems.

(b) If a contract entered into under this section includes a provision that allows a person performing duties under the contract on behalf of the entity to receive a per diem for days spent performing those duties and to be reimbursed for travel expenses incurred in performing those duties, the per diem and reimbursement for travel expenses incurred must be paid at the same rate set in the General Appropriations Act for state employees.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 318 (H.B. 610), § 1, effective September 1, 2009.

Sec. 161.303. [Expires September 1, 2027] Establishment and Administration of Fund.

(a) The Chris Kyker Endowment for Seniors Fund is a special fund outside the state treasury held by the comptroller.

(b) The comptroller shall deposit in the fund:

(1) money appropriated to the fund;

(2) grants, gifts, and donations from any other public or private source; and

(3) income and interest, including depository interest, as provided by Subsection (f).

(c) The comptroller shall administer and manage the assets of the fund in accordance with this section and the rules adopted by the executive commissioner under Section 161.304(c). In managing the assets of the fund, the comptroller may acquire, exchange, sell, supervise, manage, or retain, through procedures and subject to restrictions the comptroller considers appropriate, any kind of investment that a prudent investor, exercising reasonable care, skill, and caution, would acquire or retain in light of the purposes, terms, distribution requirements, and other circumstances of the fund then prevailing, taking into consideration the investment of all the assets of the fund rather than a single investment.

(d) The expenses of managing fund investments shall be paid from the fund.

(e) On request, the comptroller shall fully disclose all details concerning the investments of the fund.

(f) Interest earned on the fund shall be credited to the fund.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 318 (H.B. 610), § 1, effective September 1, 2009.

Sec. 161.304. [Expires September 1, 2027] Use of Fund.

(a) The following may be used only to fund a contract entered into under Section 161.302:

(1) contributions to the fund described by Section 161.303(b)(2); and

(2) income and interest earned on money in the fund described by Section 161.303(b)(3).

(b) Except as provided by Subsection (a), money in the fund may not be used for any purpose.

(c) The executive commissioner may adopt rules regarding distribution of money in the fund in accordance with this section.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 318 (H.B. 610), § 1, effective September 1, 2009.

Subchapter I

*Fall Prevention Awareness
[Expires September 1, 2027]*

Sec. 161.351. [Expires September 1, 2027] Legislative Findings.

The legislature finds that:

(1) in 2008, 1.14 million older Texans were expected to sustain falls;

(2) the risk factors associated with falling increase with age;

(3) approximately 20 to 30 percent of older adults who fall suffer moderate to severe injuries, resulting in almost 80,000 hospitalizations annually and constituting 40 percent of all nursing facility placements;

(4) according to the Centers for Disease Control and Prevention of the United States Public Health Service, the total direct cost of all fall-related injuries in 2000 for people 65 years of age and older exceeded \$19 billion nationwide; and

(5) research shows that a well-designed fall prevention program that includes risk factor assessments, a focused physical activity program, and improvement of the home environment can reduce the incidence of falls by 30 to 50 percent.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 95 (H.B. 703), § 1, effective May 23, 2009; am. Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 27.001(39), effective September 1, 2011, (renumbered from Sec. 161.151); am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 4.464, effective April 2, 2015.

Sec. 161.352. [Expires September 1, 2027] Fall Prevention Awareness Week.

The week that begins on the first Sunday of each year that falls after the date of the autumnal equinox is declared "Fall Prevention Awareness Week."

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 95 (H.B. 703), § 1, effective May 23, 2009; am. Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 27.001(39), effective September 1, 2011, (renumbered from Sec. 161.152).

Sec. 161.353. [Expires September 1, 2027] Fall Prevention Policy.

The department may develop recommendations to:

(1) raise public awareness about fall prevention;

(2) educate older adults and individuals who provide care to older adults about best practices to reduce the incidence and risk of falls among older adults;

(3) encourage state and local governments and the private sector to promote policies and programs that

help reduce the incidence and risk of falls among older adults;

(4) encourage area agencies on aging to include fall prevention education in their services;

(5) develop a system for reporting falls to improve available information on falls; and

(6) incorporate fall prevention guidelines into state and local planning documents that affect housing, transportation, parks, recreational facilities, and other public facilities.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 95 (H.B. 703), § 1, effective May 23, 2009; am. Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 27.001(39), effective September 1, 2011, (renumbered from Sec. 161.153).

TITLE 12

JUVENILE JUSTICE SERVICES AND FACILITIES

SUBTITLE B

PROBATION SERVICES; PROBATION FACILITIES

CHAPTER 221

Assistance to Counties and Regulation of Juvenile Boards and Juvenile Probation Departments

Subchapter A. General Provisions

Section 221.003.	Rules Concerning Mental Health Screening Instrument and Risk and Needs Assessment Instrument; Admissibility of Statements.
221.0061.	Trauma-Informed Care Training.

Subchapter B. Contract Standards and Monitoring

221.056.	Residential Treatment Facility.
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Subchapter A

General Provisions

Sec. 221.003. Rules Concerning Mental Health Screening Instrument and Risk and Needs Assessment Instrument; Admissibility of Statements.

(a) The board by rule shall require juvenile probation departments to use the mental health screening instrument selected by the department for the initial screening of children under the jurisdiction of probation departments who have been formally referred to a juvenile probation department. The department shall give priority to training in the use of this instrument in any preservice or in-service training that the department provides for probation officers. The rules adopted by the board under this section must allow a clinical assessment by a licensed mental health professional to be substituted for the mental health screening instrument selected by the department if the clinical assessment is performed in the time prescribed by the department.

(b) A juvenile probation department must, before the disposition of a child’s case and using a validated risk and needs assessment instrument or process provided or approved by the department, complete a risk and needs assessment for each child under the jurisdiction of the juvenile probation department.

(b-1) Any risk and needs assessment instrument or process that is provided or approved by the department for a juvenile probation department to use under Subsection (b) must be a validated instrument or process.

(c) Any statement made by a child and any mental health data obtained from the child during the administration of the mental health screening instrument or the initial risk and needs assessment instruments under this section is not admissible against the child at any adjudication hearing. The person administering the mental health screening instrument or initial risk and needs assessment instruments shall inform the child that any statement made by the child and any mental health data obtained from the child during the administration of the instrument is not admissible against the child at any adjudication hearing.

(d) A juvenile probation department shall report data from the use of the screening instrument or clinical assessment under Subsection (a) and the risk and needs assessment under Subsection (b) to the department in the format and at the time prescribed by the department.

(e) The board shall adopt rules to ensure that youth in the juvenile justice system are assessed using the screening instrument or clinical assessment under Subsection (a) and the risk and needs assessment under Subsection (b).

HISTORY: am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.004, effective September 1, 2011 (renumbered from Sec. 141.042(e) to (j)); am. Acts 2013, 83rd Leg., ch. 1299 (H.B. 2862), § 36, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 962 (S.B. 1630), § 5, effective September 1, 2015.

Sec. 221.0061. Trauma-Informed Care Training.

The department shall provide trauma-informed care training during the preservice training the department provides for juvenile probation officers, juvenile supervision officers, juvenile correctional officers, and juvenile parole officers. The training must provide knowledge, in line with best practices, of how to interact with juveniles who have experienced traumatic events.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1351 (S.B. 1356), § 3, effective September 1, 2013.

Subchapter B

Contract Standards and Monitoring

Sec. 221.056. Residential Treatment Facility.

(a) The department may contract with a local mental health and mental retardation authority for the establishment of a residential treatment facility for juveniles with mental illness or emotional injury who, as a condition of juvenile probation, are ordered by a court to reside at the facility and receive education services at the facility. The department may work in cooperation with the local mental health and mental retardation authority to provide

mental health residential treatment services for juveniles residing at a facility established under this section.

(b) A residential treatment facility established under this section must provide juveniles receiving treatment at the facility:

(1) a short-term program of mental health stabilization that does not exceed 150 days in duration; and

(2) all educational opportunities and services, including special education instruction and related services, that a school district is required under state or federal law to provide for students residing in the district through a charter school operated in accordance with and subject to Subchapter D, Chapter 12, Education Code.

(c) If a residential treatment facility established under this section is unable to provide adequate and sufficient educational opportunities and services to juveniles residing at the facility, the facility may not continue to operate beyond the end of the school year in which the opportunities or services provided by the facility are determined to be inadequate or insufficient.

(d) Notwithstanding any other law and in addition to the number of charters allowed under Subchapter D, Chapter 12, Education Code, the commissioner of education shall grant a charter on the application of a residential treatment facility established under this section for a school chartered for the purposes of this section.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1187 (H.B. 3689), § 3.012, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.004, effective September 1, 2011 (renumbered from Sec. 141.059); am. Acts 2013, 83rd Leg., ch. 1140 (S.B. 2), § 45, effective September 1, 2013.

SUBTITLE C

SECURE FACILITIES

Chapter	
244.	Care and Treatment of Children
245.	Release

CHAPTER 244

Care and Treatment of Children

Subchapter A. General Care and Treatment of Children

Section	
244.001.	Initial Examination.
244.002.	Reexamination.
244.003.	Records of Examinations and Treatment.
244.004.	Failure to Examine or Reexamine.
244.005.	Determination of Treatment.
244.006.	Type of Treatment Permitted.
244.009.	Health Care Delivery System.
244.0106.	Rules Regarding Services for Foster Children.
244.011.	Children with Mental Illness or Mental Retardation.
244.012.	Examination Before Discharge.
244.0125.	Transfer of Certain Children Serving Determinate Sentences for Mental Health Services.
244.013.	Notice of Pending Discharge.
244.014.	Referral of Determinate Sentence Offenders for Transfer.
244.015.	Evaluation of Certain Children Serving Determinate Sentences.

Subchapter B. Provision of Certain Information; Rights of Parents

Section	
244.052.	Rights of Parents.

Subchapter A

General Care and Treatment of Children

Sec. 244.001. Initial Examination.

(a) The department shall examine and make a study of each child committed to it within three business days after commitment. The study shall be made according to rules established by the board and shall include:

(1) long-term and specialized treatment planning for the child; and

(2) consideration of the child's:

(A) medical history;

(B) substance abuse;

(C) treatment history;

(D) psychiatric history;

(E) sex offender history; and

(F) violent offense history.

(a-1) As soon as possible, the department shall develop a written treatment plan for the child which outlines the specialized treatment needs identified by the study described by Subsection (a), makes recommendations for meeting the child's specialized treatment needs, and makes an individually tailored statement of treatment goals, objectives, and timelines.

(b) For a child for whom a minimum length of stay is established under Section 243.002 of one year or longer, the initial examination must include a comprehensive psychiatric evaluation unless the department had received the results of a comprehensive evaluation of the child conducted not more than 90 days before the date of the initial examination.

(c) The department shall administer comprehensive psychological assessments to a child as part of the child's initial examination, including assessments designed to identify whether a child is in need of a psychiatric evaluation. If the results of a child's psychological assessments indicate that the child is in need of a psychiatric evaluation, the department shall as soon as practicable conduct a psychiatric evaluation of the child.

(d) The board shall establish rules for the periodic review and reevaluation of the written treatment plan as described by Subsection (a-1).

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1983, 68th Leg., ch. 44 (S.B. 427), art. 2, § 34, effective April 26, 1983; am. Acts 1987, 70th Leg., ch. 1099 (S.B. 33), § 31, effective September 1, 1987; am. Acts 1993, 73rd Leg., ch. 1048 (H.B. 1731), § 4, effective September 1, 1993; am. Acts 2007, 80th Leg., ch. 263 (S.B. 103), § 46, effective June 8, 2007; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.071).

Sec. 244.002. Reexamination.

(a) The department shall periodically reexamine each child under its control, except those on release under supervision or in foster homes, for the purpose of determining whether a rehabilitation plan made by the depart-

ment concerning the child should be modified or continued.

(b) The reexamination must include a study of all current circumstances of a child's personal and family situation and an evaluation of the progress made by the child since the child's last examination.

(c) The reexamination of a child may be made as frequently as the department considers necessary, but shall be made at intervals not exceeding six months.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1983, 68th Leg., ch. 44 (S.B. 428), art. 2, § 36, effective April 26, 1983; am. Acts 2007, 80th Leg., ch. 263 (S.B. 103), § 46, effective June 8, 2007; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.072).

Sec. 244.003. Records of Examinations and Treatment.

(a) The department shall keep written records of all examinations and conclusions based on them and of all orders concerning the disposition or treatment of each child subject to its control.

(b) Except as provided by Section 243.051(c), these records and all other information concerning a child, including personally identifiable information, are not public and are available only according to the provisions of Section 58.005, Family Code, Section 244.051 of this code, and Chapter 67, Code of Criminal Procedure.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1983, 68th Leg., ch. 44 (S.B. 429), art. 2, § 37, effective April 26, 1983; am. Acts 1983, 68th Leg., ch. 769 (H.B. 475), § 2, effective June 19, 1983; am. Acts 1987, 70th Leg., ch. 1099 (S.B. 33), § 32, effective September 1, 1987; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 57, effective January 1, 1996; am. Acts 1997, 75th Leg., ch. 1086 (H.B. 1550), § 32, effective September 1, 1997; am. Acts 2003, 78th Leg., ch. 283 (H.B. 2319), § 46, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1294 (H.B. 2895), § 1, effective September 1, 2003; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.073); am. Acts 2017, 85th Leg., ch. 1058 (H.B. 2931), § 4.14, effective January 1, 2019.

Sec. 244.004. Failure to Examine or Reexamine.

(a) Failure of the department to examine or reexamine a child as required by this subchapter does not entitle the child to be discharged from the control of the department, but the child may petition the committing court for discharge.

(b) After due notice to the department, the committing court shall discharge the child from the control of the department unless the department satisfies the court that further control is necessary.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1983, 68th Leg., ch. 44 (S.B. 430), art. 2, § 38, effective April 26, 1983; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.074).

Sec. 244.005. Determination of Treatment.

When a child has been committed to the department, the department may:

(1) permit the child liberty under supervision and on conditions the department believes conducive to acceptable behavior;

(2) order the child's confinement under conditions the department believes best designed for the child's welfare and the interests of the public;

(3) order reconfinement or renewed release as often as conditions indicate to be desirable;

(4) revoke or modify any order of the department affecting a child, except an order of final discharge, as often as conditions indicate; or

(5) discharge the child from control when the department is satisfied that discharge will best serve the child's welfare and the protection of the public.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1983, 68th Leg., ch. 44 (S.B. 431), art. 2, § 39, effective April 26, 1983; am. Acts 1987, 70th Leg., ch. 1099 (S.B. 33), § 33, effective September 1, 1987; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.075).

Sec. 244.006. Type of Treatment Permitted.

(a) As a means of correcting the socially harmful tendencies of a child committed to the department, the department may:

(1) require the child to participate in moral, academic, vocational, physical, and correctional training and activities;

(2) require the modes of life and conduct that seem best adapted to fit the child for return to full liberty without danger to the public;

(3) provide any medical or psychiatric treatment that is necessary; and

(4) place physically fit children in parks-maintenance camps, forestry camps, or ranches owned by the state or the United States and require the performance of suitable conservation and maintenance work.

(b) The dominant purpose of placing children in camps is to benefit and rehabilitate the children rather than to make the camps self-sustaining. Children placed in camps may not be exploited.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1983, 68th Leg., ch. 44 (S.B. 432), art. 2, § 40, effective April 26, 1983; am. Acts 1987, 70th Leg., ch. 1099 (S.B. 33), § 34, effective September 1, 1987; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.076).

Sec. 244.009. Health Care Delivery System.

(a) In providing medical care, behavioral health care, or rehabilitation services, the department shall integrate the provision of those services in an integrated comprehensive delivery system.

(b) The delivery system may be used to deliver any medical, behavioral health, or rehabilitation services provided to a child in the custody of the department, including:

(1) health care;

(2) dental care;

(3) behavioral health care;

(4) substance abuse treatment;

(5) nutrition;

(6) programming;

(7) case management; and

(8) general rehabilitation services, including educational, spiritual, daily living, recreational, and security services.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011.

Sec. 244.0106. Rules Regarding Services for Foster Children.

(a) The board and the executive commissioner of the Health and Human Services Commission shall jointly adopt rules to ensure that a child for whom the Department of Family and Protective Services has been appointed managing conservator receives appropriate services while the child is committed to the department or released under supervision by the department.

(b) The rules adopted under this section must require the department and the Department of Family and Protective Services to cooperate in providing appropriate services to a child for whom the Department of Family and Protective Services has been appointed managing conservator while the child is committed to the department or released under supervision by the department, including:

- (1) medical care, as defined by Section 266.001, Family Code;
- (2) mental health treatment and counseling;
- (3) education, including special education;
- (4) case management;
- (5) drug and alcohol abuse assessment or treatment;
- (6) sex offender treatment; and
- (7) trauma informed care.

(c) The rules adopted under this section must require:

(1) the Department of Family and Protective Services to:

(A) provide the department with access to relevant health and education information regarding a child; and

(B) require a child's caseworker to visit the child in person at least once each month while the child is committed to the department;

(2) the department to:

(A) provide the Department of Family and Protective Services with relevant health and education information regarding a child;

(B) permit communication, including in person, by telephone, and by mail, between a child committed to the department and:

(i) the Department of Family and Protective Services; and

(ii) the attorney ad litem, the guardian ad litem, and the volunteer advocate for the child; and

(C) provide the Department of Family and Protective Services and any attorney ad litem or guardian ad litem for the child with timely notice of the following events relating to the child:

(i) a meeting designed to develop or revise the individual case plan for the child;

(ii) in accordance with any participation protocols to which the Department of Family and Protective Services and the department agree, a medical appointment at which a person authorized to consent to medical care must participate as required by Section 266.004(i), Family Code;

(iii) an education meeting, including admission, review, or dismissal meetings for a child receiving special education;

(iv) a grievance or disciplinary hearing for the child;

(v) a report of abuse or neglect of the child; and

(vi) a significant change in medical condition of the child, as defined by Section 264.018, Family Code; and

(3) the Department of Family and Protective Services and the department to participate in transition planning for the child through release from detention, release under supervision, and discharge.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 108 (H.B. 1629), § 15, effective May 23, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.0767); am. Acts 2015, 84th Leg., ch. 722 (H.B. 1309), § 4, effective June 17, 2015; am. Acts 2015, 84th Leg., ch. 944 (S.B. 206), § 85, effective September 1, 2015.

Sec. 244.011. Children with Mental Illness or Mental Retardation.

(a) The department shall accept a child committed to the department who is mentally ill or mentally retarded.

(b) Unless a child is committed to the department under a determinate sentence under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, the department shall discharge a child who is mentally ill or mentally retarded from its custody if:

(1) the child has completed the minimum length of stay for the child's committing offense; and

(2) the department determines that the child is unable to progress in the department's rehabilitation programs because of the child's mental illness or mental retardation.

(c) If a child who is discharged from the department under Subsection (b) as a result of mental illness is not receiving court-ordered mental health services, the child's discharge is effective on the earlier of:

(1) the date the court enters an order regarding an application for mental health services filed under Section 244.012(b); or

(2) the 30th day after the date the application is filed.

(d) If a child who is discharged from the department under Subsection (b) as a result of mental illness is receiving court-ordered mental health services, the child's discharge from the department is effective immediately. If the child is receiving mental health services outside the child's home county, the department shall notify the mental health authority located in that county of the discharge not later than the 30th day after the date that the child's discharge is effective.

(e) If a child who is discharged from the department under Subsection (b) as a result of mental retardation is not receiving mental retardation services, the child's discharge is effective on the earlier of:

(1) the date the court enters an order regarding an application for mental retardation services filed under Section 244.012(b); or

(2) the 30th day after the date that the application is filed.

(f) If a child who is discharged from the department under Subsection (b) as a result of mental retardation is receiving mental retardation services, the child's discharge from the department is effective immediately.

(g) If a child who is mentally ill or mentally retarded is discharged from the department under Subsection (b), the child is eligible to receive continuity of care services from the Texas Correctional Office on Offenders with Medical or Mental Impairments under Chapter 614, Health and Safety Code.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1983, 68th Leg., ch. 44 (S.B. 433), art. 2, § 41, effective April 26, 1983; am. Acts 1987, 70th Leg., ch. 1099 (S.B. 33), § 36, effective September 1, 1987; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 60, effective May 31, 1995; am. Acts 1997, 75th Leg., ch. 1086 (H.B. 1550), § 33, effective June 19, 1997; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 32, effective September 1, 1999; am. Acts 2009, 81st Leg., ch. 1038 (H.B. 4451), § 1, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.077).

Sec. 244.012. Examination Before Discharge.

(a) The department shall establish a system that identifies children in the department's custody who are mentally ill or mentally retarded.

(b) Before a child who is identified as mentally ill is discharged from the department's custody under Section 244.011(b), a department psychiatrist shall examine the child. The department shall refer a child requiring outpatient psychiatric treatment to the appropriate mental health authority. For a child requiring inpatient psychiatric treatment, the department shall file a sworn application for court-ordered mental health services, as provided in Subchapter C, Chapter 574, Health and Safety Code, if:

- (1) the child is not receiving court-ordered mental health services; and
- (2) the psychiatrist who examined the child determines that the child is mentally ill and the child meets at least one of the criteria listed in Section 574.034 or 574.0345, Health and Safety Code.

(c) Before a child who is identified as mentally retarded under Chapter 593, Health and Safety Code, is discharged from the department's custody under Section 244.011(b), the department shall refer the child for mental retardation services if the child is not receiving mental retardation services.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1086 (H.B. 1550), § 34, effective June 19, 1997; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 33, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 1294 (H.B. 2895), § 3, effective September 1, 2003; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.0772); am. Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 25, effective September 1, 2019.

Sec. 244.0125. Transfer of Certain Children Serving Determinate Sentences for Mental Health Services.

(a) The department may petition the juvenile court that entered the order of commitment for a child for the initiation of mental health commitment proceedings if the child is committed to the department under a determinate sentence under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code.

(b) A petition made by the department shall be treated as a motion under Section 55.11, Family Code, and the

juvenile court shall proceed in accordance with Subchapter B, Chapter 55, Family Code.

(c) The department shall cooperate with the juvenile court in any proceeding under this section.

(d) The juvenile court shall credit to the term of the child's commitment to the department any time the child is committed to an inpatient mental health facility.

(e) A child committed to an inpatient mental health facility as a result of a petition filed under this section may not be released from the facility on a pass or furlough.

(f) If the term of an order committing a child to an inpatient mental health facility is scheduled to expire before the end of the child's sentence and another order committing the child to an inpatient mental health facility is not scheduled to be entered, the inpatient mental health facility shall notify the juvenile court that entered the order of commitment committing the child to the department. The juvenile court may transfer the child to the custody of the department, transfer the child to the Texas Department of Criminal Justice, or release the child under supervision, as appropriate.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1038 (H.B. 4451), § 2, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.0773).

Sec. 244.013. Notice of Pending Discharge.

As soon as practicable after the department makes a decision to discharge a child or authorize the child's absence from the department's custody, the department shall give notice of the department's decision to the juvenile court and the office of the prosecuting attorney of the county in which the adjudication that the child engaged in delinquent conduct was made.

HISTORY: Enacted by Acts 1981, 67th Leg., ch. 523 (H.B. 345), § 2, effective August 31, 1981; am. Acts 1983, 68th Leg., ch. 44 (S.B. 434), art. 2, § 42, effective April 26, 1983; am. Acts 1987, 70th Leg., ch. 1099 (S.B. 33), § 38, effective September 1, 1987; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.078).

Sec. 244.014. Referral of Determinate Sentence Offenders for Transfer.

(a) After a child sentenced to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, becomes 16 years of age but before the child becomes 19 years of age, the department may refer the child to the juvenile court that entered the order of commitment for approval of the child's transfer to the Texas Department of Criminal Justice for confinement if:

- (1) the child has not completed the sentence; and
- (2) the child's conduct, regardless of whether the child was released under supervision under Section 245.051, indicates that the welfare of the community requires the transfer.

(b) The department shall cooperate with the court on any proceeding on the transfer of the child.

(c) If a child is released under supervision, a juvenile court adjudication that the child engaged in delinquent conduct constituting a felony offense, a criminal court conviction of the child for a felony offense, or a determination under Section 244.005(4) revoking the child's re-

lease under supervision is required before referral of the child to the juvenile court under Subsection (a).

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 385 (H.B. 682), § 17, effective September 1, 1987; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 61, effective January 1, 1996; am. Acts 2005, 79th Leg., ch. 949 (H.B. 1575), § 40, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 263 (S.B. 103), § 50, effective June 8, 2007; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.079); am. Acts 2013, 83rd Leg., ch. 1299 (H.B. 2862), § 39, effective September 1, 2013.

Sec. 244.015. Evaluation of Certain Children Serving Determinate Sentences.

(a) When a child who is sentenced to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, becomes 18 years of age, the department shall evaluate whether the child is in need of additional services that can be completed in the six-month period after the child's 18th birthday to prepare the child for release from the custody of the department or transfer to the Texas Department of Criminal Justice.

(b) This section does not apply to a child who is released from the custody of the department or who is transferred to the Texas Department of Criminal Justice before the child's 18th birthday.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 263 (S.B. 103), § 51, effective June 8, 2007; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.0791).

Subchapter B

Provision of Certain Information; Rights of Parents

Sec. 244.052. Rights of Parents.

(a) The department, in consultation with advocacy and support groups such as those described in Section 242.056(a), shall develop a parent's bill of rights for distribution to the parent or guardian of a child who is under 18 years of age and committed to the department. The parent's bill of rights must include:

- (1) a description of the department's grievance policies and procedures, including contact information for the office of inspector general and the office of the independent ombudsman established under Chapter 261;
- (2) a list of possible incidents that require parental notification;
- (3) policies concerning visits and telephone conversations with a child committed to the department;
- (4) a description of department caseworker responsibilities;
- (5) a statement that the department caseworker assigned to a child may assist the child's parent or guardian in obtaining information and services from the department and other resources concerning:

(A) counseling, including substance abuse and mental health counseling;

(B) assistance programs, including financial and travel assistance programs for visiting a child committed to the department;

(C) workforce preparedness programs;

(D) parenting programs; and

(E) department seminars; and

(6) information concerning the indeterminate sentencing structure at the department, an explanation of reasons that a child's commitment at the department could be extended, and an explanation of the review process under Sections 245.101 and 245.104 for a child committed to the department without a determinate sentence.

(b) Not later than 48 hours after the time a child is admitted to a department facility, the department shall mail to the child's parent or guardian at the last known address of the parent or guardian:

(1) the parent's bill of rights; and

(2) the contact information of the department caseworker assigned to the child.

(c) The department shall on a quarterly basis provide to the parent, guardian, or designated advocate of a child who is in the custody of the department a report concerning the progress of the child at the department, including:

(1) the academic and behavioral progress of the child; and

(2) the results of any reexamination of the child conducted under Section 244.002.

(d) The department shall ensure that written information provided to a parent or guardian regarding the rights of a child in the custody of the department or the rights of a child's parent or guardian, including the parent's bill of rights, is clear and easy to understand.

(e) The department shall ensure that if the Department of Family and Protective Services has been appointed managing conservator of a child, the Department of Family and Protective Services is given the same rights as the child's parent under the parent's bill of rights developed under this section.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011.

CHAPTER 245

Release

Subchapter B. Authority to Release; Resumption of Care

Section 245.0535.	Comprehensive Reentry and Reintegration Plan for Children; Study and Report.
245.054.	Information Provided to Court Before Release.

Subchapter D. Termination of Control

245.152.	Determinate Sentence Parole.
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Subchapter B

Authority to Release; Resumption of Care

Sec. 245.0535. Comprehensive Reentry and Reintegration Plan for Children; Study and Report.

(a) The department shall develop a comprehensive plan for each child committed to the custody of the department to reduce recidivism and ensure the successful reentry and reintegration of the child into the community following the child's release under supervision or final dis-

charge, as applicable, from the department. The plan for a child must be designed to ensure that the child receives an extensive continuity of care in services from the time the child is committed to the department to the time of the child's final discharge from the department. The plan for a child must include, as applicable:

- (1) housing assistance;
- (2) a step-down program, such as placement in a halfway house;
- (3) family counseling;
- (4) academic and vocational mentoring;
- (5) trauma counseling for a child who is a victim of abuse while in the custody of the department; and
- (6) other specialized treatment services appropriate for the child.

(b) The comprehensive reentry and reintegration plan developed under this section must provide for:

- (1) an assessment of each child committed to the department to determine which skills the child needs to develop to be successful in the community following release under supervision or final discharge;
- (2) programs that address the assessed needs of each child;
- (3) a comprehensive network of transition programs to address the needs of children released under supervision or finally discharged from the department;
- (4) the identification of providers of existing local programs and transitional services with whom the department may contract under this section to implement the reentry and reintegration plan; and
- (5) subject to Subsection (c), the sharing of information between local coordinators, persons with whom the department contracts under this section, and other providers of services as necessary to adequately assess and address the needs of each child.

(c) A child's personal health information may be disclosed under Subsection (b)(5) only in the manner authorized by Section 244.051 or other state or federal law, provided that the disclosure does not violate the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191).

(d) The programs provided under Subsections (b)(2) and (3) must:

- (1) be implemented by highly skilled staff who are experienced in working with reentry and reintegration programs for children;
- (2) provide children with:
 - (A) individualized case management and a full continuum of care;
 - (B) life-skills training, including information about budgeting, money management, nutrition, and exercise;
 - (C) education and, if a child has a learning disability, special education;
 - (D) employment training;
 - (E) appropriate treatment programs, including substance abuse and mental health treatment programs; and
 - (F) parenting and relationship-building classes; and
- (3) be designed to build for children post-release and post-discharge support from the community into which

the child is released under supervision or finally discharged, including support from agencies and organizations within that community.

(e) The department may contract and coordinate with private vendors, units of local government, or other entities to implement the comprehensive reentry and reintegration plan developed under this section, including contracting to:

- (1) coordinate the supervision and services provided to children during the time children are in the custody of the department with any supervision or services provided children who have been released under supervision or finally discharged from the department;
- (2) provide children awaiting release under supervision or final discharge with documents that are necessary after release or discharge, including identification papers, medical prescriptions, job training certificates, and referrals to services; and
- (3) provide housing and structured programs, including programs for recovering substance abusers, through which children are provided services immediately following release under supervision or final discharge.

(f) To ensure accountability, any contract entered into under this section must contain specific performance measures that the department shall use to evaluate compliance with the terms of the contract.

(g) [Deleted by Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011.]

(h) The department shall conduct and coordinate research to determine whether the comprehensive reentry and reintegration plan developed under this section reduces recidivism rates.

(i) Not later than December 31 of each even-numbered year, the department shall deliver a report of the results of research conducted or coordinated under Subsection (h) to the lieutenant governor, the speaker of the house of representatives, and the standing committees of each house of the legislature with primary jurisdiction over juvenile justice and corrections.

(j) If a program or service in the child's comprehensive reentry and reintegration plan is not available at the time the child is to be released, the department shall find a suitable alternative program or service so that the child's release is not postponed.

(k) The department shall:

- (1) clearly explain the comprehensive reentry and reintegration plan and any conditions of supervision to a child who will be released on supervision; and
- (2) require each child committed to the department that is to be released on supervision to acknowledge and sign a document containing any conditions of supervision.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1187 (H.B. 3689), § 1.011, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.08131); am. Acts 2013, 83rd Leg., ch. 1033 (H.B. 2733), § 8, effective September 1, 2013.

Sec. 245.054. Information Provided to Court Before Release.

(a) In addition to providing the court with notice of release of a child under Section 245.051(b), as soon as

possible but not later than the 30th day before the date the department releases the child, the department shall provide the court that committed the child to the department:

- (1) a copy of the child's reentry and reintegration plan developed under Section 245.0535; and
- (2) a report concerning the progress the child has made while committed to the department.

(b) If, on release, the department places a child in a county other than the county served by the court that committed the child to the department, the department shall provide the information described by Subsection (a) to both the committing court and the juvenile court in the county where the child is placed after release.

(c) If, on release, a child's residence is located in another state, the department shall provide the information described by Subsection (a) to both the committing court and a juvenile court of the other state that has jurisdiction over the area in which the child's residence is located.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1187 (H.B. 3689), § 1.012, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.08141).

Subchapter D

Termination of Control

Sec. 245.152. Determinate Sentence Parole.

(a) Not later than the 90th day before the date the department transfers a person to the custody of the Texas Department of Criminal Justice for release on parole under Section 245.051(c) or 245.151(e), the department shall submit to the Texas Department of Criminal Justice all pertinent information relating to the person, including:

- (1) the juvenile court judgment;
- (2) the circumstances of the person's offense;
- (3) the person's previous social history and juvenile court records;
- (4) the person's physical and mental health record;
- (5) a record of the person's conduct, employment history, and attitude while committed to the department;
- (6) a record of the sentence time served by the person at the department and in a juvenile detention facility in connection with the conduct for which the person was adjudicated; and
- (7) any written comments or information provided by the department, local officials, family members of the person, victims of the offense, or the general public.

(b) The department shall provide instruction for parole officers of the Texas Department of Criminal Justice relating to juvenile programs at the department. The department and the Texas Department of Criminal Justice shall enter into a memorandum of understanding relating to the administration of this subsection.

(c) The Texas Department of Criminal Justice shall grant credit for sentence time served by a person at the department and in a juvenile detention facility, as recorded by the department under Subsection (a)(6), in computing the person's eligibility for parole and discharge from the Texas Department of Criminal Justice.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 12(12.20), effective September 1, 1997; am. Acts 2007, 80th Leg., ch. 263 (S.B. 103), § 54, effective June 8, 2007; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.115, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.0841).

LABOR CODE

TITLE 4 EMPLOYMENT SERVICES AND UNEMPLOYMENT

SUBTITLE B

TEXAS WORKFORCE COMMISSION; WORKFORCE DEVELOPMENT; EMPLOYMENT SERVICES

CHAPTER 302

Division of Workforce Development

Subchapter A

General Provisions

Section
302.00335. Texas Veterans Leadership Program.

Sec. 302.00335. Texas Veterans Leadership Program.

(a) The commission, in consultation with the Texas Veterans Commission, shall establish a Texas Veterans Leadership Program.

(b) The mission of the program is to serve as a resource and referral network connecting veterans with the resources and tools they need to lead productive lives and enjoy the full benefits of the society they have willingly served.

(c) The program shall collaborate with local workforce development boards to provide services to veterans under this section. The program may collaborate with other federal, state, county, municipal, and private agencies to provide services to veterans under this section.

(d) The program shall employ veterans to serve as veteran resource and referral specialists. A veteran resource and referral specialist shall:

- (1) seek out veterans in need of services;
- (2) serve as a resource and referral agent, directing veterans to resources tailored to veterans' needs;
- (3) make referrals and coordinate with other programs of the commission, the Texas Veterans Commission, and other federal, state, county, municipal, and private agencies that provide services for veterans relating to:
 - (A) employment;
 - (B) education and training;
 - (C) medical care;
 - (D) mental health and counseling; and

- (E) veterans benefits; and
- (4) coordinate the services of volunteer veterans familiar with the obstacles faced by veterans to assist in mentoring and serving veterans.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 741 (H.B. 696), § 1, effective June 10, 2019.

SUBTITLE C.

VOCATIONAL REHABILITATION AND CERTAIN OTHER SERVICES FOR PERSONS WITH DISABILITIES

CHAPTER 352.

Vocational Rehabilitation Services

Subchapter B.

General Powers and Duties

Section
352.060. Report Regarding Occupational Skills Training for Individuals with Intellectual and Developmental Disabilities. [Effective until September 2, 2021]

Sec. 352.060. Report Regarding Occupational Skills Training for Individuals with Intellectual and Developmental Disabilities. [Effective until September 2, 2021]

(a) The commission shall prepare a report that identifies:

- (1) potential funding sources for occupational skills training programs for individuals with intellectual and developmental disabilities; and
- (2) specific occupations in high-demand industries in this state for which a postsecondary certification, occupational license, or other workforce credential is required and that may be appropriate for individuals with intellectual and developmental disabilities.

(b) Not later than November 1, 2020, the commission shall:

- (1) publish the report in a prominent location on the commission's Internet website; and
 - (2) submit a copy of the report to each legislative standing committee with jurisdiction over workforce development or vocational rehabilitative services.
- (c) This section expires September 1, 2021.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 348 (S.B. 2038), § 1, effective September 1, 2019.

LOCAL GOVERNMENT CODE

**TITLE 11
PUBLIC SAFETY**

**SUBTITLE B
COUNTY PUBLIC SAFETY**

**CHAPTER 351
County Jails and Law Enforcement**

*Subchapter A
County Jail Facilities*

Section
351.014. Holding Insane Persons.

Sec. 351.014. Holding Insane Persons.

(a) A person suspected to be or adjudged insane may not be held in a county jail unless the person:

- (1) demonstrates homicidal tendencies; and
- (2) must be restrained from committing acts of violence against other persons.

(b) A person requiring restraint under this section may be held in a county jail for not more than 24 hours. The person shall be kept under observation at all times.

(c) At the end of the 24-hour period, the person shall be released or taken to a hospital or mental hospital.

(d) A person held under this section shall be kept in a special enclosure or room for that purpose. The special enclosure or room must have:

- (1) a clear floor area of 40 square feet or more;
- (2) a ceiling height above the floor of eight feet or more; and
- (3) a soft covering on the floor and walls, designed to protect a violent person from self-injury or destruction.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 149 (S.B. 896), § 1, effective September 1, 1987; am. Acts 1999, 76th Leg., ch. 952 (H.B. 2469), § 4, effective September 1, 1999.

OCCUPATIONS CODE

TITLE 3

HEALTH PROFESSIONS

SUBTITLE A

PROVISIONS APPLYING TO HEALTH PROFESSIONS GENERALLY

Chapter 101.	Health Professions Council
Chapter 113.	Mental Health Telemedicine and Telehealth Services

CHAPTER 101

Health Professions Council

Subchapter D

Reporting Requirements

Section 101.151.	Annual Report.
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Sec. 101.151. Annual Report.

(a) The council shall prepare an annual report that includes:

- (1) a statistical compilation of enforcement actions taken by a regulatory agency listed in Section 101.002;
- (2) recommendations for statutory changes to improve the regulation of the health care professions;
- (3) strategies to expand the health care workforce in this state, including:

(A) methods for reducing the time required to process license applications for health care professions;

(B) methods for increasing the number of health care practitioners providing mental and behavioral health care services; and

(C) any statutory and legislative appropriation recommendations the council determines are appropriate for expanding the health care workforce in this state, including recommendations for expanding the health care workforce in medically underserved areas; and

(4) other relevant information and recommendations determined necessary by the council.

(b) The council shall send the report to the governor, the lieutenant governor, the speaker of the house of representatives, the chairs of the standing committees of the senate and the house of representatives having primary jurisdiction over public health, and the chairs of the standing committees of the senate and the house of representatives having primary jurisdiction over state finance or appropriations not later than February 1 of each year.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 388 (H.B. 3155), § 1, effective September 1, 1999; am. Acts 2019, 86th Leg., ch. 644 (S.B. 1636), § 1, effective June 10, 2019.

CHAPTER 113.

Mental Health Telemedicine and Telehealth Services

Section 113.001.	Definitions.
113.002.	Patient Located Outside of State.

Sec. 113.001. Definitions.

The definitions provided by Section 111.001 apply to this chapter.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1328 (H.B. 4455), § 1, effective September 1, 2019.

Sec. 113.002. Patient Located Outside of State.

Notwithstanding any other law, a health professional may provide a mental health service that is within the scope of the professional's license, certification, or authorization through the use of a telemedicine medical service or a telehealth service to a patient who is located outside of this state, subject to any applicable regulation of the jurisdiction in which the patient is located.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 1328 (H.B. 4455), § 1, effective September 1, 2019.

TITLE 10

OCCUPATIONS RELATED TO LAW ENFORCEMENT AND SECURITY

CHAPTER 1701

Law Enforcement Officers [Expires September 1, 2021]

Subchapter F. Training Programs and Schools [Expires September 1, 2021]

Section 1701.253.	School Curriculum. [Effective until January 1, 2021; Expires September 1, 2021]
1701.253.	School Curriculum. [Effective January 1, 2021; Expires September 1, 2021]
1701.262.	[Expires September 1, 2021] Training for School District Peace Officers and School Resource Officers.
1701.264.	[Expires September 1, 2021] Acquired and Traumatic Brain Injuries Training.
1701.265.	[Expires September 1, 2021] Trauma Affected Veterans Training.

Subchapter G. License Requirements; Disqualifications and Exemptions [Expires September 1, 2021]

1701.310.	[Expires September 1, 2021] Appointment of County Jailer; Training Required.
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Subchapter H. Continuing Education and Yearly Weapons Proficiency [Expires September 1, 2021]

1701.352.	[Expires September 1, 2021] Continuing Education Programs.
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Subchapter I. Professional Training and Recognition
[Expires September 1, 2021]

Section 1701.402.	[Expires September 1, 2021] Proficiency Certificates.
1701.404.	[Expires September 1, 2021] Certification of Officers for Mental Health Assignments.

Subchapter F

Training Programs and Schools
[Expires September 1, 2021]

Sec. 1701.253. School Curriculum. [Effective until January 1, 2021; Expires September 1, 2021]

(a) The commission shall establish minimum curriculum requirements for preparatory and advanced courses and programs for schools subject to approval under Section 1701.251(c)(1).

(b) In establishing requirements under this section, the commission shall require courses and programs to provide training in:

(1) the recognition, investigation, and documentation of cases that involve child abuse and neglect, family violence, and sexual assault, including the use of best practices and trauma-informed response techniques to effectively recognize, investigate, and document those cases;

(2) issues concerning sex offender characteristics; and

(3) crime victims' rights under Chapter 56, Code of Criminal Procedure, and Chapter 57, Family Code, and the duty of law enforcement agencies to ensure that a victim is afforded those rights.

(b-1) The commission shall consult with the Sexual Assault Survivors' Task Force established under Section 772.0064, Government Code, regarding minimum curriculum requirements for training in the investigation and documentation of cases that involve sexual assault or other sex offenses.

(b-2) This subsection and Subsection (b-1) expire September 1, 2023.

(c) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on civil rights, racial sensitivity, and cultural diversity for persons licensed under this chapter.

(d) Training in documentation of cases required by Subsection (b) shall include instruction in:

(1) making a written account of the extent of injuries sustained by the victim of an alleged offense;

(2) recording by photograph or videotape the area in which an alleged offense occurred and the victim's injuries;

(3) recognizing and recording a victim's statement that may be admissible as evidence in a proceeding concerning the matter about which the statement was made; and

(4) recognizing and recording circumstances indicating that a victim may have been assaulted in the manner described by Section 22.01(b)(2)(B), Penal Code.

(e) As part of the minimum curriculum requirements relating to the vehicle and traffic laws of this state, the

commission shall require an education and training program on laws relating to the operation of motorcycles and to the wearing of protective headgear by motorcycle operators and passengers. In addition, the commission shall require education and training on motorcycle operator profiling awareness and sensitivity training.

(f) Training for officers and recruits in investigation of cases required by Subsection (b)(1)(B) shall include instruction in preventing dual arrest whenever possible and conducting a thorough investigation to determine which person is the predominant aggressor when allegations of family violence from two or more opposing persons are received arising from the same incident.

(g) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on asset forfeiture under Chapter 59, Code of Criminal Procedure, for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

(h) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on racial profiling for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

(i) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on identity theft under Section 32.51, Penal Code, for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

(j) As part of the minimum curriculum requirements, the commission shall require an officer to complete a 40-hour statewide education and training program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments. An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. An officer may not satisfy the requirements of this subsection or Section 1701.402(g) by taking an online course on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments.

(k) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program for officers licensed under this chapter that covers the laws of this state and of the United States pertaining to peace officers.

(l) As part of the minimum curriculum requirements, the commission shall require an officer licensed by the commission on or after January 1, 2016, to complete a

canine encounter training program established by the commission under Section 1701.261. An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter unless the officer completes the program as part of the officer's basic training course.

(m) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on procedures for interacting with drivers who are deaf or hard of hearing, as defined by Section 81.001, Human Resources Code, including identifying specialty license plates issued to individuals who are deaf or hard of hearing under Section 504.204, Transportation Code. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

(n) As part of the minimum curriculum requirements, the commission shall require an officer to complete a statewide education and training program on de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury.

(o) As part of the minimum curriculum requirements, the commission shall require an officer to complete the civilian interaction training program developed under Section 1701.268. An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter unless the officer completes the program as part of the officer's basic training course.

(p) As part of the minimum curriculum requirements, the commission shall require an officer to complete the basic education and training program on the trafficking of persons developed under Section 1701.258(a). An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter unless the officer completes the program as part of the officer's basic training course.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 388 (H.B. 3155), § 1, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 657 (H.B. 2585), § 4, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 897 (H.B. 3491), § 1, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 929 (S.B. 563), § 5, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 947 (S.B. 1074), § 4, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1034 (H.B. 1572), § 14, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), § 14.007, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1326 (S.B. 473), § 8, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 393 (S.B. 1473), § 3, effective September 1, 2005; am. Acts 2009, 81st Leg., ch. 1172 (H.B. 3389), § 12, effective September 1, 2009; am. Acts 2015, 84th Leg., ch. 31 (H.B. 593), § 1, effective September 1, 2015; am. Acts 2015, 84th Leg., ch. 642 (S.B. 1987), § 2, effective January 1, 2016; am. Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 24.001(31), effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 513 (S.B. 30), § 5, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 950 (S.B. 1849), § 4.02, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 76 (S.B. 971), § 1, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 107 (S.B. 586), § 1, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 411 (H.B. 1590), § 4, effective June 4, 2019; by Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 21.001(38), effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 715 (H.B. 292), § 1, effective September 1, 2019.

Sec. 1701.253. School Curriculum. [Effective January 1, 2021; Expires September 1, 2021]

(a) The commission shall establish minimum curriculum requirements for preparatory and advanced courses and programs for schools subject to approval under Section 1701.251(c)(1).

(b) **[As amended by Acts 2019, 86th Leg., ch. 107 (S.B. 586)]** In establishing requirements under this section, the commission shall require courses and programs to provide training in:

(1) the recognition, investigation, and documentation of cases that involve child abuse and neglect, family violence, and sexual assault, including the use of best practices and trauma-informed response techniques to effectively recognize, investigate, and document those cases;

(2) issues concerning sex offender characteristics; and

(3) crime victims' rights under Chapter 56, Code of Criminal Procedure, and Chapter 57, Family Code, and the duty of law enforcement agencies to ensure that a victim is afforded those rights.

(b) **[As amended by Acts 2019, 86th Leg., ch. 469 (H.B. 4173)]** In establishing requirements under this section, the commission shall require courses and programs to provide training in:

(1) the investigation and documentation of cases that involve:

(A) child abuse or neglect;

(B) family violence; and

(C) sexual assault;

(2) issues concerning sex offender characteristics; and

(3) crime victims' rights under Chapter 56A, Code of Criminal Procedure, and Chapter 57, Family Code, and the duty of law enforcement agencies to ensure that a victim is afforded those rights.

(b-1) The commission shall consult with the Sexual Assault Survivors' Task Force established under Section 772.0064, Government Code, regarding minimum curriculum requirements for training in the investigation and documentation of cases that involve sexual assault or other sex offenses.

(b-2) This subsection and Subsection (b-1) expire September 1, 2023.

(c) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on civil rights, racial sensitivity, and cultural diversity for persons licensed under this chapter.

(d) Training in documentation of cases required by Subsection (b) shall include instruction in:

(1) making a written account of the extent of injuries sustained by the victim of an alleged offense;

(2) recording by photograph or videotape the area in which an alleged offense occurred and the victim's injuries;

(3) recognizing and recording a victim's statement that may be admissible as evidence in a proceeding concerning the matter about which the statement was made; and

(4) recognizing and recording circumstances indicating that a victim may have been assaulted in the manner described by Section 22.01(b)(2)(B), Penal Code.

(e) As part of the minimum curriculum requirements relating to the vehicle and traffic laws of this state, the commission shall require an education and training program on laws relating to the operation of motorcycles and to the wearing of protective headgear by motorcycle operators and passengers. In addition, the commission shall require education and training on motorcycle operator profiling awareness and sensitivity training.

(f) Training for officers and recruits in investigation of cases required by Subsection (b)(1)(B) shall include instruction in preventing dual arrest whenever possible and conducting a thorough investigation to determine which person is the predominant aggressor when allegations of family violence from two or more opposing persons are received arising from the same incident.

(g) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on asset forfeiture under Chapter 59, Code of Criminal Procedure, for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

(h) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on racial profiling for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

(i) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on identity theft under Section 32.51, Penal Code, for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

(j) As part of the minimum curriculum requirements, the commission shall require an officer to complete a 40-hour statewide education and training program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments. An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. An officer may not satisfy the requirements of this subsection or Section 1701.402(g) by taking an online course on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments.

(k) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program for officers licensed under this chapter that covers the laws of this state and of the United States pertaining to peace officers.

(l) As part of the minimum curriculum requirements, the commission shall require an officer licensed by the

commission on or after January 1, 2016, to complete a canine encounter training program established by the commission under Section 1701.261. An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter unless the officer completes the program as part of the officer's basic training course.

(m) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on procedures for interacting with drivers who are deaf or hard of hearing, as defined by Section 81.001, Human Resources Code, including identifying specialty license plates issued to individuals who are deaf or hard of hearing under Section 504.204, Transportation Code. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

(n) As part of the minimum curriculum requirements, the commission shall require an officer to complete a statewide education and training program on de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury.

(o) As part of the minimum curriculum requirements, the commission shall require an officer to complete the civilian interaction training program developed under Section 1701.268. An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter unless the officer completes the program as part of the officer's basic training course.

(p) As part of the minimum curriculum requirements, the commission shall require an officer to complete the basic education and training program on the trafficking of persons developed under Section 1701.258(a). An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter unless the officer completes the program as part of the officer's basic training course.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 388 (H.B. 3155), § 1, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 657 (H.B. 2585), § 4, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 897 (H.B. 3491), § 1, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 929 (S.B. 563), § 5, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 947 (S.B. 1074), § 4, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1034 (H.B. 1572), § 14, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), § 14.007, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1326 (S.B. 473), § 8, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 393 (S.B. 1473), § 3, effective September 1, 2005; am. Acts 2009, 81st Leg., ch. 1172 (H.B. 3389), § 12, effective September 1, 2009; am. Acts 2015, 84th Leg., ch. 31 (H.B. 593), § 1, effective September 1, 2015; am. Acts 2015, 84th Leg., ch. 642 (S.B. 1987), § 2, effective January 1, 2016; am. Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 24.001(31), effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 513 (S.B. 30), § 5, effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 950 (S.B. 1849), § 4.02, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 76 (S.B. 971), § 1, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 107 (S.B. 586), § 1, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 411 (H.B. 1590), § 4, effective June 4, 2019; by Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 21.001(38), effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 469 (H.B. 4173),

§ 2.57, effective January 1, 2021; am. Acts 2019, 86th Leg., ch. 715 (H.B. 292), § 1, effective September 1, 2019.

Sec. 1701.262. [Expires September 1, 2021] Training for School District Peace Officers and School Resource Officers.

(a) In this section:

(1) "Center" means the Texas School Safety Center at Texas State University.

(2) "Institute" means an institute dedicated to providing training to law enforcement and the development of law enforcement policies, such as the Law Enforcement Management Institute of Texas at Sam Houston State University or the Caruth Police Institute.

(3) "School district peace officer" means a peace officer commissioned under Section 37.081, Education Code.

(4) "School resource officer" has the meaning assigned by Section 1701.601.

(b) The commission, in consultation with an institute or the center, shall create, adopt, and distribute a model training curriculum for school district peace officers and school resource officers.

(c) The curriculum developed under this section must incorporate learning objectives regarding:

(1) child and adolescent development and psychology;

(2) positive behavioral interventions and supports, conflict resolution techniques, and restorative justice techniques;

(3) de-escalation techniques and techniques for limiting the use of force, including the use of physical, mechanical, and chemical restraints;

(4) the mental and behavioral health needs of children with disabilities or special needs; and

(5) mental health crisis intervention.

(d) Before adopting and distributing any curriculum under this section, the commission shall provide a 30-day period for public comment.

(e) The commission shall provide the curriculum developed under this section and any supplemental education materials created for the curriculum to:

(1) school district police departments;

(2) law enforcement agencies that place peace officers in a school as school resource officers under a memorandum of understanding; and

(3) any entity that provides training to school district peace officers or school resource officers.

(f) The commission shall review curriculum developed and adopted under this section and update subject matter contained in the curriculum as needed at least once every four years.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 1258 (H.B. 2684), § 2, effective June 20, 2015.

Sec. 1701.264. [Expires September 1, 2021] Acquired and Traumatic Brain Injuries Training.

(a) In this section, "first responder" has the meaning assigned by Section 421.095, Government Code.

(b) The commission, in collaboration with the office of acquired brain injury of the Health and Human Services Commission and the Texas Traumatic Brain Injury Advisory Council, shall establish and maintain a training

program for peace officers and first responders that provides information on:

(1) the effects of an acquired brain injury and of a traumatic brain injury; and

(2) techniques to interact with persons who have an acquired brain injury or a traumatic brain injury.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 725 (H.B. 1338), § 1, effective September 1, 2015; Renumbered from Tex. Occ. Code § 1701.261 by Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 24.001(32), effective September 1, 2017.

Sec. 1701.265. [Expires September 1, 2021] Trauma Affected Veterans Training.

(a) In this section, "veteran" means a person who has served in:

(1) the army, navy, air force, coast guard, or marine corps of the United States; or

(2) the Texas National Guard as defined by Section 431.001, Government Code.

(b) The commission, in collaboration with the Texas Veterans Commission, shall establish and maintain a training program for peace officers that provides information on veterans with combat-related trauma, post-traumatic stress, post-traumatic stress disorder, or a traumatic brain injury. An officer may not complete the training under this subsection by taking an online course.

HISTORY: Enacted by Acts 2015, 84th Leg., ch. 725 (H.B. 1338), § 1, effective September 1, 2015; Renumbered from Tex. Occ. Code § 1701.262 by Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 24.001(32), effective September 1, 2017.

Subchapter G

License Requirements; Disqualifications and Exemptions

[Expires September 1, 2021]

Sec. 1701.310. [Expires September 1, 2021] Appointment of County Jailer; Training Required.

(a) Except as provided by Subsection (e), a person may not be appointed as a county jailer, except on a temporary basis, unless the person has satisfactorily completed a preparatory training program, as required by the commission, in the operation of a county jail at a school operated or licensed by the commission. The training program must consist of at least eight hours of mental health training approved by the commission and the Commission on Jail Standards.

(b) A county jailer appointed on a temporary basis who does not satisfactorily complete the preparatory training program before the first anniversary of the date that the person is appointed shall be removed from the position. A county jailer appointed on a temporary basis shall be enrolled in the preparatory training program on or before the 90th day after their temporary appointment. A temporary appointment may not be renewed.

(c) A county jailer serving under permanent appointment before September 1, 1979, regardless of whether the person's employment was terminated before that date because of failure to satisfy standards adopted under Chapter 511, Government Code, is not required to meet a

requirement of this section as a condition of continued employment or promotion unless:

(1) in an attempt to meet the standards the person took an examination and failed or was not allowed to finish the examination because the person acted dishonestly in regard to the examination;

(2) the person forged a document purporting to show that the person meets the standards; or

(3) the person seeks a new appointment as a county jailer on or after September 1, 1984.

(d) A county jailer serving under permanent appointment before September 1, 1979, is eligible to attend training courses in the operation of a county jail, subject to commission rules.

(e) A person trained and certified by the Texas Department of Criminal Justice to serve as a corrections officer in that agency's correctional institutions division is not required to complete the training requirements of this section to be appointed a part-time county jailer. Examinations under Section 1701.304 and psychological examinations under Section 1701.306 apply.

(f) A county jailer appointed on a temporary basis may not be promoted to a supervisory position in a county jail.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 388 (H.B. 3155), § 1, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 14.502(a), effective September 1, 2001; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.142, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 1224 (S.B. 542), § 3, effective September 1, 2011; am. Acts 2017, 85th Leg., ch. 950 (S.B. 1849), § 4.03, effective January 1, 2018; am. Acts 2019, 86th Leg., ch. 1252 (H.B. 4468), §§ 5, 6, effective September 1, 2019.

Subchapter H

Continuing Education and Yearly Weapons Proficiency

[Expires September 1, 2021]

Sec. 1701.352. [Expires September 1, 2021] Continuing Education Programs.

(a) The commission shall recognize, prepare, or administer continuing education programs for officers and county jailers.

(b) The commission shall require a state, county, special district, or municipal agency that appoints or employs peace officers to provide each peace officer with a training program at least once every 48 months that is approved by the commission and consists of:

(1) topics selected by the agency; and

(2) for an officer holding only a basic proficiency certificate, not more than 20 hours of education and training that contain curricula incorporating the learning objectives developed by the commission regarding:

(A) civil rights, racial sensitivity, and cultural diversity;

(B) de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments;

(C) de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury; and

(D) unless determined by the agency head to be inconsistent with the officer's assigned duties:

(i) the recognition, documentation, and investigation of cases that involve child abuse or neglect, family violence, and sexual assault, including the use of best practices and trauma-informed techniques to effectively recognize, document, and investigate those cases; and

(ii) issues concerning sex offender characteristics.

(c) A course provided under Subsection (b) may use instructional materials developed by the agency or its trainers or by entities having training agreements with the commission in addition to materials included in curricula developed by the commission.

(d) A peace officer who is appointed or will be appointed to the officer's first supervisory position must receive in-service training on supervision as part of the course provided for the officer under Subsection (b) not earlier than the 12th month before the date of that appointment or later than the first anniversary of the date of that appointment.

(e) The commission may require a state, county, special district, or municipal agency that appoints or employs a reserve law enforcement officer, county jailer, or public security officer to provide each of those persons with education and training in civil rights, racial sensitivity, and cultural diversity at least once every 48 months.

(f) Training in documentation of cases required by Subsection (b) shall include instruction in:

(1) making a written account of the extent of injuries sustained by the victim of an alleged offense;

(2) recording by photograph or videotape the area in which an alleged offense occurred and the victim's injuries;

(3) recognizing and recording a victim's statement that may be admissible as evidence in a proceeding concerning the matter about which the statement was made; and

(4) recognizing and recording circumstances indicating that a victim may have been assaulted in the manner described by Section 22.01(b)(2)(B), Penal Code.

(g) The training and education program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments under Subsection (b)(2)(B) may not be provided as an online course. The commission shall:

(1) determine best practices for interacting with persons with mental impairments, in consultation with the Bill Blackwood Law Enforcement Management Institute of Texas; and

(2) review the education and training program under Subsection (b)(2)(B) at least once every 24 months.

(h) The commission shall require a state, county, special district, or municipal agency that employs telecommunicators to provide each telecommunicator with 24 hours of crisis communications instruction approved by the commission. The instruction must be provided on or before the first anniversary of the telecommunicator's first day of employment.

(i) A state agency, county, special district, or municipality that appoints or employs a telecommunicator shall

provide training to the telecommunicator of not less than 20 hours during each 24-month period of employment. The training must be approved by the commission and consist of topics selected by the commission and the employing entity.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 388 (H.B. 3155), § 1, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1157 (H.B. 2881), § 2, effective September 1, 2001; am. Acts 2009, 81st Leg., ch. 1172 (H.B. 3389), § 16, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 855 (H.B. 3823), § 8, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 968 (H.B. 1951), § 8, effective January 1, 2014; am. Acts 2015, 84th Leg., ch. 418 (H.B. 3211), § 1, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 950 (S.B. 1849), § 4.04, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 76 (S.B. 971), § 2, effective September 1, 2019; am. Acts 2019, 86th Leg., ch. 107 (S.B. 586), § 2, effective September 1, 2019.

Subchapter I

Professional Training and Recognition [Expires September 1, 2021]

Sec. 1701.402. [Expires September 1, 2021] Proficiency Certificates.

(a) The commission shall issue certificates that recognize proficiency based on law enforcement training, education, and experience. For this purpose the commission shall use the employment records of the employing agency.

(b) As a requirement for a basic proficiency certificate, the commission shall require completion of local courses or programs of instruction on federal and state statutes that relate to employment issues affecting peace officers, telecommunicators, and county jailers, including:

- (1) civil service;
- (2) compensation, including overtime compensation, and vacation time;
- (3) personnel files and other employee records;
- (4) management-employee relations in law enforcement organizations;
- (5) work-related injuries;
- (6) complaints and investigations of employee misconduct; and
- (7) disciplinary actions and the appeal of disciplinary actions.

(c) An employing agency is responsible for providing the training required by this section.

(d) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on asset forfeiture established by the commission under Section 1701.253(g).

(e) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on racial profiling established by the commission under Section 1701.253(h).

(f) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on identity theft established by the commission under Section 1701.253(i).

(g) As a requirement for an intermediate proficiency certificate or an advanced proficiency certificate, an officer must complete the education and training program described by Section 1701.253 regarding de-escalation and

crisis intervention techniques to facilitate interaction with persons with mental impairments.

(h) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on investigative topics established by the commission under Section 1701.253(b).

(i) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on civil rights, racial sensitivity, and cultural diversity established by the commission under Section 1701.253(c).

(j) As a requirement for an intermediate or advanced proficiency certificate issued by the commission on or after January 1, 2011, an officer must complete the basic education and training program on the trafficking of persons described by Section 1701.258(a).

(k) As a requirement for an intermediate or advanced proficiency certificate issued by the commission on or after January 1, 2015, an officer must complete an education and training program on missing and exploited children. The commission by rule shall establish the program. The program must:

- (1) consist of at least four hours of training;
- (2) include instruction on reporting an attempted child abduction to the missing children and missing persons information clearinghouse under Chapter 63, Code of Criminal Procedure;
- (3) include instruction on responding to and investigating situations in which the Internet is used to commit crimes against children; and
- (4) include a review of the substance of Chapters 20 and 43, Penal Code.

(l) As a requirement for an intermediate or advanced proficiency certificate issued by the commission on or after January 1, 2016, an officer must complete the canine encounter training program established by the commission under Section 1701.261.

(m) As a requirement for an intermediate or advanced proficiency certificate issued by the commission on or after January 1, 2016, an officer must complete an education and training program on the Texas Crime Information Center's child safety check alert list established by the commission under Section 1701.266.

(n) As a requirement for an intermediate proficiency certificate or an advanced proficiency certificate, an officer must complete the education and training program regarding de-escalation techniques to facilitate interaction with members of the public established by the commission under Section 1701.253(n).

(o) The commission shall adopt rules to allow an officer who has served in the military to receive credit toward meeting any training hours required for an intermediate, advanced, or master proficiency certificate based on that military service.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 388 (H.B. 3155), § 1, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 929 (S.B. 563), § 6, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 947 (S.B. 1074), § 5, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), § 14.008, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1326 (S.B. 473), § 9, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 393 (S.B. 1473), § 4, effective September 1, 2005; am. Acts 2009, 81st Leg., ch. 1002 (H.B. 4009), § 6, effective September 1, 2009;

am. Acts 2009, 81st Leg., ch. 1172 (H.B. 3389), § 17, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 27.001(48), effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 855 (H.B. 3823), § 9, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 571 (S.B. 742), § 9, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 31 (H.B. 593), § 3, effective September 1, 2015; am. Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 24.002(12), effective September 1, 2017; am. Acts 2017, 85th Leg., ch. 950 (S.B. 1849), § 4.05, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 222 (H.B. 971), § 1, effective September 1, 2019.

Sec. 1701.404. [Expires September 1, 2021] Certification of Officers for Mental Health Assignments.

(a) The commission by rule may establish minimum requirements for the training, testing, and certification of special officers for offenders with mental impairments.

(b) The commission may certify a sheriff, sheriff's deputy, constable, other peace officer, county jailer, or justice of the peace as a special officer for offenders with mental impairments if the person:

(1) completes a training course in emergency first aid and lifesaving techniques approved by the commission;

(2) completes a training course administered by the commission on mental health issues and offenders with mental impairments; and

(3) passes an examination administered by the commission that is designed to test the person's:

(A) knowledge and recognition of the characteristics and symptoms of mental illness, mental retardation, and mental disabilities; and

(B) knowledge of mental health crisis intervention strategies for people with mental impairments.

(c) The commission may issue a professional achievement or proficiency certificate to an officer, county jailer, or justice of the peace who meets the requirements of Subsection (b).

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 388 (H.B. 3155), § 1, effective September 1, 1999; am. Acts 2009, 81st Leg., ch. 1131 (H.B. 2093), § 1, effective September 1, 2009.

PENAL CODE

TITLE 1 INTRODUCTORY PROVISIONS

CHAPTER 1 General Provisions

Section
1.07. Definitions.

Sec. 1.07. Definitions.

(a) In this code:

(1) "Act" means a bodily movement, whether voluntary or involuntary, and includes speech.

(2) "Actor" means a person whose criminal responsibility is in issue in a criminal action. Whenever the term "suspect" is used in this code, it means "actor."

(3) "Agency" includes authority, board, bureau, commission, committee, council, department, district, division, and office.

(4) "Alcoholic beverage" has the meaning assigned by Section 1.04, Alcoholic Beverage Code.

(5) "Another" means a person other than the actor.

(6) "Association" means a government or governmental subdivision or agency, trust, partnership, or two or more persons having a joint or common economic interest.

(7) "Benefit" means anything reasonably regarded as economic gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested.

(8) "Bodily injury" means physical pain, illness, or any impairment of physical condition.

(8-a) "Civil commitment facility" means a facility owned, leased, or operated by the state, or by a vendor under contract with the state, that houses only persons who have been civilly committed as sexually violent predators under Chapter 841, Health and Safety Code.

(9) "Coercion" means a threat, however communicated:

(A) to commit an offense;

(B) to inflict bodily injury in the future on the person threatened or another;

(C) to accuse a person of any offense;

(D) to expose a person to hatred, contempt, or ridicule;

(E) to harm the credit or business repute of any person; or

(F) to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

(10) "Conduct" means an act or omission and its accompanying mental state.

(11) "Consent" means assent in fact, whether express or apparent.

(12) "Controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.

(13) "Corporation" includes nonprofit corporations, professional associations created pursuant to statute, and joint stock companies.

(14) "Correctional facility" means a place designated by law for the confinement of a person arrested for, charged with, or convicted of a criminal offense. The term includes:

(A) a municipal or county jail;

(B) a confinement facility operated by the Texas Department of Criminal Justice;

(C) a confinement facility operated under contract with any division of the Texas Department of Criminal Justice; and

(D) a community corrections facility operated by a community supervision and corrections department.

(15) "Criminal negligence" is defined in Section 6.03 (Culpable Mental States).

(16) "Dangerous drug" has the meaning assigned by Section 483.001, Health and Safety Code.

(17) "Deadly weapon" means:

(A) a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or

(B) anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

(18) "Drug" has the meaning assigned by Section 481.002, Health and Safety Code.

(19) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(A) induced by force, threat, or fraud;

(B) given by a person the actor knows is not legally authorized to act for the owner;

(C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable decisions; or

(D) given solely to detect the commission of an offense.

(20) "Electric generating plant" means a facility that generates electric energy for distribution to the public.

(21) "Electric utility substation" means a facility used to switch or change voltage in connection with the transmission of electric energy for distribution to the public.

(22) "Element of offense" means:

(A) the forbidden conduct;

(B) the required culpability;

(C) any required result; and

(D) the negation of any exception to the offense.

(23) "Felony" means an offense so designated by law or punishable by death or confinement in a penitentiary.

(24) "Government" means:

(A) the state;

(B) a county, municipality, or political subdivision of the state; or

(C) any branch or agency of the state, a county, municipality, or political subdivision.

(25) “Harm” means anything reasonably regarded as loss, disadvantage, or injury, including harm to another person in whose welfare the person affected is interested.

(26) “Individual” means a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth.

(27) [Repealed by Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.144, effective September 1, 2009.]

(28) “Intentional” is defined in Section 6.03 (Culpable Mental States).

(29) “Knowing” is defined in Section 6.03 (Culpable Mental States).

(30) “Law” means the constitution or a statute of this state or of the United States, a written opinion of a court of record, a municipal ordinance, an order of a county commissioners court, or a rule authorized by and lawfully adopted under a statute.

(31) “Misdemeanor” means an offense so designated by law or punishable by fine, by confinement in jail, or by both fine and confinement in jail.

(32) “Oath” includes affirmation.

(33) “Official proceeding” means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant.

(34) “Omission” means failure to act.

(35) “Owner” means a person who:

(A) has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor; or

(B) is a holder in due course of a negotiable instrument.

(36) “Peace officer” means a person elected, employed, or appointed as a peace officer under Article 2.12, Code of Criminal Procedure, Section 51.212 or 51.214, Education Code, or other law.

(37) “Penal institution” means a place designated by law for confinement of persons arrested for, charged with, or convicted of an offense.

(38) “Person” means an individual or a corporation, association, limited liability company, or other entity or organization governed by the Business Organizations Code.

(39) “Possession” means actual care, custody, control, or management.

(40) “Public place” means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

(41) “Public servant” means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties:

(A) an officer, employee, or agent of government;

(B) a juror or grand juror; or

(C) an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy; or

(D) an attorney at law or notary public when participating in the performance of a governmental function; or

(E) a candidate for nomination or election to public office; or

(F) a person who is performing a governmental function under a claim of right although he is not legally qualified to do so.

(42) “Reasonable belief” means a belief that would be held by an ordinary and prudent man in the same circumstances as the actor.

(43) “Reckless” is defined in Section 6.03 (Culpable Mental States).

(44) “Rule” includes regulation.

(45) “Secure correctional facility” means:

(A) a municipal or county jail; or

(B) a confinement facility operated by or under a contract with any division of the Texas Department of Criminal Justice.

(46) “Serious bodily injury” means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(46-a) “Sight order” means a written or electronic instruction to pay money that is authorized by the person giving the instruction and that is payable on demand or at a definite time by the person being instructed to pay. The term includes a check, an electronic debit, or an automatic bank draft.

(46-b) “Federal special investigator” means a person described by Article 2.122, Code of Criminal Procedure.

(47) “Swear” includes affirm.

(48) “Unlawful” means criminal or tortious or both and includes what would be criminal or tortious but for a defense not amounting to justification or privilege.

(49) “Death” includes, for an individual who is an unborn child, the failure to be born alive.

(b) The definition of a term in this code applies to each grammatical variation of the term.

HISTORY: Enacted by Acts 1973, 63rd Leg., ch. 399 (S.B. 34), § 1, effective January 1, 1974; am. Acts 1975, 64th Leg., ch. 342 (S.B. 127), § 1, effective September 1, 1975; am. Acts 1977, 65th Leg., ch. 848 (H.B. 2007), § 1, effective August 29, 1977; am. Acts 1979, 66th Leg., ch. 530 (S.B. 952), § 1, effective August 27, 1979; am. Acts 1979, 66th Leg., ch. 655 (S.B. 846), § 1, effective September 1, 1979; am. Acts 1987, 70th Leg., ch. 167 (S.B. 892), § 5.01(a)(43), effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 997 (H.B. 832), § 1, effective August 28, 1989; am. Acts 1991, 72nd Leg., ch. 543 (H.B. 1801), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 1.01, effective September 1, 1994; am. Acts 2003, 78th Leg., ch. 822 (S.B. 319), § 2.01, effective September 1, 2003; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.144, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 421 (H.B. 2031), § 1, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 839 (H.B. 3423), § 1, effective September 1, 2011; am. Acts 2017, 85th Leg., ch. 34 (S.B. 1576), § 26, effective September 1, 2017; am. Acts 2019, 86th Leg., ch. 112 (S.B. 1258), § 1, effective September 1, 2019.

TITLE 2

GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

CHAPTER 8

General Defenses to Criminal Responsibility

Section
8.08. Child with Mental Illness, Disability, or
Lack of Capacity.

Sec. 8.01. Insanity.

(a) It is an affirmative defense to prosecution that, at the time of the conduct charged, the actor, as a result of severe mental disease or defect, did not know that his conduct was wrong.

(b) The term “mental disease or defect” does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

HISTORY: Enacted by Acts 1973, 63rd Leg., ch. 399 (S.B. 34), § 1, effective January 1, 1974; am. Acts 1983, 68th Leg., ch. 454 (S.B. 7), § 1, effective August 29, 1983; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 1.01, effective September 1, 1994.

Sec. 8.08. Child with Mental Illness, Disability, or Lack of Capacity.

(a) On motion by the state, the defendant, or a person standing in parental relation to the defendant, or on the

court’s own motion, a court with jurisdiction of an offense described by Section 8.07(a)(4) or (5) shall determine whether probable cause exists to believe that a child, including a child with a mental illness or developmental disability:

(1) lacks the capacity to understand the proceedings in criminal court or to assist in the child’s own defense and is unfit to proceed; or

(2) lacks substantial capacity either to appreciate the wrongfulness of the child’s own conduct or to conform the child’s conduct to the requirement of the law.

(b) If the court determines that probable cause exists for a finding under Subsection (a), after providing notice to the state, the court may dismiss the complaint.

(c) A dismissal of a complaint under Subsection (b) may be appealed as provided by Article 44.01, Code of Criminal Procedure.

(d) In this section, “child” has the meaning assigned by Article 45.058(h), Code of Criminal Procedure.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1407 (S.B. 393), § 18, effective September 1, 2013.

TRANSPORTATION CODE

TITLE 7 VEHICLES AND TRAFFIC

SUBTITLE A CERTIFICATES OF TITLE AND REGISTRATION OF VEHICLES

CHAPTER 502 Registration of Vehicles

Subchapter B *Registration Requirements*

Sec. 502.061. Registration by Owner with Condition That Impedes Effective Communication.

(a) An application for registration must provide space for the applicant to voluntarily indicate that the applicant has a health condition or disability that may impede effective communication with a peace officer. The department may request from a person who makes an indication under this subsection verification of a condition in the form of:

- (1) for a physical health condition, a written statement from a licensed physician; or
- (2) for a mental health condition, a written statement from a licensed physician, a licensed psychologist, or a non-physician mental health professional, as defined by Section 571.003, Health and Safety Code.

(b) The department shall provide to the Department of Public Safety the vehicle registration information of a

person who voluntarily indicated on an application under Subsection (a) that the person has a health condition or disability that may impede effective communication. The department may not provide to the Department of Public Safety information that shows the type of health condition or disability a person has.

(c) The Department of Public Safety shall establish a system to include information received under Subsection (b) in the Texas Law Enforcement Telecommunications System for the purpose of alerting a peace officer who makes a traffic stop that the operator of the stopped vehicle may have a health condition or disability that may impede effective communication.

(d) The Department of Public Safety may not make information received under Subsection (b) available in the Texas Law Enforcement Telecommunications System to a person who has access to the system under a contract unless the contract prohibits the person from disclosing that information to a person who is not subject to the contract.

(e) The department may not issue to a person without the person's consent a license plate with a visible marking that indicates to the general public that the person voluntarily indicated on an application under Subsection (a) that the person has a health condition or disability that may impede effective communication.

(f) Except as provided by Subsection (d), information supplied to the department relating to an applicant's health condition or disability is for the confidential use of the department and the Department of Public Safety and may not be disclosed to any person.

HISTORY: Enacted by Acts 2019, 86th Leg., ch. 613 (S.B. 976), § 1, effective September 1, 2019.

TEXAS ADMINISTRATIVE CODE

TITLE 25.

HEALTH SERVICES

PART 1.

DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 401.

Mental Health System Administration

Subchapter G.

Local Mental Health Authority Notification and Appeal

Section

§ 401.464. Notification and Appeals Process

§ 401.464. Notification and Appeals Process

(a) The TXMHMR service system is dedicated to providing mental health and mental retardation services/supports which are viewed as satisfactory by persons receiving those services/supports and their legally authorized representatives. Therefore, local authorities and their contractors shall take steps to assure that these persons:

- (1) have a method to express their concerns or dissatisfaction;
- (2) are assisted to do so in a constructive way; and
- (3) have their concerns or dissatisfaction addressed through a review process.

(b) A request to review decisions described in this section may be made by the person requesting or receiving services/supports, the person's legal representative, or any other individual with the person's consent.

(c) At the time of admission into services and on an annual basis thereafter, the local authority and its contractors shall provide to persons who receive services/supports and their legally authorized representatives written notification in a language and/or method understood by the individual of the local authority or its contractor's policy for addressing concerns or dissatisfaction with services/supports. The notification shall explain:

- (1) an easily understood process for persons and legally authorized representatives to request a review of their concerns or dissatisfaction by the local authority or its contractor, whichever is appropriate;
- (2) how the person may receive assistance in requesting the review;
- (3) the timeframes for the review; and
- (4) the method by which the person is informed of the outcome of that review.

(d) Local authorities and their contractors shall notify persons and legally authorized representatives in writing in a language and/or method understood by the individual of the following decisions and of the process to appeal by requesting a review of those decisions:

- (1) a decision to deny the person services/supports at the conclusion of a local authority's procedure which

determines whether the person meets the criteria for the priority population; and

(2) a decision to terminate services/supports and follow-along from the local authority or its contractor, if appropriate.

(e) The written notification referred to in subsection (d) of this section must:

(1) be given or mailed to the person and the legally authorized representative within ten working days of the date the decision was made;

(2) state the reason for the decision;

(3) explain that the person and legally authorized representative may contact either the local authority or its contractor, whichever is appropriate, within 30 days of receipt of notification if dissatisfied with the decision and request that the decision be reviewed in accordance with subsection (g) of this section; and

(4) include name(s), phone number(s) and address(es) of one or more accessible staff to contact during office hours.

(f) If a person or legally authorized representative believes that the local authority or its contractor has made a decision to involuntarily reduce services by changing the amount, duration, or scope of services/supports provided and is dissatisfied with that decision, then the person may request in writing that the decision be reviewed in accordance with subsection (g) of this section.

(g) The review by the local authority or its contractor shall:

(1) begin within ten working days of receipt of the request for a review and be completed within ten working days of the time it begins unless an extension is granted by the CEO of the local authority or its contractor, whichever is appropriate;

(2) begin immediately upon receipt of the request and be completed within five working days if the decision is related to a crisis service;

(3) be conducted by an individual(s) who was not involved in the initial decision;

(4) include a review of the original decision which led to the person's dissatisfaction;

(5) result in a decision to uphold, reverse, or modify the original decision; and

(6) provide the person an opportunity to express his or her concerns in person or by telephone to the individual reviewing the decision. The review shall also allow the person to:

(A) have a representative talk with the reviewer;

or

(B) submit his or her concerns in writing, on tape, or in some other fashion.

(h) Following a review, either the local authority or its contractor, whichever is appropriate, shall explain to the person and legally authorized representative in writing and also in person or by telephone, if requested, the action it will take or, if no action will be taken, why it will not change the decision or believes such action would not be in the person's best interest. This is the final step in the review process.

(i) The notification and review process described in this section:

(1) is applicable only to services/supports funded by TXMHMR and provided or contracted for by its local authorities;

(2) does not preclude a person or legally authorized representative's right to reviews, appeals, or other actions that accompany other funds administered through a local authority or its contractors, or to other appeals

processes provided for by other state and federal laws, e.g., Texas Health and Safety Code, Title 7, Chapter 593 (Persons with Mental Retardation Act); 42 USC § 1396 (Medicaid statute); and Texas Human Resources Code, Chapter 73 (Chapter 621 of this title (relating to Early Childhood Intervention)), Early Childhood Intervention programs as funded by the Texas Interagency Council for Early Childhood Intervention.

HISTORY: The provisions of this § 401.464 adopted to be effective February 11, 1994, 19 TexReg 591; amended to be effective January 3, 1997, 21 TexReg 12402

CHAPTER 404.

Protection of Clients and Staff—Mental Health Services

Subchapter E.

Rights of Persons Receiving Mental Health Services

Section

- § 404.151. Purpose
- § 404.152. Application
- § 404.153. Definitions
- § 404.154. Rights of All Persons Receiving Mental Health Services
- § 404.155. Rights of Persons Receiving Residential Mental Health Services
- § 404.156. Additional Rights of Persons Receiving Residential Mental Health Services at Department Facilities
- § 404.157. Rights of Persons Voluntarily Admitted to Inpatient Services
- § 404.158. Rights of Persons Apprehended for Emergency Detention for Inpatient Mental Health Services (Other Than for Chemical Dependency)
- § 404.159. Rights of Persons Apprehended for Emergency Detention for Inpatient Chemical Dependency Services
- § 404.160. Special Rights of Minors Receiving Inpatient Mental Health Services
- § 404.161. Rights Handbooks for Persons Receiving Mental Health Services at Department Facilities, Community Centers, and Psychiatric Hospitals Operated by Community Centers
- § 404.162. Patient's Bill of Rights, Teen's Bill of Rights, and Children's Bill of Rights for Individuals Receiving Mental Health Services at Psychiatric Hospitals Not Operated by a Community Center
- § 404.163. Communication of Rights to Individuals Receiving Mental Health Services
- § 404.164. Rights Protection Officer at Department Facilities and Community Centers
- § 404.165. Staff Training in Rights of Persons Receiving Mental Health Services
- § 404.166. Restriction of Rights as Part of Non-Emergency Behavioral Interventions
- § 404.167. Restriction of Rights as Part of Emergency Behavioral Interventions: Restraint and Seclusion
- § 404.168. References
- § 404.169. Distribution

§ 404.151. Purpose

The purpose of this subchapter is:

- (1) to provide to persons receiving mental health services:
 - (A) a listing of the specific rights guaranteed to them;

(B) the assurance that these rights must and will be made known to them, and, when applicable, to the persons having legal responsibility for them (i.e., parent of a minor, managing conservator, legal guardian of the person, limited legal guardian of the person); and

(C) assistance in exercising their rights in a manner which does not conflict with the rights of other persons;

(2) to require the development of rights handbooks and their distribution to persons receiving mental health services and, when applicable, to the persons with legal responsibility for them and other interested parties;

(3) to require the appointment of a rights protection officer at each department facility and community MHMR center which provides mental health services; and

(4) to ensure that department facility, community center, and psychiatric hospital employees are aware of the rights of persons receiving mental health services.

HISTORY: The provisions of this § 404.151 adopted to be effective December 10, 1993, 18 TexReg 8790

§ 404.152. Application

The provisions of this subchapter shall apply to each of the following in which mental health services are provided:

- (1) facilities of the Texas Department of Mental Health and Mental Retardation and their respective community-based programs;
- (2) community centers;
- (3) psychiatric hospitals; and
- (4) any program contracting with these entities.

HISTORY: The provisions of this § 404.152 adopted to be effective December 10, 1993, 18 TexReg 8790

§ 404.153. Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Aversive conditioning—A highly restrictive behavior intervention designed to eliminate undesirable behavior patterns through learned associations with unpleasant stimuli or tasks.

(2) Behavior interventions—Interventions to increase socially adaptive behavior and to modify maladaptive or problem behaviors and replace them with behaviors and skills that are adaptive and socially productive. Also referred to as “behavior management,” “behavior training,” “behavior therapy,” and related terms.

(3) Community center—A community mental health and mental retardation center established under the Texas Health and Safety Code, Title 7, Chapter 534.

(4) Department—The Texas Department of Mental Health and Mental Retardation.

(5) Department facilities—The state hospitals and state centers which provide mental health services, and their respective community-based programs.

(6) Emergency—A situation in which, in the opinion of the treating physician, the immediate use of medication, or, in the opinion of the treating physician or other appropriate professional, the immediate use of restrictive techniques is essential to interrupt imminent physical danger to self or others.

(7) Ethics Committee—A Texas Board of MHMR-approved body composed of clinicians, consumers, family members, and outside experts convened for the purpose

of reviewing and resolving issues surrounding clinical care and treatment.

(8) Hospital—A general or special hospital as defined in the Health and Safety Code, § 241.003(4) and § 241.003(11), that includes an identifiable part of the hospital for the provision of mental health services.

(9) Informed consent—The knowing written consent of an individual or the individual's legally authorized representative, so situated as to be able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion. The basic elements of information necessary for informed consent include all of the following presented in language or format easily understood by the individual:

(A) a thorough explanation of the procedures to be followed and their purposes, including identification of any experimental procedures;

(B) a description of any attendant discomforts and reasonably expected risks;

(C) a description of any reasonably expected benefits;

(D) a disclosure of any appropriate alternative procedures as well as their reasonably expected risks and benefits, including those that might result if no procedure is utilized;

(E) an offer to answer any questions about the procedures; and

(F) an instruction that the individual can withdraw consent and stop participating in the program or activity at any time without prejudice to the individual. Withdrawal of consent may be in any form, including noncompliance, active resistance, or a verbal or other expression of unwillingness to continue participating in any aspect of the program.

(10) Highly restrictive interventions—Any intervention (e.g., aversive conditioning) that poses potentially increased physical, emotional, or psychological distress to the individual upon whom it is imposed.

(11) Inpatient services—Residential services provided in a department facility, a licensed hospital unit, a licensed crisis stabilization unit, or a psychiatric hospital.

(12) Intrusive searches—The tactile and/or visual examination of an individual's partially clothed (a state of undress that would not be acceptable in public) or fully unclothed body, personal belongings, or space designated for the storage of the individual's personal belongings. Intrusive searches do not include:

(A) routine searches of belongings for contraband at the time of admission, return from pass, or transfer;

(B) superficial external pat-downs by staff of the same sex;

(C) daily room checks for housekeeping and chore completion;

(D) physical assessments by nurses and physicians; and

(E) searches of the person's outer clothing, hair, or mouth, unless the search is resisted by the person, in which case all procedures for intrusive searches are to be followed.

(13) 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, supervise, and rehabilitate mentally disordered and disabled persons, including

persons mentally disordered and disabled from alcoholism and drug addiction.

(14) Office of Consumer Services and Rights Protection (CSRP)—The office located within the department's central office which maintains the toll-free telephone line 1-800-252-8154 to receive rights-related complaints from persons receiving services at department facilities and community centers and which is responsible for assisting persons receiving mental health services with needed services and rights protection.

(15) Psychiatric hospital—

(A) An establishment licensed by the Texas Department of Health under the Texas Health and Safety Code, Chapter 577, offering inpatient services, including treatment, facilities, and beds for use beyond 24 hours, for the primary purpose of providing psychiatric assessment and diagnostic services and psychiatric inpatient care and treatment for mental illness. Such services must be more intensive than room, board, personal services, and general medical and nursing care. Although substance abuse services may be offered, a majority of beds (51%) must be dedicated to the treatment of mental illness in adults and/or children. Services other than those of an inpatient nature are not licensed or regulated by the Texas Department of Health and are considered only to the extent that they affect the stated resources for the inpatient components; or

(B) That identifiable part of a hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by the Texas Department of Health under the Texas Health and Safety Code, Chapter 241.

(16) Residential services—Twenty-four hour services provided and/or contracted by the department or a community center (e.g., structured group residential programs, halfway houses, hospital units providing MH services, licensed crisis stabilization units, etc.) or a psychiatric hospital.

(17) Rights protection officer—An employee appointed by the head of a department facility or community center to protect and advocate for the rights of persons receiving mental health services.

(18) Unusual medications—Medication that has not been approved by the Food and Drug Administration for use in the United States, or medication that is being used to treat conditions for which its use has not been demonstrated through rational scientific theory and evidence in biomedical literature, controlled clinical trials, or expert medical opinion.

HISTORY: The provisions of this § 404.153 adopted to be effective December 10, 1993, 18 TexReg 8790; amended to be effective October 1, 1996, 21 TexReg 8505

§ 404.154. Rights of All Persons Receiving Mental Health Services

Persons receiving mental health services from department facilities, community centers, and psychiatric hospitals have the following rights.

(1) The rights, benefits, responsibilities, and privileges guaranteed by the constitutions and laws of the United States and the State of Texas unless they have been restricted by specific provisions of law. These rights include, but are not limited to, the right to impartial access to and provision of treatment, regardless of race, nationality, religion, sex, ethnicity, sexual orientation, age, or disability; the right to

petition for habeas corpus; the right to register and vote at elections; the right to acquire, use, and dispose of property including contractual rights; the right to sue and be sued; all rights relating to the granting, use, and revocation of licenses, permits, privileges, and benefits under law; the right to religious freedom; and rights concerning domestic relations.

(2) The right to presumption of mental competency in the absence of a judicial determination to the contrary. Any questions regarding applicability of this right or a limitation on it should be referred for appropriate legal advice.

(3) The right to a humane treatment environment that ensures protection from harm, provides privacy to as great a degree as possible with regard to personal needs, and promotes respect and dignity for each individual.

(4) The right to appropriate treatment in the least restrictive appropriate setting available consistent with the protection of the individual and the protection of the community.

(5) The right to be informed of those rules and regulations of the department facility, community center, or psychiatric hospital relating to expectations of the individual's conduct. Staff must document in the medical record the date and manner in which this information was provided.

(6) The right to communication in a language and format understandable to the individual for all services provided.

(7) The right to participate actively in the development and periodic review of an individualized treatment plan (extending to a parent or conservator of a minor, and the legal guardian of the person, when applicable); and the right to a timely consideration of any request for the participation of any other person in this process, with the right to be informed of the reasons for any denial of such a request. Staff must document in the medical record that the parent, guardian, conservator, or other person was notified of the date, time, and location of each meeting so that he or she could participate.

(8) The right to explanations of the care, procedures, and treatment to be provided; the risks, side effects, and benefits of all medications and treatment procedures to be used, including those that are unusual or experimental; the alternative treatment procedures that are available; and the possible consequences of refusing the treatment or procedure. This right extends to the parent or conservator of a minor, the legal guardian of the person, when applicable, and to any other person authorized by the individual served.

(9) The right to refuse particular treatments without prejudice to participation in other programs, or without compromising access to other treatments or services solely because of the refusal.

(10) The right to meet with the professional staff members responsible for the individual's care and to be informed of their professional discipline, job title, and responsibilities. In addition, the individual has the right to an explanation of the justification involving any proposed change in the appointment of staff members responsible for the individual's care.

(11) The right to obtain an independent psychiatric, psychosocial, psychological, or medical examination or evaluation by a psychiatrist, physician, or nonphysician mental health professional of the individual's choice at the individual's own expense. The department facility, community center, or psychiatric hospital administrator shall allow the individual to obtain the examination or

evaluation at any reasonable time. If the individual is a minor, the minor's parent, legal guardian, or managing or possessory conservator is entitled to obtain the examination or evaluation.

(12) The right to be granted an in-house review of the individual treatment plan or specific procedure upon reasonable request as provided for in the written procedures of the department facility, community center, or psychiatric hospital.

(13) The right to an explanation of the justification of any transfer of the individual to any program within or outside of the department facility, community center, or psychiatric hospital.

(14) The right to participate actively in the development of a discharge plan addressing aftercare issues which include the individual's mental health, physical health, and social needs. This right extends to a parent or conservator of a minor, or the legal guardian of the person, when applicable. The individual also has the right to a timely consideration of any request for the participation of any other person in this discharge planning, with the right to be informed of the reasons for any denial of such a request. Staff must document in the medical record that the parent, guardian, conservator, or other person was notified of the date, time, and location of each meeting so that he or she could participate.

(15) The right to information, upon request, pertaining to the cost of services rendered (itemized when possible), the sources of the program's reimbursement, and any limitations placed upon the duration of services. At department facilities and community centers, no person will be denied services due to an inability to pay for them.

(16) The right to be free from unnecessary or excessive medication, which includes the right to give or withhold informed consent to treatment with psychoactive medication, unless the right has been limited by court order or in an emergency. This right extends to the parent or conservator of a minor or the legal guardian of the person, if applicable. For individuals receiving inpatient services at department facilities, community centers, or other mental health facilities when those services are operated by the department or funded by the department through a contractual or other agreement, this right may only be limited in accordance with the provisions of Chapter 405, Subchapter FF of this title (relating to Consent to Treatment with Psychoactive Medication).

(17) The right to give or withhold informed consent to participate in research programs without compromising access to services to which the individual is otherwise entitled.

(18) The right to give or withhold informed consent for the use or performance of any of the following (exceptions to this right must be in accordance with applicable laws, standards, or, for department facilities and community centers, department rules, and must be fully explained to the individual and the person authorized to give consent, if applicable):

(A) surgical procedures;

(B) electroconvulsive therapy (prohibited for minors under the age of 16);

(C) unusual medications;

(D) behavior therapy when aversive procedures are used or a right otherwise guaranteed in this rule is restricted;

(E) hazardous assessment procedures;

(F) audiovisual equipment; and

(G) other procedures for which consent is required by law.

(19) The right to withdraw consent at any time in any matter in which the person receiving services has previously granted consent, without limiting or compromising access to services or other treatment(s).

(20) The right to be informed of the current and future use and disposition of products of special observation and audiovisual techniques, such as one-way vision mirrors, tape recorders, television, movies, or photographs.

(21) The right to confidentiality of records and the right to be informed of the conditions under which information can be disclosed without the individual's consent. At department facilities and community centers, client-identifying information shall be disclosed in accordance with Chapter 403, Subchapter K of this title (relating to Client-Identifying Information). At psychiatric hospitals, client-identifying information shall be disclosed in accordance with the provisions of the Texas Health and Safety Code, §§ 576.005 and 611.001-611.005, and 42 Code of Federal Regulations, Part 2.

(22) The right to be informed of a treating physician's intent to disclose information (when the physician determines such disclosure is in the individual's best interest) to a law enforcement officer or the individual's legally authorized representative when the disclosure is not specifically permitted by other law (e.g., information provided to law enforcement officers legally authorized to conduct investigations concerning complaints of abuse or denial of rights). Unless the individual is unavailable, this includes the right to be informed:

- (A) of the intent to disclose the information;
- (B) to whom the information will be disclosed; and
- (C) of the client's right to prohibit the information from being disclosed by providing contrary written instructions.

(23) The right to have access to information contained in one's own record. The right extends to the parent or conservator of a minor (unless the minor is receiving chemical dependency services) and to the legal guardian of a person declared to be legally incompetent. Department facilities and community centers should also reference Chapter 403, Subchapter K of this title (relating to Client-Identifying Information) regarding this right.

(A) Confidential information about another person who has not consented to the release shall be deleted from the record prior to its release, unless it is:

- (i) information relating to the individual that another person has provided;
- (ii) the identity of the person responsible for that information; or
- (iii) the identity of any person who provided information that resulted in the individual's commitment.

(B) This right may be limited by a mental health professional if the professional determines that release of a portion of the information would be harmful to the individual's physical, mental, or emotional health.

(C) Any denial of access to information shall be in keeping with, documented, and reviewed regularly according to provisions outlined in the Texas Health and Safety Code, § 611.004 or § 611.0045. Individuals also have the right to an independent review of any denial of access in accordance with Public Law 99-319 (Protection and Advocacy Act for Mentally Ill

Individuals) or the Texas Health and Safety Code, § 611.0045.

(24) The right to be free from mistreatment, abuse, neglect, and exploitation. See 40 TAC Chapter 710, Subchapter a (concerning Abuse and Neglect of Persons Served by TXMHMR Facilities), 40 TAC Chapter 710, Subchapter B (concerning Client Abuse and Neglect in Community Mental Health and Mental Retardation Centers), and 40 TAC Chapter 710, Subchapter C (concerning Patient Abuse in Private Psychiatric Facilities).

(25) The right to reasonable protection of personal property from theft or loss. At department facilities, the head of the facility must institute procedures to protect and adequately secure the personal property of persons served, including clothing. Community centers and psychiatric hospitals should develop and post procedures regarding protection and security of personal property of persons served.

(26) The right not to be secluded or have physical restraint applied to the individual unless it has been prescribed by a physician, except in emergency situations. If physical restraint or seclusion is utilized, the reason for the medical order, the length of time restraint or seclusion has been ordered, and the behaviors necessary for the individual to be removed from restraint or seclusion shall be explained to the individual, and the restraint or seclusion shall be discontinued as soon as possible. Department facilities and community centers should reference Chapter 405, Subchapter F of this title (relating to Restraint and Seclusion in Mental Health Facilities) for more information regarding this right.

(27) The right to fair compensation for labor performed for the department facility, community center, or psychiatric hospital in accordance with the Fair Labor Standards Act. Persons receiving services at department facilities and community centers have the right to be informed of the availability of employment opportunities at the department facility or in the community which may lead to competitive employment, as outlined in the Texas Health and Safety Code, § 533.008 (§ 2.17A of the Texas Mental Health and Mental Retardation Act).

(28) The right to be free from intrusive searches of person or possessions unless justified by clinical necessity, ordered by a physician, and witnessed. Any searches involving removal of any item of clothing shall be witnessed by an individual of the same sex as the person being searched and shall be conducted in a private area. Only physicians will perform body orifice searches.

(29) The right to be transported to, from, and between department facilities (including community-based services), community centers, and psychiatric hospitals in a way that protects the dignity and safety of the individual. This includes:

(A) the right of females to be transported or accompanied by a female attendant unless the individual is accompanied by her father, husband, adult brother, or adult son;

(B) the right of all individuals not to be transported in a marked police or sheriff's car or accompanied by a uniformed officer unless other means are not available;

(C) the right of all individuals not to be transported with state prisoners;

(D) the right of all individuals not to be physically restrained, unless necessary to protect the health and safety of the individual or of a person traveling with

the individual, in which case procedures outlined in the Texas Health and Safety Code, § 574.045, shall be followed; and

(E) the right of all individuals to be provided reasonable opportunities to get food and water and use a bathroom.

(30) The right to initiate a complaint. At department facilities and community centers, this includes the right to be informed of how to contact the facility or center rights protection officer (as outlined in §404.164 of this title (relating to Rights Protection Officer at Department Facilities and Community Centers)), the facility or center public responsibility committee, and the Office of Consumer Services and Rights Protection in central office (toll-free 1-800-252-8154, toll-free TDD 1-800-538-4870). At psychiatric hospitals, this includes the right to be informed of how to contact the Health Facility Licensure and Certification Division of the Texas Department of Health (toll-free 1-800-228-1570).

(31) The right of any individual to make a complaint regarding denial of rights without any form of retaliation.

(32) The right to have these rights and any additional rights explained aloud in a way the person served can understand within 24 hours of admission to services (refer to §404.163 of this title (relating to Communication of Rights to Individuals Receiving Mental Health Services)) and upon request. Persons admitted voluntarily have the right to have these rights and any additional rights explained aloud in a way the person served can understand prior to admission to services and upon request.

HISTORY: The provisions of this § 404.154 adopted to be effective December 10, 1993, 18 TexReg 8790

§ 404.155. Rights of Persons Receiving Residential Mental Health Services

(a) Personal rights.

(1) The following personal rights shall be provided to all persons receiving residential mental health services.

(A) The right to communicate with persons outside the department facility, community center, or psychiatric hospital, in keeping with the general rules of the facility, including:

(i) receiving visitors at reasonable times and places, allowing for as much privacy as possible;

(ii) making phone calls at reasonable times, allowing for as much privacy as possible; and

(iii) communicating by uncensored and sealed mail with others, except in the following situations:

(I) When there is reason to suspect that the mail contains items such as illicit drugs or weapons which may present imminent risk of harm to the individual or others, the treating physician may authorize observing the opening of the mail by writing a specific order into the individual's chart explaining the potential harm, the reason for suspicion, and what mail is to be opened. The mail may then be opened by the individual in the presence of two members of the individual's treatment team. After inspecting the mail and removing any items which might present imminent risk of harm to the individual or others, the mail shall be given to the individual; those observing the opening of the mail may not read it.

(II) If the individual is unable to open personal mail because of a physical limitation, a staff member may assist if documentation of the need for assistance is provided in the individual's record and if the

individual requests or agrees to such assistance. An order authorizing this assistance must be signed by the treating physician and must be reviewed every seven days, except in the case of an individual with a chronic physical limitation, when the order may remain in effect until there is an improvement in the individual's condition. Other orders may be renewed as long as the condition exists. Staff members may offer to read mail to individuals unable to read because of illiteracy, blindness, or other reason, but staff members may not read the mail if the individual declines the offer.

(III) Employees may observe the opening of packages received by individuals deemed not capable of protecting personal property. An order authorizing this limitation must be signed by the treating physician and must be reviewed every seven days, except in the case of an individual with a chronic limitation, when the order must be reviewed at least every 30 days. a diagnosis of mental illness or mental retardation is not in itself considered a chronic limitation. Any cash or articles received shall be recorded in the individual's record and placed in appropriate safekeeping accessible to the individual.

(B) The right to keep and use personal possessions. This includes the right to wear one's own clothing and religious or other symbolic items. This right may be limited only if the use of the possession is determined by the treatment team to present imminent risk of harm, to present a security risk, or to prevent the individual from participating in the treatment plan. This includes the right to be free from searches of belongings except those searches based on reasonable belief that failure to search may present imminent risk of harm to the individual or others. a clinical justification must exist and be documented in the individual's record if access to or the use of any personal possession is limited or if a search of the individual's belongings is conducted.

(C) The right to have an opportunity for physical exercise and for going outdoors, with or without supervision, as clinically indicated, at least daily. a physician's order limiting this right must be reviewed and renewed, if necessary, at intervals no longer than every three days and the findings of the review must be documented in the individual's record.

(D) The right to have access, with or without supervision, as clinically indicated, to appropriate areas of the campus of the department facility, community MHMR center, or psychiatric hospital away from the individual's living unit, including, but not limited to, recreation and canteen/snack areas. The access should be available as frequently as the individual's clinical condition and schedule of therapeutic activities allow.

(E) The right to have opportunities for suitable interactions with individuals of the opposite sex, with or without supervision, as appropriate for the individual.

(2) For persons receiving inpatient services, the exercise of these rights may be limited by the treating physician only to the extent that the restriction is necessary to maintain the individual's physical and/or emotional well-being or to protect another person. If a restriction is imposed, the treating physician shall document the reasons for the restriction and the duration of the restriction in the individual's record. Unless otherwise specified, the written order must be reviewed

within seven days, and if renewed, it must be renewed in writing at intervals no greater than every seven days. The treatment team should consider strategies to help the individual regain or resume the practice of the right.

(A) A physician or physician's designee shall inform the individual of the clinical reasons for the restriction and its duration as soon as possible. The parent/conservator of a minor or the legal guardian of an individual, if applicable, shall also be informed of the restriction and its duration as appropriate.

(B) The right to communicate with legal counsel, the department, the courts, or the state attorney general may not be restricted.

(3) Except for the general rules of the program, there is no provision for limiting these rights for persons voluntarily admitted to a residential program other than an inpatient unit.

(b) Additional rights. In addition to the rights outlined in subsection (a) of this section, persons receiving residential mental health services shall also have the following rights.

(1) The right to have unrestricted visits from attorneys, internal advocates, representatives of Advocacy, Inc. with the consent of the person served, private physicians, or other mental health professionals at reasonable times and places. At department facilities, this right shall also include unrestricted visits from public responsibility committee members at reasonable times and places.

(2) The right to be informed in writing and by any other means necessary for communication, at the time of admission to and discharge from inpatient services and upon request, of the existence and purpose of the protection and advocacy system in this state under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (Public Law 99-319). The notice must include the protection and advocacy system's telephone number and address. In Texas, the system is called Advocacy, Inc.

(3) The right to wear suitable clothing which is neat, clean, and well-fitting. At department facilities and community centers, clothing will be obtained and provided for individuals not having such clothing.

(4) The right to religious freedom. No person shall be forced to attend or engage in any religious activity.

(5) The right to a timely consideration of a request for transfer to another room if another person in the room is unreasonably disturbing the individual, with the right to be informed of any reasons for any denial of such a request.

(6) The right to receive appropriate treatment of any physical ailments essential to the treatment of a mental disorder and for a physical disorder arising in the course of an individual's inpatient psychiatric care. The manner in which these physical disorders are treated is the decision of the physician, consistent with good professional judgment. If the physician determines the procedures required for treatment to be elective rather than essential, the individual has the right to consult with a provider outside the facility for treatment at the individual's own expense.

(7) The right of each adult individual admitted to an inpatient program to have the department facility, community center, or psychiatric hospital notify a person chosen by the individual of the admission if the individual grants permission. Documentation of the individual's granting or denial of that permission must be entered into the individual's clinical record. If such notification

is refused upon admission, the individual served shall be reformed of this right as the individual's condition changes.

(8) The right of each adult individual admitted to an inpatient program to have the department facility, community center, or psychiatric hospital notify a person chosen by the individual prior to discharge or release if the individual grants permission. Documentation of the individual's granting or denial of that permission must be entered into the individual's clinical record.

(9) The right of each adult individual admitted to an inpatient program to have the department facility, community center, or psychiatric hospital provide information about the right to make health care decisions and execute advance directives as allowed by state law.

(10) Effective May 1, 1994, the right to written information, in the individual's primary language, if possible, about any prescription medications ordered by the treating physician. This information shall, at minimum, identify the major types of prescription medications; specify the conditions for which the medications are prescribed; identify the risks, side effects, and benefits associated with each type of medication; and include sources of detailed information about each particular medication. This right extends to the individual's family on request unless prohibited by state or federal confidentiality laws.

(11) The right to receive, within four hours after the facility administrator or designee receives a written request, a list of the medications prescribed for administration to the individual while the individual is in the department facility, community center, or psychiatric hospital. The list must include the name, dosage, and administration schedule of each medication and the name of the physician who prescribed each medication. This right extends to a person designated by the individual and to the individual's legal guardian or managing conservator, if applicable. If sufficient time to prepare the list before discharge is not available, the list may be mailed within 24 hours after discharge to the individual or another appropriate, designated party.

(A) If an individual informs a person associated with or employed by the department facility, community center, or psychiatric hospital of the individual's desire to leave, the employee or person shall, as soon as possible, assist the individual in creating the written request and present it to the individual to sign, date, and time.

(B) Without regard to whether the individual agrees to sign the paperwork, the request will be documented and processed by staff.

(12) The right to have a periodic review of the need for continued inpatient treatment.

HISTORY: The provisions of this § 404.155 adopted to be effective December 10, 1993, 18 TexReg 8790

§ 404.156. Additional Rights of Persons Receiving Residential Mental Health Services at Department Facilities

In addition to the rights listed in § 404.155 of this title (relating to Rights of Persons Receiving Residential Mental Health Services), persons receiving residential mental health services at department facilities have the following rights.

(1) The right to be advised of the availability of trust fund accounts and other safekeeping for funds and articles of value. This right shall extend to the family of

the person receiving services, who shall be informed of the existence of the trust fund as a means of protecting personal funds for the person served, and who shall be advised to send all monies, either checks or cash, to the cashier, and not to the individual or ward employees. Families shall be informed that the department facility is not responsible for funds mailed directly to the person served. The method of advising persons served and their families of this right is to be determined by each department facility.

(2) The right of each individual admitted to an inpatient program of a department facility to have the state pay the cost of transportation home upon discharge or furlough unless the individual or someone responsible for the individual is able to do so.

(3) The right of each individual admitted to an inpatient program of a department facility other than for substance abuse to be informed in writing at admission and upon discharge of the existence of the court monitor of the RAJ v. Jones settlement and to be informed of how to contact the monitor's office, the plaintiff's counsel, and organizations which provide free legal assistance.

HISTORY: The provisions of this § 404.156 adopted to be effective December 10, 1993, 18 TexReg 8790

§ 404.157. Rights of Persons Voluntarily Admitted to Inpatient Services

(a) All persons voluntarily admitted to inpatient services for treatment of mental illness or chemical dependency or the person who requested admission on the individual's behalf have the right to request discharge. Any such person expressing a request for release shall be given an explanation of the process for requesting release and afforded the opportunity to request release in writing.

(1) When a written request for release is presented to any direct care staff of the department facility, community center, or psychiatric hospital, it should be signed, dated, and timed by the individual or a person legally responsible for the individual.

(2) If an individual informs a person associated with or employed by the department facility, community center, or psychiatric hospital of the individual's desire to leave, the employee or person shall, as soon as possible, assist the individual in creating the written request and present it to the individual to sign, date, and time. Without regard to whether the individual agrees to sign paperwork requesting discharge from services, the request will be documented and processed by staff. The refusal or inability of the individual to sign the request for discharge will be documented on the unsigned written request.

(3) All written or prepared requests for discharge will be timed, dated, and signed by the staff member, who shall provide information to the individual that pursuant to law, during the ensuing period of up to 24 hours, the individual will be observed and evaluated to determine the clinical appropriateness of seeking an involuntary commitment to services. The form and format for requesting release and the information to be provided may be prescribed by the department.

(b) All persons voluntarily admitted to inpatient services for treatment of mental illness or chemical dependency have the right to be discharged within four hours of a request for release unless the individual's treating physician (or another physician if the treating physician is not available) determines that there is cause to believe that the individual might meet the criteria for court-ordered mental health services or emergency detention.

(1) Each such person detained beyond four hours has the right to be examined in person by a physician and assessed for discharge readiness within 24 hours of the filing of a request for release, with results of the assessment and recommendation resulting documented in the medical record and disclosed to the individual. All such persons have the right not to be detained beyond the completion of the in-person examination unless:

(A) the person who filed the request for release files a written withdrawal of the request or asks a staff member to withdraw the request (the staff member must put the request in writing);

(B) the person served, in the physician's clinical judgment, meets the criteria for involuntary commitment outlined in the Texas Health and Safety Code, § 573.022, and an application for court-ordered mental health services, chemical-dependency services or emergency detention will be filed and an order obtained not later than 4 p.m. on the next succeeding business day after the date on which the examination occurs and the individual is detained under the provisions of the relevant statute; or

(C) the person receiving inpatient treatment for chemical dependency is a minor admitted with the consent of the parent, guardian, or conservator, and the individual who gave that consent objects in writing to the release of the minor after consultation with personnel of the department facility, community center, or psychiatric hospital.

(2) If extremely hazardous weather conditions exist or a disaster occurs, the physician may request the judge of a court that has jurisdiction to extend the period under which the individual may be detained. The judge or a magistrate appointed by the judge may, by written order made each day, extend the period during which the individual may be detained until 4 p.m. on the first succeeding business day.

(c) All persons voluntarily admitted to inpatient services for treatment of mental illness or chemical dependency have the right not to have an application for court-ordered mental health or chemical dependency services filed while receiving voluntary services unless, in the opinion of the physician responsible for the individual's treatment, the individual meets the criteria for court-ordered services as outlined in the Texas Health and Safety Code, § 573.022, and either:

(1) requests discharge;

(2) is absent without authorization;

(3) is unable to consent to appropriate and necessary psychiatric or chemical dependency treatment; or

(4) refuses to consent to necessary and appropriate treatment recommended by the physician responsible for the individual's treatment and the physician completes a certificate of medical examination for medical illness that, in addition to the information required by the Texas Health and Safety Code, § 574.011, includes the opinion of the physician that:

(A) there is no reasonable alternative to the treatment recommended by the physician; and

(B) the individual will not benefit from continued inpatient care without the recommended treatment.

(d) Each of these persons has the right to be informed by the physician of the intent to file an application for court-ordered mental health services based on the criteria outlined in subsection (c) of this section.

(e) Each of these person has the right to be free from threatening or coercive representations of actions that will result if the individual requests to leave a department facil-

ity, community center, or psychiatric hospital against medical advice, including representations that:

(1) the individual will be subject to an involuntary commitment proceeding or subsequent emergency detention unless that representation is made by a physician or on the written instruction of a physician who has evaluated the individual within 48 hours prior to the representation;

(2) the individual's insurance company will refuse to pay all or any portion of the medical expenses previously incurred; or

(3) the person will be reported to an enforcement or regulatory agency (i.e., Department of Protective and Regulatory Services) merely because the person refuses to follow a treatment recommendation. However, this does not preclude reminding the individual of the consequences of requesting release as relate to any agreements the individual entered into as a condition of treatment, i.e., treatment as a condition of parole.

HISTORY: The provisions of this § 404.157 adopted to be effective December 10, 1993, 18 TexReg 8790

§ 404.158. Rights of Persons Apprehended for Emergency Detention for Inpatient Mental Health Services (Other Than for Chemical Dependency)

The rights of each person apprehended and presented for emergency detention for inpatient mental health services at a department facility, community center, or psychiatric hospital are granted under the relevant sections of the Texas Mental Health Code (Texas Civil Statutes, Article 5547-1 et seq.).

(1) Each person apprehended or detained, but not yet admitted, has the following rights.

(A) The right to be advised of the location of detention, the reasons for detention, and that detention could result in a longer period of involuntary commitment.

(B) The right to contact an attorney of the person's own choosing with opportunities to contact that attorney.

(C) The right to be transferred back to the location of apprehension, or other suitable place, if not admitted for emergency detention, unless the person is arrested or objects to the return.

(D) The right to be released if the head of the department facility, community center, or psychiatric hospital determines that any one of the criteria for emergency detention no longer applies.

(E) The right to be informed that anything the person says to the personnel of the department facility, community center, or psychiatric hospital may be used in the proceeding for further detention.

(F) The right to a preliminary examination by a physician conducted immediately upon arrival at the department facility, community center, or psychiatric hospital following apprehension to determine whether the person meets the criteria for admission for emergency detention. If a physician is not available to conduct the examination, steps shall immediately be taken to arrange for the examination as soon as possible, but in no case more than 24 hours after apprehension.

(2) If the person is accepted for treatment on an emergency detention, the personnel of the department facility, community center, or psychiatric hospital shall immediately advise the person of the following rights.

(A) The right not to be detained for more than 24 hours after the hour of initial detention unless an order for further detention is obtained, except that if the 24-hour period ends on a Saturday or Sunday or a legal holiday or before 4 p.m. on the first business day succeeding the Saturday, Sunday, or legal holiday, the period of detention shall end no later than 4 p.m. of the first succeeding business day. In the case of an extreme weather emergency or disaster, a judge may also extend the period of detention by written order for no more than 24 hours at a time.

(B) The right to be released if the head of the department facility, community center, or psychiatric hospital determines that any one of the criteria for emergency detention, as outlined in the Texas Health and Safety Code, § 573.022, no longer applies.

(C) The right to be returned to the location of apprehension, place of residence, or other suitable place if released from emergency detention, unless the person is arrested or objects to the return.

(D) The right to be informed that if a petition for court-ordered treatment is filed, the person is entitled to a judicial probable cause hearing no later than the 72nd hour after the hour of which detention begins under an order of protective custody except that if the 72-hour period ends on a Saturday or Sunday or a legal holiday, the hearing shall be held no later than the next day that is not a Saturday, Sunday, or legal holiday. In the case of an extreme weather emergency or disaster, a judge may also delay the hearing by written order for no more than 24 hours at a time.

(E) The right to have an attorney appointed if the person does not have an attorney when application for court-ordered services is filed.

(F) The right to communicate with the attorney at any reasonable time and to have assistance in contacting the attorney.

(G) The right to present evidence and to cross-examine witnesses who testify on behalf of the petitioner at a hearing.

HISTORY: The provisions of this § 404.158 adopted to be effective December 10, 1993, 18 TexReg 8790

§ 404.159. Rights of Persons Apprehended for Emergency Detention for Inpatient Chemical Dependency Services

The rights of each person apprehended and presented for emergency detention for inpatient chemical dependency services at a department facility, community center, or psychiatric hospital are granted under the relevant sections of the Texas Alcohol and Drug Abuse Services Act (Texas Civil Statutes, Article 5561c-2).

(1) Each person apprehended or detained, but not yet admitted, for emergency detention has the following rights.

(A) The right to be advised of the location of detention, the reasons for detention, and that detention could result in a longer period of involuntary commitment.

(B) The right to contact an attorney of the person's own choosing with opportunities to contact that attorney.

(C) The right to be transported back to the location of apprehension, or other suitable place, if not admitted for emergency detention, unless the person is arrested or objects to the return.

(D) The right to be released if the head of the department facility, community center, or psychiatric

hospital determines that any one of the criteria for emergency detention, as outlined in the Texas Health and Safety Code, § 573.022, no longer applies.

(E) The right to be informed that anything the person says to the personnel of the department facility, community center, or psychiatric hospital may be used in proceedings for further detention.

(F) The right to have a preliminary examination by a physician conducted immediately upon arrival at the department facility, community center, or psychiatric hospital following apprehension to determine whether the person meets the criteria for admission for emergency detention. If a physician is not available to conduct the examination, steps shall immediately be taken to arrange for the examination as soon as possible, but in no case more than 24 hours after apprehension.

(2) If a person is accepted for treatment on an emergency detention, the personnel of the department facility, community center, or psychiatric hospital shall immediately advise the person of the following rights.

(A) The right not to be detained for more than 24 hours after the hour of initial detention unless an order for further detention is obtained, except that if the 24-hour period ends on a Saturday or a Sunday or legal holiday or before 4 p.m. on the first business day succeeding the Saturday, Sunday, or legal holiday, the period of detention shall end no later than 4 p.m. of the first succeeding business day. In the case of an extreme weather emergency or disaster, a judge may also delay the hearing by written order for no more than 24 hours at a time.

(B) The right to be released if the head of the department facility, community center, or psychiatric hospital determines that the criteria for emergency detention, as outlined in the Texas Health and Safety Code, § 573.022, no longer applies.

(C) The right to be transferred back to the location of apprehension, or other suitable place, if released from emergency detention, unless the person is arrested or objects to the return.

(D) The right to be informed that no later than the 24th hour after the hour of initial detention, the head of the department facility, community center, or psychiatric hospital may file a petition for court-ordered treatment, except that if the 24-hour period ends on a Saturday, Sunday, or legal holiday, the petition shall be filed no later than 4 p.m. of the first succeeding business day that is not a Saturday, Sunday, or legal holiday.

(E) The right to be informed that if a petition for court-ordered treatment is filed, the person is entitled to a judicial probable cause hearing no later than the 72nd hour after the hour on which detention begins under an order of protective custody to determine whether the person should remain detained in the department facility, community center, or psychiatric hospital, except that if the period ends on Saturday, Sunday, or legal holiday, the hearing must be held no later than the next business day that is not a Saturday, Sunday, or legal holiday. In the case of an extreme weather emergency or disaster, a judge may also delay the hearing by written order for no more than 24 hours at a time.

(F) The right to have an attorney appointed when application for court-ordered services is filed (if the person does not have an attorney).

(G) The right to communicate with the attorney at any reasonable time and to have assistance in contacting the attorney.

(H) The right to be informed that anything the person says to the personnel of the department facility, community center, or psychiatric hospital may be used in making a determination relating to detention, may result in the filing of a petition for court-ordered treatment, and may be used at a court hearing.

(I) The right to present evidence and to cross-examine witnesses who testify on behalf of the petitioner at a hearing.

(J) The right to refuse medication unless there is an imminent likelihood of serious physical injury to the person or others if the medication is refused.

(K) The right to be informed that beginning on the 24th hour before a hearing for court-ordered treatment, the person may refuse to take medication unless the medication is necessary to save the person's life.

(L) The right to request that a hearing be held in the county of which the person is a resident, if within the state.

HISTORY: The provisions of this § 404.159 adopted to be effective December 10, 1993, 18 TexReg 8790

§ 404.160. Special Rights of Minors Receiving Inpatient Mental Health Services

In addition to the applicable rights addressed in § 404.154-404.159 of this title (relating to Rights of All Persons Receiving Mental Health Services; Rights of Persons Receiving Residential Mental Health Services; Additional Rights of Persons Receiving Residential Mental Health Services at Department; Rights of Persons Voluntarily Admitted to Inpatient Services; Rights of Persons Apprehended for Emergency Detention for Inpatient Mental Health Services (Other Than for Chemical Dependency); and Rights of Persons Apprehended for Emergency Detention for Inpatient Chemical Dependency Services), minors admitted to inpatient mental health services shall have the following rights.

(1) The right to treatment by persons who have specialized education and training in the emotional, mental health, and chemical dependency problems and treatment of minors.

(2) The right to receive inpatient services in an area separated from adults receiving services.

(3) The right to regular communication with the individual's family. Other than in keeping with the general rules of the facility, this right may only be limited when the limitation is necessary to protect the individual's welfare in keeping with procedures outlined in § 404.155(a)(2) of this title (relating to Rights of Persons Receiving Residential Mental Health Services).

HISTORY: The provisions of this § 404.160 adopted to be effective December 10, 1993, 18 TexReg 8790

§ 404.161. Rights Handbooks for Persons Receiving Mental Health Services at Department Facilities, Community Centers, and Psychiatric Hospitals Operated by Community Centers

(a) The department will publish a rights handbook which will contain interpretations written in simple and nontechnical language of the various rights afforded individuals receiving mental health services, an explanation of the circumstances under which those rights may be limited, and an explanation of the appeals process. This hand-

book will be revised by the Office of Consumer Services and Rights Protection as necessary.

(b) The department will publish a Teen's Bill of Rights and a Children's Bill of Rights ("The Little Dinosaur Named Wilbur," with supplementary material) which are adopted by reference as Exhibits B and C of this subchapter, respectively, with copies available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668. The Teen's Bill of Rights and the Children's Bill of Rights will contain interpretations written in simple and nontechnical language of the rights afforded minors receiving mental health services, an explanation of the circumstances under which those rights may be limited, and organizations individuals may contact in the event of rights violations. The Teen's Bill of Rights and the Children's Bill of Rights will be revised as necessary.

(1) The Teen's Bill of Rights is generally recommended for minors over the age of eight.

(2) The Children's Bill of Rights is generally recommended for minors under the age of eight.

(3) Notwithstanding these guidelines, staff should consider the developmental level of the minor being admitted in determining the appropriate document to be provided. Minors may also request and receive the rights handbook.

(c) The handbook, Teen's Bill of Rights and/or Children's Bill of Rights, published by the department will be used as the formal document for rights notification for individuals admitted to department facilities, their community programs, and psychiatric hospitals operated by community centers. Community centers may distribute the handbook published by the department or may choose to publish their own version. Handbooks published by community centers must contain all rights outlined in the handbook published by the department and must be approved by the Office of Consumer Services and Rights Protection prior to their distribution.

(d) Each handbook distributed must include the toll-free number of the Office of Consumer Services and Rights Protection (CSRP) in central office (1-800-252-8154), the toll free TDD number of CSRP (1-800-538-4870), the toll free number of Advocacy, Inc. (1-800-223-4206, both voice and TDD capabilities), the name, telephone number, and mailing address of the rights protection officer, and the mailing address of the public responsibility committee for the facility or community center which distributes it.

(e) Immediately upon admission into services, each individual and the parent or conservator of a minor and the legal guardian of the person, when applicable, must be given the appropriate rights handbook. The parent, conservator, or legal guardian of a minor shall also receive a copy of the rights handbook in addition to the Teen's Bill of Rights and/or Children's Bill of Rights.

(f) All handbooks must be printed in English and Spanish, and must be made available in any other language used by a significant percentage of the service area's population. Copies of the rights handbook must be displayed prominently at all times in all areas frequented by persons receiving services (e.g., day rooms, recreational rooms, waiting rooms, lobby areas). A sufficient number of copies will be kept on hand in each of these areas in order that a copy may be made readily available to anyone requesting one. The head of each department facility and community center shall appoint an individual responsible for ensuring that these requirements are met.

(g) Nothing in this section shall preclude the use or distribution of additional brochures or materials outlining

rights information provided the information does not conflict with information presented in the rights handbook.

HISTORY: The provisions of this § 404.161 adopted to be effective December 10, 1993, 18 TexReg 8790

§ 404.162. Patient's Bill of Rights, Teen's Bill of Rights, and Children's Bill of Rights for Individuals Receiving Mental Health Services at Psychiatric Hospitals Not Operated by a Community Center

(a) The department will publish a Patient's Bill of Rights, which is herein adopted by reference as Exhibit a of this subchapter, with copies available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, which will contain interpretations written in simple and nontechnical language of the various rights afforded individuals receiving mental health services at psychiatric hospitals, an explanation of the circumstances under which those rights may be limited, and organizations individuals may contact in the event of rights violations. The Patient's Bill of Rights will be revised as necessary.

(b) The department will publish a Teen's Bill of Rights and a Children's Bill of Rights ("The Little Dinosaur Named Wilbur," with supplementary material) which are adopted by reference as Exhibits B and C of this subchapter, respectively, with copies available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668. The Teen's Bill of Rights and the Children's Bill of Rights will contain interpretations written in simple and nontechnical language of the rights afforded minors receiving mental health services at psychiatric hospitals, an explanation of the circumstances under which those rights may be limited, and organizations individuals may contact in the event of rights violations. The Teen's Bill of Rights and the Children's Bill of Rights will be revised as necessary.

(c) The Patient's Bill of Rights, the Teen's Bill of Rights, and the Children's Bill of Rights published by the department will be used as the formal document for rights notification for individuals admitted to psychiatric hospitals which are not operated by community centers. At psychiatric hospitals operated by community centers, individuals admitted for services will receive the rights handbook as outlined in § 404.161 of this title (relating to Rights Handbooks for Persons Receiving Mental Health Services at Facilities, Community Centers, and Psychiatric Hospitals Operated by Community Centers).

(d) The Patient's Bill of Rights, the Teen's Bill of Rights, and the Children's Bill of Rights must be printed in English and Spanish, and must be made available in other languages of primary use by individuals admitted to each psychiatric hospital.

(e) Immediately upon admission into services, each individual must be given the Patient's Bill of Rights, Teen's Bill of Rights, and/or Children's Bill of Rights.

(1) A copy must also be given to the individual's parent or conservator of a minor and the legal guardian of the person, when applicable, and to any other person requested by the individual.

(2) The parent/conservator of a minor shall receive a copy of the Patient's Bill of Rights in addition to the Teen's Bill of Rights and/or Children's Bill of Rights.

(f) Copies of the Patient's Bill of Rights, Teen's Bill of Rights, and/or Children's Bill of Rights must be displayed prominently at all times in all areas frequented by persons receiving services (e.g., day rooms, recreational rooms, wait-

ing rooms, lobby areas). A sufficient number of copies will be kept on hand in each of these areas in order that a copy may be made readily available to anyone requesting one.

(g) Nothing in this section shall preclude the use or distribution of additional brochures or materials outlining rights information provided the information does not conflict with information presented in the rights handbook.

HISTORY: The provisions of this § 404.162 adopted to be effective December 10, 1993, 18 TexReg 8790

§ 404.163. Communication of Rights to Individuals Receiving Mental Health Services

(a) In addition to receiving a rights handbook, each newly admitted individual, the parent or conservator of a minor, and the guardian of the person shall be informed orally of all rights in his or her primary language using plain and simple terms within 24 hours of admission into services. Persons admitted for voluntary services shall be given this information prior to admission to services. The notification will also include an explanation of the circumstances under which those rights may be limited, and an explanation of how a complaint may be filed. This notification also must occur at least annually and upon any changes to this information. The method used to communicate the information should be designed for effective communication, tailored to meet each person's ability to comprehend, and responsive to any visual or hearing impairment.

(b) Oral communication of rights shall be documented on a form bearing the date and signatures of the individual and/or the parent, conservator, or guardian, and the staff member who explained the rights. The form should be filed in the individual's chart. Psychiatric hospitals should use the form provided on the Patient's Bill of Rights. Department facilities should use the Receipt of Information Record (MHRS 9-1 Form). Community centers may use the MHRS 9-1 Form or a form of their own design which contains all of the applicable elements, so long as the form is used only for the documentation of communication of rights.

(c) When the individual receiving services is unable or unwilling to sign the document which confirms that rights have been orally communicated, a brief explanation of the reason should be entered onto that document along with the signatures of the person who explained the rights and a third-party witness.

(d) If the individual does not appear to understand the rights explanation, staff will attempt to provide another explanation periodically until understanding is reached or until discharge. The necessity for repeating the rights communication process will be documented, signed, and dated by staff.

HISTORY: The provisions of this § 404.163 adopted to be effective December 10, 1993, 18 TexReg 8790

§ 404.164. Rights Protection Officer at Department Facilities and Community Centers

(a) The head of each department facility and each community center shall appoint a rights protection officer for the facility or center. The rights protection officer must be able to perform the duties of this office without any conflicts of interest.

(b) The name, telephone number, and mailing address of the rights protection officer must be prominently posted in every program or residential area frequented by service recipients, including community outreach or contract programs. Individuals desiring to contact the rights protection

officer must be allowed access to facility or center telephones to do so.

(c) Duties required of the rights protection officer are specified at the discretion of the head of the facility or center, but must include the following:

(1) receiving complaints/allegations of violations of rights, allegations of inadequate provision of services, and requests for advocacy from service recipients, their families, their friends, service providers, other facility or center personnel, other agencies, the general public, and the Office of Consumer Services and Rights Protection;

(2) thoroughly investigating each such complaint received;

(3) representing the expressed desires of the individuals served and advocating for the resolution of their grievances;

(4) reporting the results of investigations and advocacy to service recipients and the complainants, consistent with the protection of the service recipients' right to have any identifying information remain confidential;

(5) ensuring that the rights of individuals receiving services have been thoroughly explained to facility and center personnel through periodic training. The rights protection officer may provide the training directly or by consulting with facility or center training personnel; and

(6) reviewing all policies, procedures, behavior therapy programs, and rules which affect the rights of persons receiving services.

HISTORY: The provisions of this § 404.164 adopted to be effective December 10, 1993, 18 TexReg 8790

§ 404.165. Staff Training in Rights of Persons Receiving Mental Health Services

This subchapter shall be thoroughly and periodically explained to all employees of each department facility, community center, and psychiatric hospital as follows.

(1) All new employees shall receive the instruction on the content of this subchapter during their orientation training and prior to beginning work.

(2) Within 60 days after the effective date of this subchapter, all current employees shall be briefed on its contents by the head of the department facility, community center, or psychiatric hospital or designee.

(3) All supervisory personnel shall have a continuing responsibility to keep employees informed about rules governing rights of persons receiving mental health services and shall ensure that each employee receives training on the subject not less than once each calendar year. At department facilities and community centers, such training shall be reported to the department facility or community center's office for staff development. Psychiatric hospitals shall develop an appropriate means for maintaining training records.

(4) A record shall be kept by the psychiatric hospital or the department facility or community center's office for staff development on each employee receiving orientation, annual training, or additional instruction in compliance with this section, including the date training was provided and the name of the individual conducting the training.

HISTORY: The provisions of this § 404.165 adopted to be effective December 10, 1993, 18 TexReg 8790

§ 404.166. Restriction of Rights as Part of Non-Emergency Behavioral Interventions

(a) Patients rights are guaranteed under the provisions of this subchapter. Although under special circumstances set out in this subchapter, certain rights can be limited without informed consent, it is usually mandatory and always preferable to obtain informed consent when limitation of rights is contemplated.

(b) Except as otherwise noted in this subchapter, written informed consent must be obtained when a right guaranteed by law or department rule is limited.

(1) The patient or legally authorized representative gives informed consent. Written informed consent is obtained from the:

(A) adult individual, if legally competent and deemed to be capable of understanding the required elements which constitute informed consent;

(B) guardian of the person of the adult individual if there has been a determination of mental incompetence by a court; or

(C) parent or managing conservator of a minor under the age of 16.

(2) Informed consent must be documented. Written informed consent is evidenced by a completed copy of the department's form for "Consent to Behavior Intervention," referenced as Exhibit A. Psychiatric hospitals and CSUs may use a different form provided that it includes all of the information included on the "Consent to Behavior Intervention" form.

(3) Informed consent may be withdrawn at any time. If informed consent is withdrawn, the program must be discontinued immediately, and the treatment team must meet within three working days to modify the individual's treatment plan. Withdrawal of consent may be in any form including, but not limited to, passive noncompliance, active resistance, or a verbal or other expression of unwillingness to continue participating in any aspect of the program.

(4) The limitation of the right or rights must be reviewed by the physician as appropriate but must occur at least on a monthly basis, unless otherwise specified.

(5) Informed consent must be renewed. Written informed consent must be reviewed and renewed every six months.

(c) Any limitation on rights is included as a part of the individual's comprehensive treatment plan. The treatment plan also includes a program that emphasizes positive approaches and uses positive behavioral interventions.

(d) It is prohibited for limitation on rights to be used:

(1) in retribution, as punishment, or as a means of controlling an individual by eliciting fear;

(2) for the convenience of staff or as a consequence of insufficient staff;

(3) as a substitute for a comprehensive treatment plan; or

(4) in the absence of positive behavioral interventions.

(e) Any limitation on rights will not:

(1) deprive an individual of a basic human need (e.g., a bed at night, food, personal clothing, etc.) or the essentials of a normal hospital environment; or

(2) alter the texture of a food item or use techniques that could result in failure to provide a nutritionally adequate diet. Foods used as edible reinforcers within a behavior intervention program are evaluated by the treatment team, including a qualified dietitian and physician, with consideration of the individual's nutritional status, needs, and preferences.

(f) Additional approval required. Written informed consent must be obtained for behavior intervention programs using highly restrictive interventions. Additionally, the use of any procedures or programs employing aversive techniques, such as, but not limited to, faradic stimulation, require the unanimous documented written approval of the medical director of the facility, the CEO, and the Ethics Committee.

HISTORY: The provisions of this § 404.166 adopted to be effective October 1, 1996, 21 TexReg 8505

§ 404.167. Restriction of Rights as Part of Emergency Behavioral Interventions: Restraint and Seclusion

Restraint and seclusion shall be initiated, implemented, and monitored in keeping with the provisions of Chapter 405, Subchapter F of this title (relating to Voluntary and Involuntary Behavioral Interventions in Mental Health Programs).

HISTORY: The provisions of this § 404.167 adopted to be effective October 1, 1996, 21 TexReg 8505

§ 404.168. References

Reference is made to the following Texas laws, federal laws, departmental rules, and other standards:

(1) Texas Department of Mental Health and Mental Retardation (Texas Health and Safety Code, Chapters 531-535);

(2) Texas Mental Health Code (Texas Health and Safety Code, §§ 572.003, 573.022, 573.025, 576.001-.024, 611.002);

(3) Treatment of Chemically Dependent Persons (Texas Health and Safety Code, Chapters 461 and 462);

(4) 42 Code of Federal Regulations, Part 2;

(5) Public Law 99-319, The Protection and Advocacy Act for Mentally Ill Individuals (42 USC § 10802, et seq.);

(6) Chapter 403, Subchapter K of this title (relating to Client-Identifying Information);

(7) Texas Administrative Code (TAC), Title 40, Chapter 710, Subchapter a (Abuse and Neglect of Persons Served by TXMHMR Facilities);

(8) TAC, Title 40, Chapter 710, Subchapter B (Client Abuse and Neglect in Community Mental Health and Mental Retardation Centers);

(9) TAC, Title 40, Chapter 710, Subchapter C (Patient Abuse in Private Psychiatric Hospitals);

(10) Chapter 405, Subchapter F of this title (relating to Voluntary and Involuntary Behavioral Interventions in Mental Health Programs);

(11) Chapter 405, Subchapter FF of this title (relating to Consent to Treatment With Psychoactive Medication);

(12) Fair Labor Standards Act;

(13) Joint Commission on the Accreditation of Healthcare Organizations, Comprehensive Accreditation Manual for Hospitals (1996);

(14) TDMHMR Mental Health Community Services Standards (1995), Chapter 3; and

(15) RAJ v. Jones settlement agreement.

HISTORY: The provisions of this § 404.168 adopted to be effective October 1, 1996, 21 TexReg 8505

§ 404.169. Distribution

(a) This subchapter shall be distributed to members of the Texas Board of Mental Health and Mental Retardation, commissioner, assistant commissioner, medical director, and management and program staff of Central Office; superintendents and directors of all TDMHMR mental health

facilities; and executive directors and chairpersons of the boards of all Texas community mental health and mental retardation centers; chief executive officers of all psychiatric hospitals in Texas; Advocacy Inc.; the Texas Mental Health Consumers; the Texas Alliance for the Mentally Ill; the Mental Health Association in Texas; and other interested advocacy organizations.

(b) The superintendent or director of each facility and the executive director of each community center shall provide a copy of this subchapter to the facility or center rights officer; the chair of the facility's or center's public responsibility committee; all appropriate staff; each individual who provides direct services under contract; and any other person who requests a copy.

(c) The chief executive officers of psychiatric hospitals shall provide a copy of this subchapter to the rights officer; all appropriate staff; each individual who provides direct services under contract; and any other person who requests a copy.

HISTORY: The provisions of this § 404.169 adopted to be effective October 1, 1996, 21 TexReg 8505

CHAPTER 405.

Patient Care—Mental Health Services

Section

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Subchapter E.

Electroconvulsive Therapy (ECT)

§ 405.101. Purpose

The purpose of this subchapter is:

- (1) to establish uniform procedures for informed consent to ECT;
- (2) to establish statewide reporting requirements for the use of ECT and other procedures;
- (3) to establish statewide registration requirements for ECT equipment;
- (4) to prohibit the use of ECT in persons under 16 years of age;
- (5) to prohibit the administration of ECT by any person not licensed to practice medicine in Texas; and
- (6) to provide explicit safeguards for patients in all facilities of the Texas Department of Mental Health and Mental Retardation, community mental health and mental retardation centers, private inpatient psychiatric hospitals licensed by the Texas Department of Health under the Texas Health and Safety Code, Chapter 577, and psychiatric units of hospitals licensed by the Texas Department of Health under the Texas Health and Safety Code, Chapter 241, by:
 - (A) establishing appropriate limits for the therapeutic utilization of electroconvulsive therapy;
 - (B) establishing current guidelines of the American Psychiatric Association and the Food and Drug Administration as the references of choice in questions of practice related to ECT, except to the extent that they conflict with the provisions of the Health and Safety Code, Title 7, Subtitle C, Chapter 578; and
 - (C) prohibiting the use of chemical or gaseous agents for convulsive therapy except as a research procedure conducted in accordance with Subchapter Q of this chapter (relating to Departmental Procedures for the Protection of Human Subjects Involved in Research).

HISTORY: The provisions of this § 405.101 adopted to be effective January 1, 1992, 16 TexReg 7528; amended to be effective December 10, 1993, 18 TexReg 8790

§ 405.102. Application

(a) The provisions of this subchapter apply to all organizations and individuals providing electroconvulsive therapy on an inpatient or outpatient basis, in or on a contractual basis with:

- (1) all facilities of the Texas Department of Mental Health and Mental Retardation;

(2) community mental health and mental retardation centers;

(3) psychiatric hospitals licensed by the Texas Department of Health under the Health and Safety Code, Chapter 577; and

(4) psychiatric units of hospitals licensed by the Texas Department of Health under the Health and Safety Code, Chapter 241.

(b) Pursuant to the Health and Safety Code, Title 7, Subtitle C, Chapter 578, the following provisions of this subchapter apply to all organizations and individuals administering ECT in Texas:

(1) §405.104 of this title (relating to General Requirements);

(2) §405.108 of this title (relating to Informed Consent to ECT);

(3) §405.112(b) of this title (relating to Report of Electroconvulsive Therapy);

(4) §405.114 of this title (relating to Registration of ECT Stimulus Apparatus); and

(5) §405.115 of this title (relating to Enforcement and Penalties).

HISTORY: The provisions of this § 405.102 adopted to be effective January 1, 1992, 16 TexReg 7528; amended to be effective December 10, 1993, 18 TexReg 8790

§405.103. Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Chemical or gaseous agents—Those substances which may be capable of inducing a seizure and including, but not limited to, pentylenetetrazol (Metrazol) and flurothyl (Indoklon).

(2) Chief executive officer—The superintendent or director of a state hospital, state school, or state center; the executive director of a community mental health and mental retardation center; or the person responsible for management and operation of a hospital or other health care facility or entity providing ECT.

(3) Commissioner—The commissioner of the Texas Department of Mental Health and Mental Retardation.

(4) Community mental health and mental retardation center—A community mental health and/or mental retardation center established by the Texas Health and Safety Code, Chapter 534.

(5) Department—The Texas Department of Mental Health and Mental Retardation.

(6) ECT—Electroconvulsive therapy.

(7) Electroconvulsive therapy (ECT)—A treatment in which controlled, medically applied electrical current results in a therapeutic seizure, usually attenuated by anesthesia and muscle relaxants.

(8) Fully qualified psychiatrist—A physician, licensed to practice medicine in Texas, who has completed approved residency training in psychiatry.

(9) Informed consent—The knowing consent of a patient or the guardian of the person of the patient in keeping with the provisions of §405.108 of this title (relating to Informed Consent to ECT), so situated as to be able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion. If consent is given by the guardian of the person of a patient who has been adjudicated incompetent to manage his or her own personal affairs, then the decision must be based on knowledge of what the patient would desire, if known.

(10) Insulin coma treatment—The production of a coma for therapeutic purposes through the administration of insulin.

(11) Maintenance therapy—Treatment with electroconvulsive therapy on an individually determined intermittent schedule for purposes of preventing relapse.

(12) Multiple-monitored ECT—The induction of more than one adequate seizure during one episode of anesthesia.

(13) Nurse anesthetist—A nurse credentialed by the Board of Nurse Examiners as a nurse anesthetist.

(14) Prefrontal sonic sound treatment—A treatment, not described or defined in biomedical literature, which is defined in California statutes governing ECT and other treatments as “The direct stimulation and/or destruction of brain cells or brain tissue by ultrasound for therapeutic purposes.”

(15) Psychosurgery—Surgical intervention to sever fibers connecting one part of the brain with another or to remove or to destroy brain tissue with the intent of modifying or altering severe disturbances of behavior, thought content, or mood. For purposes of this subchapter, the term does not include such surgery for the relief of intractable physical pain or the treatment of neurological disease or abnormality.

(16) Regressive or depatterning ECT—The prolonged use of daily or more frequent treatments.

(17) Reportable therapies—Electroconvulsive therapy, insulin coma treatment, “prefrontal sonic sound treatment,” psychosurgery, multiple-monitored ECT, “regressive” or “depatterning” ECT, or any other convulsive or coma-producing therapy to treat mental illness.

(18) Series of treatments—Usually six-15 treatments.

(19) TXMHMR medical director—The department’s medical director.

(20) Treatment—The administration of electroconvulsive therapy, unilaterally or bilaterally, with anesthesia, under appropriate clinical conditions for monitoring, safety, and efficacy.

HISTORY: The provisions of this § 405.103 adopted to be effective January 1, 1992, 16 TexReg 7528; amended to be effective December 10, 1993, 18 TexReg 8790

§405.104. General Requirements

(a) Only a physician licensed to practice medicine in Texas may administer ECT and a physician may not delegate the act of administering the therapy. A nonphysician who administers ECT is considered to be practicing medicine in violation of the Medical Practice Act, Texas Civil Statutes, Article 4495b.

(b) No person under the age of 16 shall receive ECT.

(c) Prior to receiving ECT, every patient, voluntary or involuntary, competent or incompetent, shall be given full explanation of ECT consistent with the definition of ECT in §405.103 of this title (relating to Definitions) and meeting the requirements of §405.108 of this title (relating to Informed Consent to ECT).

(d) If any patient, without regard to competency, objects to ECT and there is an alternative method of treatment (that is not contraindicated and which has a reasonable potential for success) to which the patient does not object, the alternative method shall be considered and, if mutually acceptable to the patient or the guardian of the person of the patient and the treating physician, shall be used. It is not to be inferred, however, that ECT should be held as a treatment of “last resort.” Full documentation of the factors considered in arriving at the decision to use ECT, the consent

process, the treatment procedures, and patient response to treatment shall be entered into the patient's permanent medical record.

(e) The use of ECT for punishment, solely for control of behavior, for convenience of staff, in order to make patients more compliant, and the use of ECT in a discriminatory or abusive manner are explicitly prohibited.

HISTORY: The provisions of this § 405.104 adopted to be effective January 1, 1992, 16 TexReg 7528; amended to be effective December 10, 1993, 18 TexReg 8790

§ 405.105. Indications and Contraindications for the Use of Electroconvulsive Therapy (ECT)

(a) The major indications for the therapeutic use of ECT are major mood disorders. ECT may be considered for some other disorders, with appropriate consideration of the risk/benefit ratio.

(b) The major contraindications to the therapeutic use of ECT are as follows:

- (1) absolute space-occupying intracranial pathology;
- (2) relative, requiring clinical consideration:
 - (A) cardiovascular disease, including arrhythmias, myocardial disease, or coronary artery disease;
 - (B) diseases which render a patient likely to suffer hemorrhage, including peptic ulcer, subdural hematoma, and aortic aneurysm;
 - (C) degenerative diseases of the central nervous system;
 - (D) glaucoma although it is recognized that intraocular pressure is not increased by ECT, and is, in fact, reduced during the seizure period, medications used adjunctively to the treatment may result in increased intraocular pressure. For patients with glaucoma, consideration should be given to pretreatment with physostigmine;
 - (E) severe orthopedic disability.

HISTORY: The provisions of this § 405.105 adopted to be effective January 1, 1992, 16 TexReg 7528

§ 405.106. Medical Evaluation Required Prior to a Course of Electroconvulsive Therapy (ECT)

(a) A thorough evaluation of the patient's psychiatric and physical status with review of pertinent laboratory findings shall be done within 30 days prior to the initiation of a course of ECT and shall be recorded in the patient's permanent medical record. Physical evaluation shall include a neurological examination. Other determinations shall include, but not be limited to, the following:

- (1) laboratory as appropriate to medical history and/or conditions, such as:
 - (A) complete blood count;
 - (B) electrolytes; and
 - (C) serum pseudocholinesterase if there is no documentation of successful use of muscle relaxant medication with general anesthesia, and if there is no record of previous testing;
- (2) x-rays as appropriate to medical history and/or conditions;
- (3) electrocardiogram.

(b) Abnormalities reported or found in the neurological or cardiac evaluation shall be evaluated by a medical specialist in the appropriate field, such evaluation to be incorporated in writing into the patient's permanent record prior to initiation of ECT.

HISTORY: The provisions of this § 405.106 adopted to be effective January 1, 1992, 16 TexReg 7528

§ 405.107. Consultation Required

(a) Before initiating a course of ECT, it shall be the responsibility of the attending physician who is not a fully qualified psychiatrist to obtain consultation from a fully qualified psychiatrist, licensed to practice medicine in Texas.

(b) The consultant shall render a written report regarding the appropriateness and probable benefits to be obtained by administration of ECT. That report will be incorporated into the patient's permanent medical record.

HISTORY: The provisions of this § 405.107 adopted to be effective January 1, 1992, 16 TexReg 7528; amended to be effective December 10, 1993, 18 TexReg 8790

§ 405.108. Informed Consent to ECT

(a) Consent under this section is not valid unless the person giving consent understands the information presented and consents voluntarily and without coercion or undue influence.

(b) A person who gives consent may revoke consent for any reason at any time, with revocation effective immediately.

(c) Prior to each individual ECT treatment, consent to electroconvulsive therapy must be obtained. Unless the person consents in accordance with this subchapter, ECT may not be administered to:

- (1) a patient who is 16 years or older and voluntarily receiving services;
- (2) an involuntary patient who is 16 years or older and who has not been adjudicated incompetent to manage his or her own personal affairs;
- (3) an involuntary patient who is 16 years or older and who has been adjudicated incompetent to manage his or her own personal affairs, unless:

- (A) the patient has an appointed guardian of the person of the patient;
- (B) the guardian of the person consents to treatment in accordance with this section; and
- (C) the consent of the guardian is based on knowledge of what the patient would desire, if known.

(d) Consent shall be documented by the signature of the person giving consent on the form entitled "Disclosure and Consent for Electroconvulsive Therapy" which is referenced as Exhibit A of § 405.117 of this title (relating to Exhibits), and which shall include a supplemental statement about the individual patient containing the information in the form entitled "Supplemental Statement" which is referenced as Exhibit B of § 405.117 of this title (relating to Exhibits), including:

- (1) indications for therapy for the patient;
- (2) medical evaluation results;
- (3) contraindications to therapy;
- (4) results of psychiatric and other medical consultation(s) relevant to ECT; and
- (5) for a patient 65 years of age or older:
 - (A) known current medical conditions that may increase the possibility of injury or death as a result of ECT; and
 - (B) statement by two physicians that the treatment is medically necessary.

(e) The consent form shall be fully completed to explicitly state the following information:

- (1) the nature and seriousness of the mental condition requiring ECT;
- (2) the nature of the procedures to be followed, including anesthesia, and their purposes, including the identification of any procedures which are experimental;

(3) the nature, degree, duration, and probability of significant risks and/or side effects and/or adverse effects resulting from ECT commonly known by the medical profession, including:

(A) memory changes of events prior to, during, and immediately following the treatment;

(B) fractures and dislocations of bones;

(C) the probability of significant temporary post-treatment confusion requiring special care; and

(D) the possibility of permanent memory dysfunction, especially noting the possible degree and duration of memory loss, the possibility of permanent, irrevocable memory loss, the remote possibility of seizures, and the possibility of death;

(4) that there is a division of opinion as to the efficacy of the procedure;

(5) the benefits reasonably to be expected;

(6) the probable degree or duration of improvement or remission expected with or without the procedure;

(7) a disclosure of any appropriate alternative procedures that might be advantageous for the patient;

(8) an offer to answer any inquiries concerning the procedures;

(9) an instruction that the consenting party is free to withdraw consent and to discontinue an individual treatment or a series of treatments at any time without prejudice to the care of the individual;

(10) an instruction that consent is for one individual treatment, and that additional treatments shall require renewed written informed consent; and

(11) the side effects of anesthesia shall also be explained.

(f) Before a patient receives ECT, the hospital, facility, or physician administering the therapy shall ensure that:

(1) the patient and the patient's guardian of the person, if any, receive a copy of the completed consent form, a written supplement containing related information concerning the individual patient, in the patient's primary language, if possible;

(2) the consent form and supplement are orally explained to the patient and the patient's guardian of the person, if any, in simple, nontechnical terms in the patient's primary language, if possible, or by means reasonably calculated to communicate with a hearing-impaired or visually-impaired person, if applicable;

(3) the patient or the patient's guardian of the person, as appropriate, signs the consent form, which states that the person has read and understood the consent form and written supplement; and

(4) the signed consent form is made a part of the patient's permanent medical record.

(g) In cases in which the individual giving consent is the guardian of the person, the requirements of the consent process may be fulfilled through a phone conversation that includes all of the elements that would be discussed in person, witnessed by one individual who is not the physician who will be administering ECT. A copy of the consent form and written supplement must be mailed or faxed to the individual giving consent prior to obtaining the initial informed consent. The consent must be obtained for each individual treatment.

(h) For a patient 65 years of age or older, before each treatment series begins the hospital, facility, or physician administering the procedure shall:

(1) ensure two physicians sign the appropriate section of the supplemental statement described in subsection (d)(5) of this section stating that the treatment is medically necessary; and

(2) inform the patient and the patient's guardian of the person, if any, orally and in the supplemental statement described in subsection (d)(5) of this section, of any known current medical condition the patient has that may increase the possibility of injury or death as a result of the treatment.

HISTORY: The provisions of this § 405.108 adopted to be effective December 10, 1993, 18 TexReg 8790; amended to be effective February 11, 1998, 23 TexReg 1089

§ 405.109. Limitations on Use: Number per Year and Number per Series of Treatments

(a) No more than 24 electroconvulsive therapy treatments may be administered to a given patient in any 12-month period, dated from the date of the first treatment except as provided in this subsection.

(1) Exceptions to this limitation require, prior to the additional treatments:

(A) for state facilities, the written approval of the department's medical director, who shall consider the recommendations of an independent, fully qualified psychiatrist who is not affiliated with the department except in a consultative capacity; or

(B) for all other providers, the written concurrence of a fully qualified psychiatrist not involved in the patient's care.

(2) All reports of such consultations shall become a part of the patient's permanent medical record.

(b) The number of ECTs to be given in eight consecutive weeks shall ordinarily be limited to 15. In those cases in which it is considered clinically advantageous to exceed these numbers of treatments in any given series, the attending physician shall obtain a second consultative opinion from a fully qualified psychiatrist who is not directly associated with the patient's care.

HISTORY: The provisions of this § 405.109 adopted to be effective January 1, 1992, 16 TexReg 7528; amended to be effective December 10, 1993, 18 TexReg 8790

§ 405.110. Personnel and Equipment Procedures

(a) Personnel. ECT may be administered only by a licensed physician credentialed by the facility providing the treatment to use ECT, or by a licensed physician in training in an approved residency program under the direct supervision of a fully qualified psychiatrist so trained and credentialed. In specific circumstances a licensed physician who is not a fully qualified psychiatrist but who has demonstrated training and experience in the administration of ECT may administer ECT providing authorization has been provided in writing to the chief executive officer by the hospital or facility medical director. Assistants shall include a recovery nurse and an ECT treatment nurse or assistant trained in ECT procedures.

(b) Equipment. Equipment available in the ECT room shall receive a general inspection on a regular basis. Equipment shall include, but not be limited to, the following:

(1) an ECT machine of contemporary model which shall be calibrated at least semiannually;

(2) a respiratory support system including oxygen, endotracheal intubation tray, suction apparatus, and equipment for tracheotomy;

(3) a cardiac arrest tray with appropriate drugs;

(4) a cardiac monitor and defibrillator.

(c) Recovery area. A recovery area containing emergency equipment and supplies shall be used, the patients to be therein until adequately recovered and all vital signs are stable. The recovery room will be equipped and staffed

to meet commonly accepted standards for postanesthesia units.

(d) Anesthesia. Anesthesia practice shall meet commonly accepted standards for patient evaluation for anesthesia, informed consent, induction, maintenance, monitoring, and documentation of anesthesia.

(1) General anesthesia shall be administered to all patients as a standard procedure during ECT. In the rare event that general anesthesia is contraindicated, the administering physician shall obtain consultation and written concurrence by two physicians, at least one of whom is a fully qualified psychiatrist.

(2) Anesthesia shall be administered only by persons credentialed by the medical staff to do so, and who are:

- (A) licensed anesthesiologists;
- (B) licensed physicians credentialed and privileged in anesthesiology for ECT; or
- (C) nurse anesthetists (CRNA).

(3) At least one person in attendance must be certified in advanced cardiorespiratory life support (ACLS).

HISTORY: The provisions of this § 405.110 adopted to be effective January 1, 1992, 16 TexReg 7528; amended to be effective December 10, 1993, 18 TexReg 8790

§ 405.111. Prohibition of Induction of Seizure by Chemical or Gaseous Agent

No chemical or gaseous agent may be used as a means to induce a seizure for therapeutic purposes, in lieu of or as a substitute for electroconvulsive therapy, unless such procedure is conducted as a research investigation and meets all the requirements of Subchapter Q of this chapter (relating to Departmental Procedures for the Protection of Human Subjects Involved in Research).

HISTORY: The provisions of this § 405.111 adopted to be effective January 1, 1992, 16 TexReg 7528

§ 405.112. Report of ECT

(a) Reporting requirements for state facilities and community centers.

(1) A report of each individual ECT administered to a patient shall be entered into the patient's medical record and shall include, but not be limited to, the following:

- (A) diagnosis for which ECT given;
- (B) date of treatment;
- (C) type of ECT machine used;
- (D) duration and strength of electrical stimulation;
- (E) all medications administered; and
- (F) any complications or adverse effects.

(2) A report of all ECT treatments will be provided at the end of each month to the chief executive officer. The report shall include the following:

- (A) name, age, gender, and identification number of patient;
- (B) diagnosis for which ECT given;
- (C) dates and number of treatments given; and
- (D) any complications or adverse effects.

(b) Reporting requirements for all providers.

(1) On a quarterly basis, the chief executive officer of a mental hospital or other facility that administers ECT, psychosurgery, "prefrontal sonic treatment," or any other convulsive or coma-producing therapy to treat mental illness and any physician who administers ECT on an outpatient basis shall make a written report to the TXMHMR medical director containing the information requested on the form entitled "Report of ECT/Other Therapies" which is referenced as Exhibit C of § 405.117 of this title (relating to Exhibits). The reporting format

requires clinical data from before, after, and 30 days after treatment.

(A) The facility and/or its medical staff shall require that the treating physician(s) provide complete, accurate, and timely information to the CEO for this purpose.

(B) Reports must be submitted to be received by the TXMHMR medical director not later than 30 days following the end of each state fiscal year quarter. For treatments administered in September, October, and November, the deadline is December 31; for December, January, and February, the deadline is March 31; for March, April, and May, the deadline is June 30; and for June, July, and August, the deadline is September 30.

(2) The report will include, but may not be limited to, the following information for the quarter:

(A) the number of persons who received the therapy, including:

- (i) the number of persons receiving voluntary mental health services who consented to the therapy;
- (ii) the number of involuntary patients who consented to the therapy; and
- (iii) the number of involuntary patients for whom a guardian of the person consented to the therapy;

(B) the age, gender, and race of the persons receiving therapy;

(C) the general source of the treatment payment;

(D) the number of non-electroconvulsive treatments listed in paragraph (1) of this subsection;

(E) the number of electroconvulsive treatments administered for each complete series of treatments, excluding maintenance treatments;

(F) the number of maintenance electroconvulsive treatments administered;

(G) the number of fractures, reported memory losses, incidents of apnea, and cardiac arrests without death;

(H) autopsy findings if death followed within 14 days after the date of the administration of the therapy; and

(I) other information that may be required by the department.

(c) Reporting requirements for the department.

(1) Annually the department shall compile the information reported under subsection (b) of this section by mental hospital, other facility, and private physician administering ECT on an outpatient basis. Private physicians and individual patients shall not be named or otherwise identified.

(2) A copy of the report shall be filed with the governor and presiding officer of each house of the legislature.

(3) The department shall use this information to analyze, audit, and monitor the use of ECT and other reportable procedures.

HISTORY: The provisions of this § 405.112 adopted to be effective January 1, 1992, 16 TexReg 7528; amended to be effective December 10, 1993, 18 TexReg 8790; amended to be effective February 11, 1998, 23 TexReg 1089

§ 405.113. ECT on Outpatient Basis

If ECT is to be given to patients on an outpatient basis, all the provisions of this subchapter apply.

HISTORY: The provisions of this § 405.113 adopted to be effective January 1, 1992, 16 TexReg 7528; amended to be effective December 10, 1993, 18 TexReg 8790

§ 405.114. Registration of ECT Stimulus Apparatus

(a) A person may not administer ECT unless the equipment used to administer the therapy is registered annually with the department. All ECT stimulus apparatus must be registered with the department by the mental hospital or other facility or by the private physician administering ECT on an outpatient basis.

(1) The department shall use the information to analyze, audit, and monitor the use of ECT.

(2) The department shall file annually a report summarizing the information with the governor and the presiding officers of the legislature. The report shall not name or otherwise identify individual physicians or patients.

(b) Within 30 days of the effective date of this subchapter, the applicant must complete and submit the form adopted by reference as Exhibit D, including a nonrefundable application fee of \$ 50.00, for all items of ECT stimulus apparatus which are housed or used at a specific location.

(c) Upon receipt of the application and fee, the department may conduct an investigation if it believes the stimulus apparatus in question may be dangerous or faulty. For purposes of investigation, any duly authorized agent of the department may at any time enter upon the premises of any facility in which ECT is administered to inspect the ECT stimulus apparatus or to take other action the department deems necessary to ascertain and assure compliance with state law and this section. Any such duly authorized agent may have access for the purposes of examination and transcription to such records and documents as the department deems relevant to the investigation.

(d) The department may deny, suspend, or revoke a registration if it determines that the stimulus apparatus is dangerous or faulty. Such action is the subject of a contested case under the Administrative Procedure and Texas Register Act. Hearings will be conducted in accordance with Chapter 403, Subchapter O of this title (relating to Practice and Procedure with Respect to Administrative Hearings of the Department in Contested Cases).

HISTORY: The provisions of this § 405.114 adopted to be effective December 10, 1993, 18 TexReg 8790

§ 405.115. Enforcement and Penalties

(a) For private psychiatric hospitals and psychiatric units of general hospitals, the Texas Department of Health shall enforce the applicable rules and standards adopted by the department to the same extent as it enforces rules adopted by the Texas Board of Health. a violation of this subchapter is subject to the same consequences as a violation of a rule adopted by the Texas Board of Health.

(b) A person who violates a provision of this subchapter may be subject to injunction, civil penalties, and related costs pursuant to the provisions of the Health and Safety Code, Chapter 571, §§ 571.022-.024, and Chapter 241, § 241.055.

(c) A person licensed by the Texas Department of Health or regulated by the department who violates a provision of this subchapter may be subject to administrative penalties and related costs pursuant to the Health and Safety Code, Chapter 571, §§ 571.025-.026, and Chapter 241, § 241.058 and § 241.0585.

(d) A treatment facility or mental health facility that violates a provision of this subchapter is liable to a person

receiving care or treatment from the facility who is harmed as a result of the violation, consistent with the provisions of the Health and Safety Code, Chapter 321, Subsections 321.003-.004.

HISTORY: The provisions of this § 405.115 adopted to be effective December 10, 1993, 18 TexReg 8790

§ 405.116. Distribution

(a) The provisions of this subchapter shall be distributed to:

(1) members of the Texas Board of Mental Health and Mental Retardation;

(2) deputy commissioners, associate deputy commissioners, and assistant deputy commissioners of TXMHMR central office;

(3) superintendents and directors of all department facilities;

(4) the TXMHMR Medical Advisory Committee;

(5) chairpersons of the boards of trustees and executive directors of community mental health and mental retardation centers;

(6) chief executive officers and medical staff chiefs of all inpatient facilities licensed in Texas;

(7) chief executive officers and chief physicians at other state agencies providing medical care, including, but not limited to, the Texas Department of Criminal Justice, the Texas Department of Corrections, and the Texas Department of Health;

(8) all psychiatrists licensed to practice medicine in Texas;

(9) the executive director of the Texas Society of Psychiatric Physicians;

(10) the executive director of the Texas Medical Association;

(11) the executive director of the Texas Hospital Association;

(12) psychiatry department chairs of universities in Texas;

(13) psychiatry department heads of Veterans Administration hospitals;

(14) psychiatry department heads of large hospital departments of psychiatry; and

(15) the Texas State Board of Medical Examiners.

(b) The chief executive officer shall provide copies of this subchapter to:

(1) clinical directors;

(2) medical directors;

(3) staff physicians; and

(4) organizations or individuals contracting with any facility providing ECT.

HISTORY: The provisions of this § 405.116 adopted to be effective December 10, 1993, 18 TexReg 8790

§ 405.117. Exhibits

The following exhibits referenced in this subchapter are available by contacting TDMHMR, Policy Development, P.O. Box 12668, Austin, Texas 78711-2668:

(1) Exhibit A—"Disclosure and Consent for Electroconvulsive Therapy";

(2) Exhibit B—"Supplemental Statement"; and

(3) Exhibit C—"Report of ECT/Other Therapies."

HISTORY: The provisions of this § 405.117 adopted to be effective February 11, 1998, 23 TexReg 1089

Subchapter K.

Deaths of Persons Served by TXMHMR Facilities or Community Mental Health and Mental Retardation Centers

§ 405.261. Purpose

The purpose of this subchapter is to provide clinical peer review procedures and, separately, administrative review procedures to be followed upon the death of a person receiving services directly operated or contracted for by a facility of the Texas Department of Mental Health and Mental Retardation or a community mental health and mental retardation center, and their respective contract providers, in order to improve the quality of care.

HISTORY: The provisions of this § 405.261 adopted to be effective June 1, 1993, 18 TexReg 2133

§ 405.262. Application

The provisions of this subchapter apply to all facilities of the Texas Department of Mental Health and Mental Retardation; to community mental health and mental retardation centers; and to their respective contract providers.

HISTORY: The provisions of this § 405.262 adopted to be effective June 1, 1993, 18 TexReg 2133

§ 405.263. Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Administrative death review—An administrative/quality assurance review activity to identify non-clinically related problems requiring correction and opportunities to improve the quality of care.

(2) Attending physician—A physician licensed to practice medicine in the State of Texas who is responsible for the general medical care and/or psychiatric care of the person served.

(3) Chief executive officer or CEO—The superintendent or director of a state facility or the executive director of a community center.

(4) Clinical death review—A clinical quality assurance/peer review activity conducted to identify clinically related problems requiring correction and opportunities to improve the quality of care pursuant to the statutes that authorize peer review activities in the State of Texas.

(5) Community center—A community mental health and mental retardation center organized pursuant to the Texas Health and Safety Code, Title 7, Chapter 534, § 053 (formerly the Texas Mental Health and Mental Retardation Act, § 3, as amended, Texas Civil Statutes, Article 5547-201 et seq.).

(6) Contract provider—An entity which, through written agreement or contract, is providing services to a person served by a facility or a community center, including entities regulated by other governmental agencies.

(7) Deceased—A person who, at death, is receiving services directly operated or contracted for by a facility or community center.

(8) Department—The Texas Department of Mental Health and Mental Retardation.

(9) Duty physician—The physician designated by the chief executive officer to handle medical care or emergencies outside regular working hours.

(10) Facility—Any state hospital, state school, state center, or other entity which is now or may hereafter be made a part of the department.

(11) Facility community-based services—Community service residential and nonresidential programs under the jurisdiction of a facility.

(12) Investigating officer—A physician or registered nurse who is neither the attending physician nor anyone significantly involved as the primary provider of treatment to the deceased immediately preceding the death.

(13) Person in charge—The employee designated as supervisor for a dorm, ward, or other program or residence area.

(14) Registered nurse—A nurse licensed by the Texas Board of Nurse Examiners to practice professional nursing in the State of Texas.

(15) TXMHMR—The Texas Department of Mental Health and Mental Retardation, including facilities and community MHMR centers.

(16) Unusual circumstances—A death which occurs under circumstances including, but not limited to, the following: unnatural death; death by unlawful means or suspicion of death by unlawful means; absence of witnesses; suicide or suspicion of suicide; or death within 24 hours of admission to the facility/community center.

HISTORY: The provisions of this § 405.263 adopted to be effective June 1, 1993, 18 TexReg 2133

§ 405.264. Facility Campus-Based Programs: Actions Taken upon the Death of Person Served

(a) Death occurring on facility grounds.

(1) When a death occurs, the person in charge shall immediately notify a registered nurse or, if readily and physically available, the attending or duty physician.

(2) The person in charge or registered nurse, as appropriate, shall perform the following activities and document them in the person's record:

(A) the date, time, and location where the person was found, and any information given by other individuals who were present at the time of death;

(B) the name of the physician notified, the time and date of notification, and the name of the employee making notification;

(C) the names of persons who observed the person dying or who found the person;

(D) any treatment immediately prior to death and any emergency procedures initiated; and

(E) complete and/or update the Client Injury/Incident Report if the death was related to an injury.

(3) The attending or duty physician shall:

(A) identify, examine, and pronounce the person dead (see paragraph (4) of this subsection);

(B) make notation of:

(i) the date, the time, and if known, the probable cause of death;

(ii) any treatment immediately prior to death and any emergency procedures initiated; and

(iii) any information given by other individuals who were present at the time of death;

(C) determine whether the death occurred under unusual circumstances and whether the cause of death is uncertain; and

(D) perform the following activities or delegate them and ensure completion and documentation:

(i) notify the facility CEO or the administrative duty officer and the chairperson of the death review committee;

(ii) if the cause of death is uncertain or if the death occurred under unusual circumstances, immediately notify the appropriate justice of the peace or county medical examiner and request an inquest; and

(iii) arrange for the notification of a funeral home of the family's and/or guardian's choice to which the deceased is to be released.

(4) In some cases, a registered nurse may pronounce a person dead and determine the date and time of death. In such instances, the registered nurse must ensure the accurate documentation of the requirements indicated in paragraph (2) of this subsection.

(A) In order for a registered nurse to pronounce a person dead the following conditions must be met:

(i) the registered nurse is privileged, in writing, by the facility to pronounce a person dead;

(ii) the person is classified either in Category II or Category III according to Subchapter C of this chapter (relating to Life-Sustaining Treatment);

(iii) the person is not being treated with artificial means of supporting the respiratory and circulatory system;

(iv) the cause of death is determined not to be uncertain or to have occurred under unusual circumstances;

(v) the facility has a written policy and procedure, jointly developed and approved by the nursing staff and medical staff, governing the practice of registered nurses pronouncing death.

(B) The registered nurse shall complete the activities described in paragraph (3)(D)(i) and (iii) of this subsection.

(C) When a registered nurse has pronounced a person dead, a physician shall within 24 hours ensure the completion of the appropriate activities described in paragraph (3)(D) of this subsection and complete the death certificate.

(5) The facility CEO or designee shall notify the deceased's personal representative (primary or emergency correspondent(s)) of the death; provide an explanation of the relevant facts related to the death; and inform them of their right to examine the deceased's medical information relevant to the death, death certificate, and autopsy findings, if any. a physician shall request consent to conduct an autopsy when appropriate.

(6) The attending or duty physician, as appropriate, shall complete the Report of the Death of a Person Served form, which herein is adopted by reference as Exhibit A, copies of which may be obtained by contacting TXMHMR, Office of Policy Development, P.O. Box 12668, Austin, Texas 78711. Within one working day of each death, the facility CEO shall be responsible for ensuring the completed reporting form (Exhibit A) is faxed to the Office of Medical Services, central office, which shall be responsible for immediately transmitting the information to the appropriate deputy commissioner. The facility CEO should also initiate direct phone contact with the appropriate deputy commissioner or designee when warranted.

(b) Death occurring off facility grounds. Death occurring off facility grounds shall be reported as required in subsection (a)(5) and (6) of this section and reviewed as required in § 405.269 of this title (relating to Facility Campus-Based Programs, Facility Community-Based Services, and Community Centers: Administrative Death Review Determination).

HISTORY: The provisions of this § 405.264 adopted to be effective June 1, 1993, 18 TexReg 2133

§ 405.265. Facility Community-Based Services: Actions Taken upon the Death of Person Served

(a) Each facility community-based services shall develop separate clinical peer review and administrative review procedures consistent with this subchapter to be implemented at the time that a determination has been made to conduct a death review.

(b) When appropriate, the facility CEO or designee shall notify the deceased's personal representative (primary or emergency correspondent(s)) of the death; provide an explanation of the relevant facts related to the death; and inform him or her of his or her right to examine the deceased's medical information relevant to the death, death certificate, and autopsy findings, if any. a physician shall request consent to conduct an autopsy when appropriate.

(c) Immediately after determination of the need to conduct an administrative death review, the facility CEO shall be responsible for ensuring that the completed reporting form (§ 405.264 of this title (relating to Facility Campus-Based Programs: Actions Taken upon the Death of Person Served) as (Exhibit a is faxed to the Office of Medical Services, central office, which shall be responsible for immediately transmitting the information to the appropriate deputy commissioner. The facility CEO should also initiate direct phone contact with the appropriate deputy commissioner or designee when warranted.

HISTORY: The provisions of this § 405.265 adopted to be effective June 1, 1993, 18 TexReg 2133

§ 405.266. Community Centers: Actions Taken upon the Death of Person Served

(a) Each community center shall develop separate clinical peer review and administrative review procedures consistent with this subchapter to be implemented at the time that a determination has been made to conduct a death review.

(b) When appropriate, the community center CEO or designee shall notify the deceased's personal representative (primary or emergency correspondent(s)) of the death; provide an explanation of the relevant facts related to the death; and inform them of their right to examine the deceased's medical information relevant to the death, death certificate, and autopsy findings, if any. a physician shall request consent to conduct an autopsy when appropriate.

(c) Immediately after determination of the need to conduct an administrative death review, the community center CEO shall be responsible for ensuring that the completed reporting form (attached to § 405.264 of this title (relating to Facility Campus-Based Programs: Actions Taken upon the Death of Person Served) as Exhibit A) is faxed to the Office of Medical Support Services, central office, which shall be responsible for immediately transmitting the information to the appropriate deputy commissioner. The community center CEO should also initiate direct phone contact with the appropriate deputy commissioner or designee when warranted.

HISTORY: The provisions of this § 405.266 adopted to be effective June 1, 1993, 18 TexReg 2133

§ 405.267. Facility Campus-Based Programs: Statutory Requirements

(a) Certificate of death. a certificate of death is required for every death which occurs in the state. a copy of the certificate of death shall be made a part of the deceased's record. Any additional findings that would reflect on the informa-

tion contained in the original certificate should be amended and refiled as required and a copy retained in the deceased's record.

(1) The individual responsible for interment or for removal of the body of the deceased for disposition is responsible for obtaining and filing the certificate of death.

(2) Medical certification of death will be made by the appropriate physician. The certificate of death shall document the disease(s), injuries, or complications that caused the death rather than the mode of dying, e.g., cardiac arrest, respiratory arrest, shock, heart failure, etc.

(b) Autopsy. An autopsy is recommended whenever possible and appropriate, providing that appropriate consent can be obtained. When an autopsy is performed, the autopsy reports shall be made a part of the deceased's record.

(1) The physician must request permission for an autopsy and document the request in the deceased's record when:

(A) the death occurred under unusual circumstances or the cause of death is uncertain; or

(B) the autopsy would clarify the diagnosis and efficacy of treatment choices.

(2) Consent for autopsy will be deemed sufficient when obtained under the provisions of Texas Code of Criminal Procedures, Article 49.13, and TXMHMR Operating Instruction 405-K, Deaths of Persons Served, which herein is adopted by reference as Exhibit B, copies of which may be obtained by contacting TXMHMR, Office of Policy Development, P.O. Box 12668, Austin, Texas 78711.

(3) The person from whom consent for autopsy is sought shall be given an explanation of what an autopsy is and why an autopsy is appropriate or desirable.

(c) Disposition of deceased persons. If burial at public expense is necessary, or if the body of the deceased is not claimed for burial, a report to that effect must be made to the Anatomical Board of the State of Texas.

(1) If burial is to take place at no expense to the state, e.g., prepaid burial contract or designated funds in the deceased's trust fund, then a report need not be made to the Anatomical Board provided the body is claimed.

(2) To claim the body for burial, an individual must provide documentation to the facility CEO which proves the individual is:

(A) related to the deceased by blood or marriage;

(B) a bona fide friend; or

(C) representative of an organization of which the deceased was a member.

(3) If efforts to contact the family and/or guardian of the deceased prove futile, a report must be made to the Anatomical Board.

(4) If the family and/or guardian is notified of the death, but the body remains unclaimed 48 hours after the notification, a report must be made to the Anatomical Board.

(5) If the body of the deceased is released to the Anatomical Board, the facility CEO or designee must file with the county clerk an affidavit that a diligent inquiry was made to find the family and/or guardian of the deceased. The affidavit will detail the manner of the attempts at notification. a copy of the affidavit will be retained in the deceased's record.

(d) Disposition of the property of deceased persons. When appropriate, the property of the deceased will be disposed of under the provisions of the Texas Probate Code. When no claim is made, the property of the deceased, in-

cluding clothing, personal effects, and trust funds, shall be disposed of under the provisions of the Texas Health and Safety Code, §§ 551.003, 551.004, 551.005, and 551.044 (formerly Texas Civil Statutes, Article 3183c).

HISTORY: The provisions of this § 405.267 adopted to be effective June 1, 1993, 18 TexReg 2133

§ 405.268. Facility Community-Based Services and Community Centers: General Guidelines upon Death of a Person Served

(a) When a death has been determined to require an administrative death review, a copy of the certificate of death shall be made a part of the deceased's record, when possible.

(b) When appropriate, the property of the deceased will be disposed of under the provisions of the Texas Probate Code.

HISTORY: The provisions of this § 405.268 adopted to be effective June 1, 1993, 18 TexReg 2133

§ 405.269. Facility Campus-Based Programs, Facility Community-Based Services and Community Centers: Administrative Death Review Determination

(a) Within one working day of the knowledge of death of a person receiving services in a TXMHMR-funded or TXMHMR-contracted program, the facility or community center CEO is responsible for conducting a preliminary review to determine whether:

(1) the death occurred on the premises of a TXMHMR-funded or TXMHMR-contracted program (e.g., the individual dies in his/her sleep at an MHA/MRA funded group home);

(2) the death occurred while the person was participating in TXMHMR-funded or TXMHMR-contracted program activities (e.g., the individual dies in a community hospital after being transferred from the facility/community center; the individual drowns while on a psychosocial program outing; the individual dies while absent from a facility on a home visit);

(3) other conditions indicate that the death may reasonably have been related to the individual's care or activities as part of the facility community-based or community center program (e.g., the individual overdoses on a psychoactive drug; the individual commits suicide); or

(4) other conditions indicate that although the death is not reasonably related to the individual's care or activities as part of the facility community-based or community center program, an evaluation of policy is warranted (e.g., the individual dies of a chronic illness in a community hospital).

(b) If none of the conditions described in subsection (a) of this section is met, then the facility or community center CEO may elect not to conduct an administrative death review. Documentation that this preliminary review was conducted must be included in the deceased's record.

(c) If any of the conditions described in subsection (a) of this section are met, an administrative death review must be conducted in compliance with this section. In addition, the need for a clinical death review must be determined as described in §405.271 of this title (relating to Facility Campus-Based Programs and Facility Community-Based Services: Clinical Death Review Determination) or in §405.272 of this title (relating to Community Centers: Clinical Death Review Determination).

HISTORY: The provisions of this § 405.269 adopted to be effective June 1, 1993, 18 TexReg 2133

§ 405.270. Facility Campus-Based Programs and Facility Community-Based Services: Clinical Death Review Committee

(a) Each facility shall maintain a clinical death review committee which shall be a medical peer review body pursuant to the statutes that authorize peer review activities in the State of Texas. The clinical death review committee shall be responsible for reviewing deaths and the quality of care delivered prior to each death reviewed by that committee.

(b) The purpose of the committee is:

(1) to review the quality and appropriateness of medical care and other medically related services rendered prior to the death; and

(2) to recommend, when appropriate, changes in medically related policy and procedure, professional education, clinical operations, or patient care.

(c) The clinical death review committee shall be chaired by a physician and include representatives of the following functions listed, which in some circumstances may be staffed by the same individual, e.g., the clinical/medical director may be the attending physician as well:

(1) the clinical/medical director or designee, who shall serve as chair provided that person is not the attending physician (the facility CEO will appoint a replacement chair when the chair of the clinical death review committee is the attending physician);

(2) the investigating officer;

(3) the director of nursing or registered nurse designee;

(4) the attending physician;

(5) the director of clinical quality assurance, designee, or the person who is responsible for clinical quality assurance functions; and

(6) other medical/nursing professionals as deemed appropriate by the committee chair, e.g., the duty physician at the time of the death, etc.

(d) The clinical death review committee shall solicit a physician external to TXMHMR to participate as a member of the clinical death review committee. If such physician is not available, then the effort to obtain external membership must be documented in the information sent to the administrative death review committee. For the purposes of this subchapter, physicians who are consultants or contractors are considered external to TXMHMR.

HISTORY: The provisions of this § 405.270 adopted to be effective June 1, 1993, 18 TexReg 2133

§ 405.271. Facility Campus-Based Programs: Clinical Death Review Determination

(a) Upon notification of a death requiring an administrative death review, the chairperson of the clinical death review committee shall appoint a member of the clinical death review committee or a qualified medical/nursing professional from outside the facility to serve as an investigating officer as defined in this subchapter. The investigating officer must be either:

(1) a physician (M.D., D.O.); or

(2) a registered nurse.

(b) After appointment, the investigating officer shall begin a preliminary investigation based upon the deceased's medical record and other information he/she deems appropriate.

(c) Within five working days of the knowledge of death, the appropriate physician shall complete a death/discharge summary for the medical record. The death/discharge summary shall include:

(1) identifying information, including:

(A) name;

(B) case number;

(C) date of birth;

(D) sex;

(E) date and type of most recent admission; and

(F) date, time, and location of death;

(2) a summary of the medical history;

(3) a summary of active medical problems;

(4) significant recent laboratory and procedural findings;

(5) a summary of recent pertinent medical consultations;

(6) clinical factors leading up to the terminal event and a review of the clinical circumstances surrounding the death, or circumstances leading to the transfer to another facility or outpatient status where death occurred, i.e., all pertinent notes, procedures, medications, resuscitation category status, and pertinent quality of life issues;

(7) preliminary autopsy findings, if available; and

(8) additional clinically related information which may be furnished by other staff.

(d) Within seven working days of the knowledge of death, the facility CEO, chair of the clinical death review committee, and investigating officer shall use the preliminary investigation information and the death/discharge summary to determine whether the death should be reviewed clinically, in compliance with § 405.273 of this title (relating to Facility Campus-Based Programs and Facility Community-Based Services: Clinical Death Review).

(1) The determination shall be based upon the possible need for review of clinical policies and procedures, the opportunity for professional education, and/or the opportunity to improve patient care through medical practice.

(2) It shall also be determined whether a preliminary administrative death review should proceed prior to the completion of the clinical death review, addressing the issues described in § 405.275(c)(2) of this title (relating to Facility Campus-Based Programs, Facility Community-Based Services, and Community Centers: Administrative Death Review) or should be deferred until the submission of the recommendations of the clinical death review committee.

(3) The deliberations and findings of a preliminary administrative death review will be considered at the final administrative death review after receipt of the recommendations of the clinical death review committee.

(e) If it has been determined that a clinical death review is unnecessary, then the facility CEO shall be responsible for forwarding to the administrative death review committee the following:

(1) a summary of the preliminary investigation information;

(2) a copy of the death/discharge summary;

(3) a copy of the death certificate, bearing a valid diagnosis, if available; and

(4) a copy of the preliminary or full autopsy report, if available; and

(5) the probable final diagnosis, including contributory causes, and reasons for variance from the death certificate, if any.

HISTORY: The provisions of this § 405.271 adopted to be effective June 1, 1993, 18 TexReg 2133

§ 405.272. Facility Community-Based Services and Community Centers: Clinical Death Review Determination

(a) Upon notification of a death requiring an administrative death review, the community center CEO or designee, or, for facility community-based services, the chair of the clinical death review committee, shall appoint a physician or registered nurse as the investigating officer, as defined in this subchapter, who shall begin a preliminary investigation based upon the deceased's medical record, particularly the circumstances leading to the transfer to another facility or outpatient status where death occurred, and other information he/she deems appropriate.

(b) Within seven working days of the knowledge of death, the CEO, and investigating officer, and additionally for facility community-based services, the chair of the clinical death review committee, shall use the preliminary investigation information to determine whether the death should be reviewed clinically, in compliance with § 405.274 of this title (relating to Community Centers: Clinical Death Review).

(1) The determination shall be based upon the possible need for review of clinical policies and procedures, the opportunity for professional education, and/or the opportunity to improve patient care through medical practice.

(2) It shall also be determined whether a preliminary administrative death review should proceed prior to the completion of the clinical death review, addressing the issue described in § 405.275(c)(2) of this title (relating to Facility Campus-Based Programs, Facility Community-Based Services, and Community Centers: Administrative Death Review) or should be deferred until the submission of the recommendations of the clinical death review committee.

(3) The deliberations and findings of a preliminary administrative death review will be considered at the final administrative death review after receipt of the recommendations of the clinical death review committee.

(c) If it has been determined that a clinical death review is unnecessary, then the CEO shall be responsible for forwarding to the administrative death review committee the following:

- (1) a summary of the preliminary investigation information;
- (2) a copy of the death/discharge summary, if available;
- (3) a copy of the death certificate, bearing a valid diagnosis, if available;
- (4) a copy of the preliminary or full autopsy report, if available; and
- (5) the probable final diagnosis, including contributory causes, and reasons for variance from the death certificate, if any.

HISTORY: The provisions of this § 405.272 adopted to be effective June 1, 1993, 18 TexReg 2133

§ 405.273. Facility Campus-Based Programs and Facility Community-Based Services: Clinical Death Review

(a) Upon determination of the need for a clinical death review, the investigating officer shall provide to the clinical death review committee:

- (1) the individual's medical record;

(2) a copy of the death certificate, bearing a valid diagnosis (may not always be available for facility community-based services);

(3) a copy of the preliminary or full autopsy report, if available; and

(4) the probable final diagnosis, including contributory causes, and reasons for variance from the death certificate, if any; and

(5) a briefing of possible issues involving clinically related facility operational policies and procedures and quality of medical care.

(b) Within 14 calendar days (or 45 days in which an autopsy is performed, or for deaths occurring at medical facilities off campus) of the determination of the need for a clinical death review, the clinical death review committee shall meet to review the death/discharge summary, the deceased's medical record, and the information the investigating officer has provided as described in subsection (a)(1)-(4) of this section. On the basis of the review, the committee shall evaluate the quality of medical and nursing care given prior to death and shall formulate written recommendations, if appropriate, for changes in policy and procedures, professional education, operations, or patient care. Suspected abuse or neglect must be reported in accordance with the rules of the Texas Department of Protective and Regulatory Services.

(c) Within 21 calendar days of the determination of the need for a clinical death review (or 52 days in cases in which an autopsy is performed, or for deaths occurring at medical facilities off campus), the clinical death review committee shall submit to the administrative death review committee the following:

- (1) the clinical death review committee's recommendations;
- (2) a copy of the death/discharge summary (may not always be available for facility community-based services);
- (3) a copy of the death certificate, bearing a valid diagnosis (may not always be available for facility community-based services);
- (4) the probable final diagnosis, including contributory causes, and reasons for variance from the death certificate, if any; and
- (5) documentation of the effort to obtain a physician external to TXMHMR to participate as a member of the clinical death review committee, if no such physician was available.

(d) To maintain the effectiveness of the death review process, the TXMHMR medical director or designee may conduct reviews of each facility's clinical death review process.

(e) The facility CEO is authorized to grant variances from the timelines by this section on a case-by-case basis. Reasons for timeline variances must be justified and documented.

HISTORY: The provisions of this § 405.273 adopted to be effective June 1, 1993, 18 TexReg 2133

§ 405.274. Community Centers: Clinical Death Review

(a) Each community center shall develop and implement procedures consistent with this subchapter for the timely reporting and review of deaths.

(b) Deaths subject to a clinical death review will be reviewed by a medical review committee pursuant to the statutes that authorize peer review activities in the State of Texas, consisting of the previously appointed investigating officer and at least two other medical/nursing professionals

(M.D., D.O., or R.N.), one of which should be a medical professional whom is neither an employee of the community center nor was the deceased's attending physician (if such medical professional is not available, then the effort to obtain external membership must be documented in the information sent to the administrative death review committee). of these three committee members, all must be either medical doctors or registered nurses. The community center CEO shall appoint one of the three medical/nursing professionals as chair of the clinical death review committee. For the purposes of this subchapter the term employee does not refer to consultants or contractors. Additionally, the membership of the clinical death review committee may include the community center CEO and/or the director of clinical quality assurance, designee, or the person who is responsible for clinical quality assurance functions.

(1) Upon determination of the need for a clinical death review, the investigating officer shall provide to the clinical death review committee:

- (A) the individual's medical record;
- (B) a copy of the death certificate, bearing a valid diagnosis, if available;
- (C) a copy of the preliminary or full autopsy report, if available; and
- (D) the probable final diagnosis, including contributory causes, and reasons for variance from the death certificate, if any; and
- (E) a briefing of possible issues involving clinically related community center operational policies and procedures and quality of medical care.

(2) Within 14 calendar days (or 45 days in which an autopsy is performed, or for deaths occurring at medical facilities to which the person was transferred prior to death) of the determination of the need for a clinical death review, the clinical death review committee shall meet to review the information the investigating officer has provided as described in subsection (b)(1) of this subsection. On the basis of the review, the committee shall evaluate the quality of medical and nursing care given prior to death and shall formulate written recommendations, if appropriate, for changes in policy and procedures, professional education, operations, or patient care. Suspected abuse or neglect must be reported in accordance with the rules of the Texas Department of Protective and Regulatory Services.

(c) Within 21 calendar days of the determination of the need for a clinical death review (or 52 days in cases in which an autopsy is performed, or for deaths occurring at medical facilities to which the person was transferred prior to death), the clinical death review committee shall submit to the administrative death review committee the following:

- (1) the clinical death review committee's recommendations;
- (2) a copy of the death/discharge summary, if available;
- (3) a copy of the death certificate, bearing a valid diagnosis, if available;
- (4) the probable final diagnosis, including contributory causes, and reasons for variance from the death certificate, if any; and
- (5) documentation of the effort to obtain an external medical professional, if no such person was available.

(d) To maintain the effectiveness of the death review process, the TXMHMR medical director or designee may conduct reviews of the community center's clinical death review process.

(e) The community center CEO is authorized to grant variances from the timelines by this section on a case-by-

case basis. Reasons for timeline variances must be justified and documented.

HISTORY: The provisions of this § 405.274 adopted to be effective June 1, 1993, 18 TexReg 2133

§ 405.275. Facility Campus-Based Programs, Facility Community-Based Services, and Community Centers: Administrative Death Review

(a) The facility or community center CEO shall convene an administrative death review committee:

(1) immediately after the determination of the need for an administrative death review, if a clinical death review was not conducted;

(2) when a preliminary administrative death review is to take place as determined in §405.271(d) or §405.272(b) off this title (relating to Facility Campus-Based Programs: Clinical Death Review Determination; Facility Community-Based Services and Community Centers: Clinical Death Review Determinations); or

(3) immediately after the receipt of the information from the clinical death review committee as described in §405.273(c) or §405.274(c) of this title (relating to Facility Campus-Based Programs and Facility Community-Based Services: Clinical Death Reviews; Community Centers: Clinical Death Review).

(b) The membership of the administrative death review committee shall consist of:

(1) three senior administrative and medical personnel (e.g., CEO, medical director, director of nursing, director of quality assurance, etc.) one of whom shall be designated as the chair by the CEO;

(2) a representative of the public, external to TXMHMR and not related to or associated with the deceased (e.g., a member of the public responsibility committee, a member of the facility or community hospital's ethics committee, a family member, an advocate, a consumer, etc.). If such representative of the public is not available, then the effort to obtain external membership must be documented in the information sent to the TXMHMR medical director; and

(3) other individuals appropriate to the death being reviewed (e.g., the investigating officer).

(c) The purpose of the administrative death review committee is to:

(1) review the information and recommendations provided by the clinical death review committee and/or from the preliminary investigation;

(2) review operational policies and procedures and continuity of care issues which may have affected the care of the individual and formulate written recommendations for changes in policies and procedures, if appropriate; and

(3) act upon the recommendations described in paragraphs (1) and (2) of this subsection.

(d) If information presented during the administrative review indicates the need for a clinical death review or a re-review, then the administrative death review committee has the authority to request such review.

(e) Suspected abuse or neglect must be reported in accordance with the rules of the Texas Department of Protective and Regulatory Services.

(f) Within 14 calendar days of the determination of the need for an administrative death review (or 45 days in cases in which an autopsy is performed, or for deaths occurring at medical facilities off campus or for deaths occurring at medical facilities to which the person was transferred prior

to death) or within 14 calendar days after the receipt of the information from the clinical death review committee, the administrative death review committee shall submit the following elements to the TXMHMR medical director (who shall forward a copy to the appropriate deputy commissioner):

- (1) a copy of the death/discharge summary, if available;
 - (2) a copy of the death certificate, bearing a valid diagnosis, if available;
 - (3) a copy of the preliminary or full autopsy report, if available;
 - (4) the probable final diagnosis, including contributory causes, and reasons for variance from the death certificate, if any;
 - (5) a copy of the clinical death review committee's recommendations, if such review was conducted;
 - (6) a copy of the administrative death review committee's recommendations; and
 - (7) if applicable, documentation of the effort to obtain external membership for the clinical death review committee and/or the administrative death review committee, if no such medical professional and/or representative of the public was available.
- (g) A summary of the resulting actions taken in response to the recommendations of the administrative and clinical death review committees shall be forwarded by the CEO or designee to the TXMHMR medical director (who shall forward a copy to the appropriate deputy commissioner) within 28 calendar days following the submission of the elements contained in subsection (f)(1)-(7) of this section.

HISTORY: The provisions of this § 405.275 adopted to be effective June 1, 1993, 18 TexReg 2133

§ 405.276. Reporting of Systemic Issues Emerging from Death Reviews

- (a) Utilizing information gathered from the elements submitted by the administrative death review committees and reviews of facility and community center's clinical death review process, the TXMHMR medical director shall report to the Texas Board of Mental Health and Mental Retardation any systemic issues emerging from death reviews, on a routine basis at least annually and more often as deemed appropriate and necessary.
- (b) Utilizing information gathered from the elements submitted in §405.275(f)(6) and (g) of this title (relating to Facility Campus-Based Programs, Facility Community-Based Services, and Community Centers: Administrative Death Review), the community center CEO shall report to the community center's board of trustees any systemic issues emerging from death reviews and the corrective actions taken, on a routine basis or when necessary.

HISTORY: The provisions of this § 405.276 adopted to be effective June 1, 1993, 18 TexReg 2133

§ 405.277. Distribution

- (a) The provisions of this subchapter concerning deaths will be distributed to members of the Texas Board of Mental Health and Mental Retardation; medical director; deputy commissioners, associate deputy commissioners, assistant deputy commissioners, management and program staff of central office; chief executive officers of all TXMHMR facilities; and chief executive officers and chairpersons of the boards of trustees of all community centers.
- (b) The facility CEO shall be responsible for the dissemination of the information contained in this subchapter to

all appropriate staff members and to contract providers of services.

HISTORY: The provisions of this § 405.277 adopted to be effective June 1, 1993, 18 TexReg 2133

§ 405.279. References

Reference is made to the following:

- (1) Texas Code of Criminal Procedures, Article 49;
- (2) Attorney General Opinion Number C-762;
- (3) Subchapter C of this chapter (relating to Life-Sustaining Treatment);
- (4) Chapter 403, Subchapter K of this title (relating to Client-Identifying Information);
- (5) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);
- (6) Subchapter Y of this chapter (relating to Client Rights—Mental Retardation Services);
- (7) Texas Health and Safety Code, Chapters 532-534;
- (8) Texas Health and Safety Code, Chapter 691 of Subtitle B, concerning death and disposition of a deceased person;
- (9) Texas Health and Safety Code, Chapter 551, §§ 551.003, 551.004, 551.005, and 551.044;
- (10) Texas Probate Code; and
- (11) rules of the Texas Department of Protective and Regulatory Services.

HISTORY: The provisions of this § 405.279 adopted to be effective June 1, 1993, 18 TexReg 2133

CHAPTER 411.

State Mental Health Authority Responsibilities

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Subchapter A.

Advisory Committees

§ 411.1. Definitions

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

(1) DSHS—The Texas Department of State Health Services.

(2) Executive Commissioner—The HHSC Executive Commissioner or his or her designee.

(3) HHSC—The Texas Health and Human Services Commission or its designee.

HISTORY: The provisions of this § 411.1 adopted to be effective June 28, 2016, 41 TexReg 4648

§ 411.3. Joint Committee on Access and Forensic Services

(a) Statutory authority. This section is authorized by:

(1) Texas Health and Safety Code, § 531.0131 and § 533.051(c), which define membership requirements and prescribe duties of the Joint Committee on Access and Forensic Services (JCAFS);

(2) Texas Health and Safety Code, § 533.0515, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules as necessary to implement its provisions; and

(3) Texas Government Code, § 531.012, which authorizes the Executive Commissioner to adopt rules for advisory committees.

(b) Applicability. Texas Government Code, Chapter 2110, and Texas Government Code, Chapter 551, apply to the JCAFS.

(c) Purpose. The purposes of the JCAFS are:

- (1) to make recommendations for a comprehensive plan for effective coordination of forensic services;
- (2) to make recommendations and monitor implementation of updates to a bed day allocation methodology; and
- (3) to make recommendations and monitor implementation of an utilization review protocol for state funded beds in hospitals and other inpatient mental health facilities.

(d) Tasks. The JCAFS considers and makes recommendations to the Executive Commissioner consistent with the committee's purpose as stated in subsection (c) of this section.

(e) Reporting requirements.

(1) The JCAFS files an annual written report with the Executive Commissioner by December 1st of each year. The report includes:

- (A) the committee's meeting dates for the previous fiscal year;
- (B) the activities it has completed to achieve the defined purpose; and
- (C) the committee's recommendations.

(2) The JCAFS files an annual written report with the Texas Legislature by December 1st of each year that includes any policy recommendations made to the Executive Commissioner.

(3) In accordance with Texas Health and Safety Code, § 533.0515, the committee sends a proposal for an updated bed day allocation methodology and bed day utilization review protocol to the Executive Commissioner no later than December 1st of each even-numbered year.

(4) In accordance with Texas Health and Safety Code, § 532.0131, the committee submits a report with recommendations concerning the creation of a comprehensive plan for coordination of forensic services to the lieutenant governor, the speaker of the house of representatives, and the standing committees of the senate and the house of representatives with primary jurisdiction over forensic services no later than July 1, 2016.

(f) Abolition. Unless reauthorized, the committee is abolished on November 1, 2019.

(g) Membership.

(1) Number of members. The JCAFS is composed of 24 members nominated by the designating organization and appointed by the Executive Commissioner. The membership includes:

- (A) two representatives designated by DSHS, including a superintendent of a state hospital with a maximum security forensic unit;
- (B) two representatives designated by the Texas Department of Criminal Justice, including a representative of the Texas Correctional Office on Offenders with Medical or Mental Impairments;
- (C) one representative designated by the Texas Juvenile Justice Department;
- (D) one representative from a State Supported Living Center that provides forensic services designated by the Texas Department of Aging and Disability Services or its successor agency;
- (E) one representative designated by the Texas Association of Counties;

(F) two representatives designated by the Texas Council of Community Centers, including one representative of an urban local service area and one representative of a rural local service area;

(G) two representatives designated by the County Judges and Commissioners Association of Texas, including one representative who is the presiding judge of a court with jurisdiction over mental health matters;

(H) one representative designated by the Sheriffs' Association of Texas;

(I) two representatives designated by the Texas Municipal League, including one representative who is a municipal law enforcement official;

(J) one representative designated by the Texas Conference of Urban Counties;

(K) two representatives designated by the Texas Hospital Association, including one representative who is a physician;

(L) one representative designated by the Texas Catalyst for Empowerment;

(M) one representative of Disability Rights Texas;

(N) one representative designated by the Texas District and County Attorneys Association; and

(O) four representatives designated by the DSHS Council for Advising and Planning for the Prevention and Treatment of Mental and Substance Use Disorders (CAP): (i) including the chair of the council, one representative of the council's members who is a consumer of or advocate for mental health services, one representative of the council's members who is a consumer of or advocate for substance abuse treatment, and one representative of the council's members who is a family member of or advocate for persons with mental health and substance abuse disorders; (ii) at least one of the designated individuals represents consumers involved with forensic services; and (iii) with the dissolution of the CAP, responsibility for designating representatives transfers to the HHSC Behavioral Health Advisory Committee.

(2) The DSHS Forensic Director serves as a non-voting ex officio member of the JCAFS.

(3) Each member serves until a replacement is nominated by the designating organization and appointed by the Executive Commissioner.

(h) Quorum. a majority of the voting members of the JCAFS constitutes a quorum.

(i) Presiding officers.

(1) The JCAFS selects from among its members a presiding officer.

(2) Unless re-elected, the term of the presiding officer is one year. a member serves no more than two consecutive terms as presiding officer.

HISTORY: The provisions of this § 411.3 adopted to be effective June 28, 2016, 41 TexReg 4648

Subchapter B.

Interagency Agreements

§ 411.61. Memorandum of Understanding Concerning Capacity Assessment for Self Care and Financial Management

(a) Introduction and Legal Authority. The Texas Department of Mental Health and Mental Retardation (TDMHMR) and Texas Department of Human Services (TDHS) enter into a memorandum of understanding (MOU) in accordance with Texas Health and Safety Code (THSC),

§ 533.044. The statute 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 TDMHMR or TDHS needs a guardian of the person or estate or both. TDMHMR and TDHS agree to require the following entities, as indicated, to comply with the provisions of this MOU:

(1) TDMHMR: state facilities; local mental retardation authorities and their contractors; and providers in the ICF/MR/RC or Medicaid waiver programs; and

(2) TDHS: nursing facilities.

(b) Definitions: The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

(1) Capacity Assessment for Self Care and Financial Management — The uniform capacity assessment instrument developed by TDMHMR and TDHS in compliance with THSC, § 533.044, for use by providers described in subsection (a)(1) and (2) of this section to assess an individual's:

(A) ability to make a decision and communicate that decision to others; and

(B) capacity to:

(i) substantially provide the individual's food, clothing, or shelter;

(ii) care for the individual's physical health; or

(iii) manage the individual's financial affairs.

(2) Developmental disability (related condition) — In accordance with the Code of Federal Regulations, Title 42, § 435.1009, a severe and chronic disability that:

(A) is attributable to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with mental retardation, and requires treatment or services similar to those required for individuals with mental retardation;

(B) is manifested before the individual reaches age 22; and

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in three or more of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(3) Elderly — In accordance with Texas Human Resources Code, § 102.001, sixty years of age or older.

(4) ICF/MR/RC — The Intermediate Care Facilities for Persons with Mental Retardation or a Related Condition program which provides Medicaid-funded residential services to individuals with mental retardation or a related condition.

(5) Individual — a person who is receiving services from a provider and who:

(A) is elderly; or

(B) has mental retardation or is suspected of having mental retardation, including a person who is

dually diagnosed with mental retardation and mental illness; or

(C) has a developmental disability or is suspected of having a developmental disability.

(6) Local mental retardation authority — As defined in the Texas Health and Safety Code, § 531.002, an entity to which the Texas Mental Health and Mental Retardation 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 consumers in one or more local service areas.

(7) Medicaid waiver program - a home and community-based program serving people with mental retardation and/or related conditions which is operated by TDMHMR as authorized by the Health Care Financing Administration (HCFA) in accordance with § 1915(c) of the Social Security Act, including the Home and Community-based Services (HCS), Home and Community-based Waiver Services — OBRA (HCS-O), and Mental Retardation Local Authority (MRLA) programs.

(8) Mental retardation — Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period (birth to 18 years of age.)

(9) Nursing facility — An organization that provides organized and structured nursing care and service and is licensed under THSC, Chapter 242.

(10) Planning team — For providers other than nursing facilities, a group composed of the individual receiving services, the individual's legally authorized representative (LAR), actively-involved family members and friends who are invited by the individual or LAR, and professional and other support staff, that meets to assess the individual's habilitation, treatment, and service/support needs and develop strategies for enabling the individual to achieve desired outcomes.

(11) Provider — Those entities described in subsection (a)(1) and (2) of this section.

(12) Professional — a person licensed or certified by the State of Texas in a health or human services occupation or who meets TDMHMR criteria to be a case manager, service coordinator, qualified mental retardation professional, or associate psychologist.

(13) State facilities — State hospitals, state schools, and state centers that are operated by TDMHMR.

(c) Capacity Assessment.

(1) A provider will perform a capacity assessment for an individual receiving services from that provider when:

(A) the provider believes a guardian of the person or the estate for that individual may be appropriate and a referral to the appropriate court for guardianship is anticipated; or

(B) requested to do so by a court .

(2) In conducting the capacity assessment, the provider will use the Capacity Assessment for Self Care and Financial Management. Copies of the Capacity Assessment for Self Care and Financial Management may be obtained by contacting the Office of Policy Development, TDMHMR, 909 West 45th Street, Austin, Texas 78756, 512/206-4516, or from the TDHS Long Term Care Policy web site.

(d) Performance of Capacity Assessment. The capacity assessment will be performed:

(1) for providers other than nursing facilities, by the professional designated by the planning team with assistance from other staff or consultants as requested by the professional or directed by the planning team; and

(2) at nursing facilities, by the social worker with assistance from member(s) of the interdisciplinary care plan team as requested by the social worker.

(e) Annual Review. No later than the last month of each state fiscal year, TDMHMR and TDHS shall review and modify the MOU as necessary.

HISTORY: The provisions of this § 411.61 adopted to be effective November 15, 1999, 24 TexReg 10091

§ 411.62. Memorandum of Understanding concerning Continuity of Care System for Offenders with Mental Impairments

(a) For the purpose of establishing a continuity of care system for offenders with mental illnesses or mental retardation, the Texas Department of Criminal Justice (TDCJ), the Texas Department of Mental Health and Mental Retardation (TDMHMR), local mental health and mental retardation authorities (MHMRAs), and local community supervision and corrections' departments (CSCD's) agree to the following:

(1) Authority and purpose. Senate Bill 252, Acts 1993, 73rd Leg., Ch.488, 1, and House Bill 1747, Acts 1997, 75th Leg., codified as Texas Health and Safety Code, § 614.013, authorizes TDCJ, TDMHMR, local MHMRAs, and CSCD's (entities) to establish a memorandum of understanding that identifies methods for:

(A) identifying persons with mental illness or mental retardation involved in the criminal justice system;

(B) developing interagency rules, policies and procedures for the coordination of the care of and exchange of information on persons with mental illness or mental retardation by local and state criminal justice agencies, TDMHMR, local MHMRAs, and CSCDs; and

(C) identifying services needed by persons with mental illness or mental retardation to re-enter the community successfully.

(2) This memorandum of understanding is intended to implement a continuity of care system for offenders with mental illness or mental retardation in the criminal justice system, using funds appropriated for that purpose.

(b) All entities agree to the extent possible to:

(1) follow the statutory provisions in Texas Health and Safety Code, § 614.017, relating to the exchange of information (including electronic) about offenders with mental illness or mental retardation for the purpose of providing or coordinating services among the entities;

(2) develop a system and a procedure that describes the agencies' role in the pre-release and post-release planning process for persons with mental illness or mental retardation;

(3) develop procedures that provide for the preparation of assessments or diagnostics prior to the imposition of community supervision, incarceration, or parole, and the transfer of such diagnostics between local and state entities prior to release from incarceration;

(4) submit to the Texas Council on Offenders with Mental Impairments (Council) a list of contact staff who are responsible for responding to referrals and/or issues regarding persons with mental illness or mental retardation;

(5) participate in cross training and/or educational events targeted for improving each agency's knowledge and understanding of the criminal justice and mental health/mental retardation systems' roles and responsibilities;

(6) inform each other of any proposed rule or standards changes which could affect the continuity of care system. Each agency shall be afforded 30 days after receipt of proposed change(s) to respond to the recommendations prior to the adoption;

(7) provide on-going status reports to the Council on the implementation of initiatives outlined in this MOU;

(8) actively seek federal funds to operate and/or expand the service capability;

(9) develop a technical assistance manual that describes the criminal justice and mental health/mental retardation service delivery systems, and the role and responsibilities of each agency.

(c) TDCJ, to the extent possible, shall:

(1) design an information base for exchange purposes, that provides the following information:

(A) the number of offenders with a priority population diagnosis of mental illness or mental retardation who are on community supervision, incarcerated, or on parole;

(B) the county of residence to which these individuals reside or will return to upon release from incarceration;

(C) the type and level of offense with which the offender has been charged and convicted;

(D) the diagnoses including psychiatric, medical, and mental retardation;

(E) any other information deemed necessary to be consistent with the intent of this agreement.

(2) develop a procedure to ensure that clients or offenders have medications and/or prescriptions upon their release from incarceration from TDCJ facilities;

(3) ensure that aftercare treatment providers are provided with all pertinent medical and/or psychiatric records prior to the client or offenders release from TDCJ facilities.

(d) TDMHMR, to the extent possible, shall:

(1) Collaborate with local authorities in the development of CARE system data elements which are within the capacity of the MHMR system to generate reports about offenders with a mental illness or mental retardation referred, served, and discharged from service;

(2) Express in departmental rules continuity of care expectations for persons with mental illness and/or mental retardation involved in the criminal justice system;

(3) maintain in the performance contracts requirements for local MH/MR authorities to identify those staff members (primary and alternates) responsible for the coordination of referrals and access to service for persons with mental illness or mental retardation involved with or referred from the state and/or local criminal justice systems; and

(4) receive referrals on any person with mental illness or mental retardation who meets the priority population definition and is in need of MH/MR treatment services, with the understanding that if no funding exists there would be on a waiting list until services are available.

(e) Local MHMRAs, to the extent possible, shall:

(1) Collaborate with TDMHMR in the development of CARE system data elements which are within the capacity of the MHMR system to generate reports about

offenders with MI/MR referred, served, and discharged from services;

(2) Develop and implement procedures with the local jail and CSCD which address respective responsibilities for sharing information and which specifically address the following circumstances:

(A) offenders whose status is that of a convicted felon or deferred adjudication and offender consent to release information is not necessary per § 614.017 of the Texas Health and Safety Code;

(B) offenders from whom consent to release information is required; and

(C) offenders from whom consent to release information is required but circumstances exist which meet the provisions of Chapter 611 of the Texas Health and Safety Code allowing release of information without consent;

(3) Identify by September 30, 1998, to the State Authority Contract Manager and the Texas Council on Offenders with Mental Impairments (TCOMI), those staff members (primary and alternates) responsible for the coordination of referrals and access to services for persons with mental illness or mental retardation involved with or referred from the state and/or local criminal justice systems. This information must be updated with the department and TCOMI when assigned staff change; and

(4) receive referrals on any person with mental illness or mental retardation who meets the priority population definition and is in need of mental health and mental retardation treatment services, with the understanding that if no funding exists they would be on a waiting list until services are available.

(f) CSCDs, to the extent possible, shall:

(1) provide information to local MHMRAs concerning persons who are under community supervision and are served by said entities;

(2) track the number of referrals to local MHMRAs;

(3) monitor the number of persons supervised by CSCDs who are on MHMR waiting lists who become re-involved in the criminal justice system;

(4) initiate referrals on any person with mental illness or mental retardation who meets the priority population definition and is in need of MHMR treatment services, with the understanding that if no funding exists they would be on a waiting list until services are available;

(5) identify barriers and gaps in services which should be identified in the community justice plan of each respective CSCD; and

(6) coordinate with local MHMR authorities to access available information, including the CARE System, on offenders with mental illness or mental retardation.

(g) Review and Monitoring.

(1) TDMHMR, TDCJ, the local MHMRAs, and local CSCDs shall jointly monitor implementation of the continuity of care system as outlined in this Memorandum of Understanding. The intent of all agencies is to provide timely communication, discussion and resolution of transitional problems should any occur.

(2) This MOU shall be adopted by the Texas Department of Mental Health and Mental Retardation, the Texas Department of Criminal Justice, the boards of trustees of community MHMR centers and local CSCDs. Subsequent to adoption, all parties to this memorandum shall annually review this memorandum and provide status reports to the Council. Amendments to this

memorandum of understanding may be made at any time by mutual agreement of the parties.

(3) The Council will serve as the dispute resolution mechanism for conflicts concerning this MOU at both the local and statewide level.

HISTORY: The provisions of this § 411.62 adopted to be effective November 15, 1999, 24 TexReg 10091

§ 411.63. Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities

(a) Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts by reference a rule of the Texas Education Agency (TEA) in 19 TAC § 89.1115 (relating to Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities).

(b) The TEA rule contains the text of an MOU between the following state agencies:

(1) TDMHMR;

(2) TEA;

(3) Texas Department of Human Services;

(4) Texas Department of Health;

(5) Texas Department of Protective and Regulatory Services;

(6) Texas Interagency Council on Early Childhood Intervention;

(7) Texas Commission on Alcohol and Drug Abuse;

(8) Texas Juvenile Probation Commission; and

(9) Texas Youth Commission.

(c) The MOU concerns the provision of a free and appropriate education for school-age residents of residential facilities and is required by the Texas Education Code, § 29.012(d).

(d) Copies of the MOU are filed in the Office of Policy Development, TDMHMR, 909 West 45th Street, Austin, Texas 78756, and may be reviewed during regular business hours.

HISTORY: The provisions of this § 411.63 adopted to be effective November 15, 1999, 24 TexReg 10091; amended to be effective February 18, 2003, 28 TexReg 1392

§ 411.64. Memorandum of Understanding (MOU) on Relocation Pilot Program

(a) Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts by reference a rule of the Texas Department of Human Services (TDHS) contained in 40TAC § 72.104 (relating to Memorandum of Understanding on Relocation Pilot Program).

(b) The TDHS rule contains the text of a memorandum of understanding (MOU) between:

(1) TDMHMR;

(2) TDHS; and

(3) Texas Department of Protective and Regulatory Services.

(c) The MOU is required by Texas Human Resources Code, § 22.038. It requires the three agencies to coordinate and implement a pilot program, subject to availability of funds, to provide a system of services and supports that fosters independence and productivity and provides meaningful opportunities for persons with disabilities to live in the community. The terms of the MOU apply in those areas of the state in which community awareness and relocation pilot programs will be implemented.

(d) Copies of the MOU are filed in the Office of Policy Development, TDMHMR, 909 West 45th Street, Austin,

Texas 78756, and may be reviewed during regular business hours.

HISTORY: The provisions of this § 411.64 adopted to be effective February 2, 2003, 28 TexReg 960

Subchapter G.

Community Centers

§ 411.301. Purpose

(a) Health and Safety Code, Title 7, Chapter 534, Subchapter A, and this subchapter govern the establishment and operation of a community center.

(b) The purpose of this subchapter is to describe requirements by which a community center is established and operated by a local agency with a plan approved by DADS and DSHS in accordance with Health and Safety Code, § 534.001(e).

HISTORY: The provisions of this § 411.301 adopted to be effective May 25, 2000, 25 TexReg 4540; amended to be effective September 11, 2011, 36 TexReg 5691

§ 411.302. Application

This subchapter applies to local agencies desiring to establish a new community center or affiliate with an existing community center and to all existing community centers established under Health and Safety Code, Title 7, Chapter 534.

HISTORY: The provisions of this § 411.302 adopted to be effective May 25, 2000, 25 TexReg 4540; amended to be effective September 11, 2011, 36 TexReg 5691

§ 411.303. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Board of trustees—A body of persons selected and appointed in accordance with Health and Safety Code, Title 7, § 534.002 or § 534.003, and § 534.004, § 534.005, and § 534.0065, that has responsibility for the effective administration of a community center.

(2) Community center or center—A center established under Health and Safety Code, Title 7, Chapter 534, Subchapter A.

(3) Current plan—The most recently approved initial or modified plan.

(4) DADS—The Department of Aging and Disability Services.

(5) DSHS—The Department of State Health Services.

(6) Facility—A state hospital, state supported living center, or state center.

(7) Initial plan—The plan developed by a board of trustees to establish a new community center.

(8) Local agency—A county, municipality, hospital district, school district, or any organizational combination of two or more of these which may establish and operate a community center.

(9) Local contribution—Funds or in-kind contribution by each local agency to a community center in the amount approved by DADS and DSHS, which includes local match if the center is a local authority.

(10) Local authority—In accordance with Health and Safety Code, § 533.035(a), an entity designated as a local mental retardation authority or a local mental health authority by the executive commissioner of the Health and Human Services Commission.

(11) Local match—In accordance with Health and Safety Code, § 534.066, those funds or in-kind support from a local authority that are required to match some or all of the state funds the local authority receives pursuant to a contract with DADS or DSHS.

(12) Mental health services—All services concerned with research, prevention, and detection of mental disorders and disabilities and all services necessary to treat, care for, supervise, and rehabilitate persons with a severe and persistent mental illness which may be accompanied by chemical dependency or mental retardation.

(13) Mental retardation services—All services concerned with research, prevention, and detection of mental retardation and all services related to the education, training, habilitation, care, treatment, and supervision of persons with mental retardation, except the education of school-age persons that the public educational system is authorized to provide.

(14) Region—The area within the boundaries of the local agencies participating in the operation of a community center established under Health and Safety Code, Chapter 534, Subchapter A.

HISTORY: The provisions of this § 411.303 adopted to be effective May 25, 2000, 25 TexReg 4540; amended to be effective September 11, 2011, 36 TexReg 5691

§ 411.305. Process to Establish a New Community Center

(a) Letter of intent. If a local agency decides to establish a new community center, then the local agency submits a letter of intent to DADS and DSHS outlining the proposed new center's region, governing structure, and other information pertinent to the formation of the proposed new center.

(1) If the local agency submitting the letter of intent is not a county or counties, the letter must be accompanied by a letter of endorsement from the appropriate county judge or judges.

(2) DADS and DSHS review the letter of intent using the following criteria:

(A) the benefits of establishing a new center over affiliation with an existing center and the establishment of a new center is consistent with DADS's and DSHS's mission for the development of community services in Texas;

(B) the population of the region of the proposed new center is at least 200,000 or large enough to support a center;

(C) a comprehensive array of mental health and mental retardation services will be provided;

(D) the extent of the local contribution supports the intent; and

(E) the efficient provision of services is financially viable.

(3) DADS and DSHS determine whether the letter of intent meets the criteria described in paragraph (2) of this section.

(b) Appointment of board of trustees. If the local agency receives notice from DADS and DSHS that the letter of intent meets the criteria described in subsection (a)(2) of this section, the local agency prescribes the criteria and procedures for the appointment of members of a board of trustees as described in Health and Safety Code, § 534.002 or § 534.003, and § 534.004, § 534.005, and § 534.0065. The local agency prescribes and makes available for public review the elements listed in Health and Safety Code, § 534.004(a). If more than one local agency is involved, the local agencies shall enter into a contract of interlocal agreement that

states the number of board members and the group from which the members are chosen, as provided in Health and Safety Code, § 534.003(c).

(c) Initial plan.

(1) Submission. The board of trustees develops and submits to DADS and DSHS an initial plan to provide effective mental health and mental retardation services to the residents of the proposed region. The board of trustees shall appoint a mental health planning advisory council and a mental retardation planning advisory council to assist in developing the initial plan. a mental health planning advisory council must have at least 50 percent representation of persons or family members of persons who have received or are receiving mental health services. a mental retardation planning advisory council must have at least 50 percent representation of persons or family members of persons who have received or are receiving mental retardation services. a combined mental health and mental retardation planning advisory council shall have at least 50 percent representation of persons or family members of persons who have received or are receiving mental health or mental retardation services with an equal number of representatives for mental health services and mental retardation services. The board of trustees shall also seek input through a public process (e.g., public hearings, focus groups, town meetings) from the residents in the proposed region regarding local needs and priorities. The initial plan must include the following elements:

(A) a comprehensive service description, which includes: (i) a statement of the mission, vision, values, and principles which establish the foundation of the proposed community center's local service delivery system; (ii) a definition of all populations to be served; (iii) a description of relevant internal and external assessments and evaluations for the local strategic planning process; (iv) a statement of local service needs and priorities; (v) identified gaps in services and supports in the local service delivery system; (vi) a description of existing local mental health and mental retardation resources and planned resource development activities; (vii) a statement of management needs and priorities to support an effective and efficient local service delivery system; and (viii) objectives, strategies, and outcomes;

(B) a community center plan in a format required by DADS and DSHS available at www.dads.state.tx.us; and

(C) a prospectus, which describes: (i) any proposed transfer of funds, assets, liabilities, personnel, and consumer and administrative records and information from a facility or existing community center and the time frames for transfer; (ii) other available funds; (iii) the arrangements for uninterrupted delivery of services; and (iv) the impact, and resolution if warranted, of current contractual obligations.

(2) Review and approval.

(A) DADS and DSHS review the initial plan.

(B) If DADS and DSHS approve the initial plan, DADS and DSHS issue a certificate of recognition as a community center.

HISTORY: The provisions of this § 411.305 adopted to be effective May 25, 2000, 25 TexReg 4540; amended to be effective September 11, 2011, 36 TexReg 5691

§ 411.307. Modifying a Community Center's Current Plan

(a) Submission. The board of trustees of a community center shall submit a modification of its current plan in accordance with this section as frequently as necessary to reflect changes in the community center's local agencies, functions, or region as described in paragraphs (1) - (3) of this subsection prior to implementing the changes. The modified plan shall be in the format required by DADS and DSHS available at www.dads.state.tx.us.

(1) If a local agency wants to affiliate with an existing community center and the existing center agrees, then the board of trustees of the existing center submits to DADS and DSHS for approval a modification of the center's current plan to reflect such affiliation, including:

(A) any proposed expansion of the center's region;

(B) a copy of the new contract of interlocal agreement; and

(C) official documentation (e.g., a resolution) confirming an intent to affiliate from each local agency and the proposed local agency.

(2) If a local agency wants to terminate its affiliation with an existing community center, then the appointing authorities of the local agencies must terminate the original contract of interlocal agreement and enter into a new contract of interlocal agreement if more than one local agency remains. The board of trustees of the existing center submits to DADS and DSHS for approval a modification of the center's current plan to reflect the termination of such affiliation, including:

(A) any change of the center's region;

(B) a copy of the new contract of interlocal agreement, if applicable; and

(C) official documentation (e.g., a resolution) from the local agency confirming its intent to terminate affiliation with the center.

(3) If an existing community center wants to expand, reduce, or substantially amend its functions or region as described in its plan (e.g., changing the population served or creating or operating a non-profit corporation), the board of trustees of the center submits to DADS and DSHS for approval a modification of the center's current plan to reflect such changes.

(b) Review and approval.

(1) DADS and DSHS review the modified plan.

(2) If DADS and DSHS approve the modified plan, DADS and DSHS notify the board of trustees in writing of the approval and issue a new certificate if appropriate.

HISTORY: The provisions of this § 411.307 adopted to be effective May 25, 2000, 25 TexReg 4540; amended to be effective September 11, 2011, 36 TexReg 5691

§ 411.308. Dissolution and Merger of Community Centers

(a) Dissolution. If a community center proposes to cease operations and dissolve, the center's board of trustees and each local agency shall inform DADS and DSHS in writing of such a decision before dissolution. DADS, DSHS, the board of trustees, and each local agency shall agree to a plan of dissolution that addresses at least the following factors:

(1) the center's assets and liabilities (including personnel);

(2) necessary audits to be conducted;

(3) closure activities, including arrangements for uninterrupted delivery of services;

(4) the transfer, archival, and security of records and information; and

(5) future plans for the region's service delivery system (e.g., affiliation with an existing center or establishment of a new center).

(b) Merger. If two or more existing community centers agree to merge into a new community center, then before merging the boards of trustees of the involved centers submit to DADS and DSHS an initial plan in accordance with § 411.305(c) of this title (relating to Process to Establish a New Community Center). The initial plan must represent the services to be provided in the combined expanded region and include a copy of the new contract of interlocal agreement and official documentation (e.g., a resolution) confirming an intent to merge from each local agency involved.

HISTORY: The provisions of this § 411.308 adopted to be effective May 25, 2000, 25 TexReg 4540; amended to be effective September 11, 2011, 36 TexReg 5691

§ 411.309. Appointment of Manager or Management Team

(a) The DADS commissioner and the DSHS commissioner may appoint a manager or management team to manage and operate a community center in accordance with Health and Safety Code, §§ 534.038, 534.039, and 534.040. The DSHS commissioner may delegate responsibility for appointing a manager or management team to the DADS commissioner.

(b) A community center may request a hearing to appeal the commissioners' decision to appoint a manager or management team in accordance with 1 Texas Administrative Code (TAC), Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act). Requesting a hearing stays the appointment unless the commissioners based the appointment on a finding under Health and Safety Code, §§ 534.038(a)(2) or (4), which means the commissioners found that the community center or an officer or employee of the center misused state or federal money or endangers or may endanger the life, health, or safety of a person served by the center.

HISTORY: The provisions of this § 411.309 adopted to be effective May 25, 2000, 25 TexReg 4540; amended to be effective September 1, 2003, 28 TexReg 6876; amended to be effective September 11, 2011, 36 TexReg 5691

§ 411.310. Standards of Administration for Boards of Trustees

(a) Each board of trustees shall:

(1) retain all financial records, supporting documents, statistical records, and any other documents pertinent to its community center budgets, contracts, performance/workload measure, and persons served for a period of five years. If audit discrepancies have not been resolved at the end of five years, the records must be retained until resolution;

(2) deposit community center funds through the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or secure deposits using collateral in a manner that protects the deposited funds; and

(3) ensure DADS and DSHS have unrestricted access to all facilities, records, data, and other information under control of the community center or its contractors as necessary to enable DADS and DSHS to audit, monitor, and review all financial and programmatic activities and services associated with the center as provided by Health and Safety Code, § 534.033(a).

(b) Each board of trustees shall receive training as required by Health and Safety Code, § 534.006, and this subsection.

(1) Before assuming office, new members must receive initial training, including:

(A) the importance of local planning and the roles and functions of the board of trustees, planning advisory committees, community center staff, and other service organizations;

(B) the current philosophies and program principles on which service delivery systems are founded, information about the service and support needs of people with mental illnesses, mental retardation, and related conditions, and the range of environments in which those services may be delivered;

(C) an overview of mental illnesses, mental retardation, and related conditions;

(D) an overview of the current local and state service delivery system, including descriptions of the types of mental health and mental retardation services provided by the community center; and

(E) applicable state and federal laws, rules, standards, and regulations.

(2) Utilizing input from persons who have received or are receiving services, their family members, and advocates, the training programs must provide orientation in the perspectives and issues of persons receiving services.

(3) A community center shall develop an annual training program for its board of trustees.

(A) Training methodologies may include: (i) presentations by staff at regular board sessions; (ii) on-site program visits; (iii) statewide and regional training conferences; (iv) seminars to enhance team building skills; (v) regional and cross-training with other community centers and their boards of trustees; and (vi) formal and informal meetings with tenured trustee members.

(B) In addition to the topics required in Health and Safety Code, § 534.006, and paragraphs (1) and (2) of this subsection, training topics may include: (i) risk management; (ii) budget analysis; (iii) consumer rights; (iv) strategic planning; and (v) new legislative and contractual requirements of community centers.

(c) The approval and notification requirements in this subsection are in accordance with Health and Safety Code, § 534.021.

(1) A board of trustees must ensure that its community center receives written approval from DADS and DSHS prior to purchase, lease-purchase, or any other transaction which will result in the community center's ownership of real property, including buildings, if DADS's and DSHS's funds or local match are involved. In addition, for acquisition of nonresidential property, the community center must notify each local agency at least 30 days before it enters into a binding obligation to acquire the property.

(2) A community center must provide written notification to DADS and DSHS and each local agency at least 30 days before it enters into a binding obligation to acquire real property, including a building, if the acquisition does not involve the use of DADS's and DSHS's funds or local match. Upon request, the commissioners may waive the 30-day requirement to notify DADS and DSHS on a case-by-case basis.

(3) All notices and requests for approval are submitted on the Real Property Acquisition and Construction Review Form and accompanied by

supporting information including, but not necessarily limited to:

(A) the reason for purchasing the property or a brief explanation of the purpose it will serve;

(B) a summary of the plan for paying for the property, including a statement regarding whether DADS's or DSHS's funds or local match will be used, and if DADS's or DSHS's funds will be used, how the funds will be used, such as directly or in the retirement of any debt associated with the acquisition;

(C) if unimproved, an assessment of the suitability of the property for construction purposes or, if improved, an assessment of the current condition of the buildings;

(D) an independent appraisal of the real estate the community center intends to purchase conducted by an appraiser certified by the Texas Appraiser Licensing and Certification Board; however, 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 past two years; and

(E) a statement that the board of trustees and executive staff are not participating financially in the transaction and will derive no personal benefit from the transaction.

HISTORY: The provisions of this § 411.310 adopted to be effective May 25, 2000, 25 TexReg 4540; amended to be effective September 11, 2011, 36 TexReg 5691

§ 411.311. Civil Rights

Each community center shall provide services in compliance with the Civil Rights Act of 1964, as amended, and the Americans With Disabilities Act (ADA) of 1990, and require the same of entities with which it contracts.

HISTORY: The provisions of this § 411.311 adopted to be effective May 25, 2000, 25 TexReg 4540; amended to be effective September 11, 2011, 36 TexReg 5691

§ 411.312. Fiscal Controls

Pursuant to Health and Safety Code, § 534.035, each community center must comply with the following review and audit procedures to provide reasonable assurance that the community center has adequate and appropriate fiscal controls.

(1) Audit procedures.

(A) Each board of trustees must ensure an annual financial and compliance audit of its accounts is conducted by a certified public accountant or public accountant licensed by the Texas State Board of Public Accountancy. At a minimum, the audit must be conducted in accordance with Government Auditing Standards.

(B) DADS and DSHS may conduct on-site audits of a community center as determined by DADS's and DSHS's financial risk analysis of the center.

(2) Review procedures.

(A) DADS and DSHS will conduct a desk review of each community center's annual audit to determine audit quality and to identify findings and questioned costs.

(B) DADS and DSHS will perform a financial risk analysis of each community center based on the center's annual audit and/or any financial information that the center is required to submit in accordance with § 411.310(b)(1) of this title (relating to Standards of Administration for Boards of Trustees).

HISTORY: The provisions of this § 411.312 adopted to be effective May 25, 2000, 25 TexReg 4540; amended to be effective September 11, 2011, 36 TexReg 5691

Subchapter J.

Standards of Care and Treatment in Psychiatric Hospitals

Division 1. General Requirements

§ 411.451. Purpose

The purpose of this subchapter is to describe standards to ensure the proper care and treatment of prospective patients and patients in private psychiatric hospitals licensed under Texas Health and Safety Code, Chapter 577, and Chapter 134 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units Licensing Rules), and in identifiable mental health services units in hospitals licensed under Texas Health and Safety Code, Chapter 241, and Chapter 133 of this title (relating to Hospital Licensing Rules).

HISTORY: The provisions of this § 411.451 adopted to be effective January 1, 2004, 28 TexReg 11294

§ 411.452. Application

This subchapter applies to:

(1) private psychiatric hospitals licensed under Texas Health and Safety Code, Chapter 577 and Chapter 134 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units Licensing Rules); and

(2) identifiable mental health services units in hospitals licensed under Texas Health and Safety Code, Chapter 241, and Chapter 133 of this title (relating to Hospital Licensing Rules).

HISTORY: The provisions of this § 411.452 adopted to be effective January 1, 2004, 28 TexReg 11294

§ 411.453. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Administrator—The individual, appointed by a governing body, who has authority to represent the hospital and, as delegated by the governing body, has responsibility for operating the hospital in accordance with the hospital's written policies and procedures.

(2) Administrator's designee—An individual designated in a hospital's written policies and procedures to act for a specified purpose on behalf of the administrator.

(3) Admission—The acceptance of an individual to a hospital's custody and care for inpatient mental health treatment based on:

(A) a physician's order issued in accordance with § 411.461(d)(2)(B) of this title (relating to Voluntary Admission);

(B) a physician's order issued in accordance with § 411.462(c)(3) of this title (relating to Emergency Detention);

(C) a protective custody order issued in accordance with Texas Health and Safety Code, § 574.022;

(D) an order for temporary inpatient mental health services issued in accordance with Texas Health and Safety Code, § 574.034;

(E) an order for extended inpatient mental health services issued in accordance with Texas Health and Safety Code, § 574.035;

(F) an order for commitment issued in accordance with the Texas Code of Criminal Procedure, Article 46B.073(d); or

(G) an order for placement in accordance with Texas Family Code, § 55.33(a)(1)(B) or § 55.52(a)(1)(B).

(4) Adult—An individual 18 years of age and older or an individual who is under 18 years of age and is or has been married or who has had the disabilities of minority removed for general purposes.

(5) APN or advanced practice nurse—A registered nurse approved by the Texas State Board of Nurse Examiners to practice as an advanced practice nurse, in accordance with Texas Occupations Code, Chapter 301. The term is synonymous with “advanced nurse practitioner.”

(6) Business day—Any day except a Saturday, Sunday, or legal holiday.

(7) CFR—The Code of Federal Regulations.

(8) COPSD or co-occurring psychiatric and substance use disorders—A diagnosis of both a mental illness and a substance use disorder.

(9) Council on Social Work Education—The national organization that is primarily responsible for the accreditation of schools of social work in the United States.

(10) Day—Calendar day.

(11) Discharge—The release by a hospital of a patient from the custody and care of the hospital.

(12) DSM—The current edition of the Diagnostic Statistical Manual of Mental Disorders published by the American Psychiatric Association.

(13) Emergency medical condition—A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances or symptoms of substance abuse) such that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) or others in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part; or

(D) in the case of a pregnant woman who is having contractions:

(i) that there is inadequate time to effect a safe transfer to another hospital before delivery; or

(ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

(14) Governing body—The governing authority of a hospital that is responsible for the hospital’s organization, management, control and operation, including appointment of the administrator.

(15) Hospital—

(A) A private psychiatric hospital licensed under Texas Health and Safety Code, Chapter 577, and Chapter 134 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units Licensing Rules); or

(B) an identifiable inpatient mental health services unit in a hospital licensed under Texas Health and Safety Code, Chapter 241, and Chapter 133 of this title (relating to Hospital Licensing Rules).

(16) IDT or interdisciplinary treatment team—A group of individuals who possess the knowledge, skills

and expertise to develop and implement a patient’s treatment plan and includes:

(A) the patient’s treating physician;

(B) the patient and the patient’s LAR, if any;

(C) the staff members identified in the treatment plan as responsible for providing or ensuring the provision of each treatment in accordance with § 411.471(c)(1)(E)(iii) of this title (relating to Inpatient Mental Health Treatment and Treatment Planning);

(D) any individual identified by the patient or the patient’s LAR, unless clinically contraindicated; and

(E) other staff members as clinically appropriate.

(17) Inpatient mental health treatment—Residential care provided in a hospital for a patient with a mental illness and a substance use disorder, if any, which includes:

(A) medical services;

(B) nursing services;

(C) social services;

(D) therapeutic activities, if ordered by the treating physician; and

(E) psychological services, if ordered by the treating physician.

(18) Involuntary patient—A patient who is receiving inpatient mental health treatment based on an admission made in accordance with:

(A) § 411.462 of this title (relating to Emergency Detention); or

(B) § 411.463 of this title (relating to Admission of an Individual Under Protective Custody Order for Court-ordered Inpatient Mental Health Services, or Under Order for Commitment or Order for Placement).

(19) LAR or legally authorized representative—An individual authorized by law to act on behalf of a individual with regard to a matter described in this subchapter, and may be a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(20) Legal holiday—A holiday listed in Texas Government Code, § 662.021 and an officially designated county holiday applicable to a court in which proceedings under the Texas Mental Health Code are held.

(21) Licensed marriage and family therapist—An individual who is licensed as a licensed marriage and family therapist by the Texas State Board of Examiners of Marriage and Family Therapists in accordance with Texas Occupations Code, Chapter 502.

(22) Licensed master social worker—An individual who is licensed as a licensed master social worker by the Texas State Board of Social Work Examiners in accordance with Texas Occupations Code, Chapter 505.

(23) Licensed professional counselor—An individual who is licensed as a licensed professional counselor by the Texas State Board of Examiners of Professional Counselors in accordance with Texas Occupations Code, Chapter 503.

(24) Licensed psychologist—An individual who is licensed as a psychologist by the Texas State Board of Examiners of Psychologists in accordance with Texas Occupations Code, Chapter 501.

(25) Licensed social worker—An individual who is licensed as a licensed social worker by the Texas State Board of Social Work Examiners in accordance with Texas Occupations Code, Chapter 505.

(26) LVN or licensed vocational nurse—An individual who is licensed as a licensed vocational nurse by the Texas Board of Vocational Nurse Examiners in accordance with Texas Occupations Code, Chapter 302. Effective February 1, 2004, an LVN is an individual who

is licensed as a vocational nurse by the Texas Board of Nurse Examiners in accordance with Texas Occupations Code, Chapter 301.

(27) Mandatory overtime—The time, other than on-call time, a nursing staff member is required to work at a hospital beyond the hours or days that were scheduled for the staff member. Neither the length of the shift (whether 4, 8, 12, or 16 hours) nor the number of shifts scheduled to work per week (whether 4, 5, or 6 per week) is the determinative factor in deciding whether time is mandatory overtime.

(28) Medical services—Services provided or delegated by a physician acting within the scope of his or her practice, as described in Texas Occupations Code, Chapter 155.

(29) Mental illness—An illness, disease, or condition (other than a sole diagnosis of epilepsy, senility, substance use disorder, mental retardation, autism, or pervasive developmental disorder) that:

(A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.

(30) Minor—An individual under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

(31) Monitoring—One or more staff members observing a patient on a continual basis or at pre-determined intervals and intervening when necessary to protect the patient from harming self or others.

(32) National League for Nursing—The national organization that is primarily responsible for the accreditation of nursing education programs in the United States.

(33) Neurological screening—A screening to assess an individual's neurological functioning.

(34) Nosocomial infection—A hospital-acquired infection of a patient.

(35) Nursing services—Services provided, assigned to an LVN, or delegated to a UAP by a registered nurse acting within the scope of his or her practice, as described in Texas Occupations Code, Chapter 301.

(36) Nursing staff—Staff members of a hospital who are registered nurses, licensed vocational nurses or unlicensed assistive personnel.

(37) Occupational therapist—An individual who is licensed as an occupational therapist by the Texas Board of Occupational Therapy Examiners in accordance with Texas Occupations Code, Chapter 454.

(38) PASP or pre-admission screening professional—A staff member whose responsibilities include conducting a pre-admission screening and who is:

- (A) a physician;
- (B) a physician assistant;
- (C) a registered nurse;
- (D) a licensed psychologist;
- (E) a psychological associate;
- (F) a licensed social worker;
- (G) a licensed professional counselor; or
- (H) a licensed marriage and family therapist.

(39) Patient—An individual who has been admitted to a hospital and has not been discharged.

(40) Physician—An individual who is:

- (A) licensed as a physician by the Texas State Board of Medical Examiners in accordance with Texas Occupations Code, Chapter 155; or

(B) authorized to perform medical acts under an institutional permit at a Texas postgraduate training program approved by the Accreditation Council on Graduate Medical Education, the American Osteopathic Association, or the Texas State Board of Medical Examiners.

(41) Physician assistant—An individual who is licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners in accordance with Texas Occupations Code, Chapter 204.

(42) Pre-admission screening—The clinical process used to gather information from a prospective patient, including a medical history, any history of substance use, and the problem for which the prospective patient is seeking treatment, to determine if a physician should conduct an admission examination.

(43) Prospective patient—An individual:

(A) for whom a request for voluntary admission has been made, in accordance with § 411.461(a) of this title (relating to Voluntary Admission); or

(B) who has been accepted by a hospital for a preliminary examination, in accordance with § 411.462(a) of this title (relating to Emergency Detention).

(44) Psychological associate—An individual who is licensed as a psychological associate by the Texas State Board of Examiners of Psychologists in accordance with Texas Occupations Code, Chapter 501.

(45) Psychological services—Services provided by a psychologist or psychological associate acting within the scope of his or her practice, as described in Texas Occupations Code, Chapter 501.

(46) Psychologist—An individual who is licensed as a psychologist by the Texas State Board of Examiners of Psychologists in accordance with Texas Occupations Code, Chapter 501.

(47) RN or registered nurse—An individual who is licensed as a registered nurse by the Texas State Board of Nurse Examiners in accordance with Texas Occupations Code, Chapter 301.

(48) Sentinel event—Any of the following occurrences that is unexpected:

- (A) the death of a patient;
- (B) the serious physical injury of a patient;
- (C) the serious psychological injury of a patient; or
- (D) circumstances that present the imminent risk of death, serious physical injury, or serious psychological injury of a patient.

(49) Social services—Services provided by:

(A) a licensed master social worker or licensed social worker acting within the scope of his or her practice, as described in Texas Occupations Code, Chapter 505; or

(B) a licensed professional counselor acting within the scope of his or her practice, as described in Texas Occupations Code, Chapter 503.

(50) Stabilize—To provide such medical treatment of the condition necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a hospital or, if the emergency medical condition for a woman is that she is in labor, that the woman has delivered the child and the placenta.

(51) Staff members—Any and all personnel of a hospital including full-time and part-time employees, contractors, students, volunteers, and professionals granted privileges by the hospital.

(52) Substance use disorder—The use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning and which currently meets the criteria for substance abuse or substance dependence as described in the DSM.

(53) TAC—The Texas Administrative Code.

(54) TDMHMR—The Texas Department of Mental Health and Mental Retardation.

(55) Therapeutic activities—Structured activities designed to develop, restore or maintain a patient's optimal level of physical and psychosocial functioning limited to:

(A) recreational therapy provided by a therapeutic recreation specialist;

(B) physical therapy, speech therapy, or occupational therapy, provided by a licensed staff member acting within the scope of the staff member's practice;

(C) art therapy provided by a staff member certified as an ATR-BC by the American Art Therapy Association;

(D) music therapy provided by a staff member who is certified as an MT-BC by the Certification Board for Music Therapists; or

(E) psychosocial or leisure activities provided by qualified staff members.

(56) Therapeutic recreation specialist—An individual who is certified as a therapeutic recreation specialist by the Texas Consortium for Therapeutic Recreation/Activities Certification or a certified therapeutic recreation specialist by the National Council for Therapeutic Recreation Certification.

(57) Treating physician—A physician who coordinates and oversees the implementation of a patient's treatment plan.

(58) Unit—A discrete and identifiable area of a hospital that includes patients' rooms or other patient living areas and is separated from another similar area:

(A) by a locked door;

(B) by a floor; or

(C) because the other similar area is in a different building.

(59) UAP or unlicensed assistive personnel—An individual, not licensed as a health care provider, who provides certain health related tasks or functions in a complementary or assistive role to a registered nurse in providing direct patient care or carrying out common nursing functions.

(60) Voluntary patient—A patient who is receiving inpatient mental health treatment based on an admission made in accordance with:

(A) §411.461 of this title (relating to Voluntary Admission); or

(B) §411.465 of this title (relating to Voluntary Treatment Following Involuntary Admission).

HISTORY: The provisions of this § 411.453 adopted to be effective January 1, 2004, 28 TexReg 11294

§411.454. General Provisions

(a) Written policies and procedures. a hospital shall develop written policies and procedures that ensure compliance with this subchapter.

(b) Compliance by staff. All staff members shall comply with this subchapter and the policies and procedures of the hospital required by subsection (a) of this section.

(c) Responsibility of hospital. a hospital shall be responsible for a staff member's compliance with this subchapter

and the policies and procedures required by subsection (a) of this section.

(d) Enforcement of policies and procedures. a hospital shall take appropriate measures to ensure a staff member's compliance with this subchapter and the policies and procedures required by subsection (a) of this section.

(e) Implementation of physician orders. a hospital shall implement all orders issued by a physician for a patient or provide adequate written justification for failing to implement the orders.

(f) Physician delegation. Except as provided by §411.461(f)(3) of this title (relating to Voluntary Admission), or other state law as applicable, a physician may delegate any medical service described in this subchapter in accordance with Texas Occupations Code, § 157.001.

(g) Compliance with rules. a hospital shall comply with the following TDMHMR rules:

(1) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(2) Chapter 405, Subchapter E of this title (relating to Electroconvulsive Therapy (ECT));

(3) Chapter 415, Subchapter F of this title (relating to Interventions in Mental Health Programs); and

(4) Chapter 405, Subchapter FF of this title (relating to Consent to Treatment with Psychoactive Medication).

(h) Compliance with Treatment Facilities Marketing Practices Act. a hospital shall comply with Texas Health and Safety Code, Chapter 164, unless the hospital is an exemption described in Texas Health and Safety Code, § 164.004.

(i) Compliance with JCAHO standards. a hospital shall be in substantial compliance with inpatient standards set forth by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO); that is, the standards for inpatient care in the current edition of the Comprehensive Accreditation Manual for Hospitals. In any case in which federal or state law, rule, or regulation is in conflict with such inpatient standards, the federal or state law, rule or regulation prevails.

HISTORY: The provisions of this § 411.454 adopted to be effective January 1, 2004, 28 TexReg 11294

§411.455. Individuals with a Sole Diagnosis of a Substance Use Disorder

A hospital shall comply with 40 TAC Chapter 148 (relating to Facility Licensure) in admitting, treating, and discharging an individual with a sole diagnosis of a substance use disorder.

HISTORY: The provisions of this § 411.455 adopted to be effective January 1, 2004, 28 TexReg 11294

Division 2. Admission

§411.459. Admission Criteria

A hospital shall develop and implement written admission criteria that:

(1) are uniformly applied to all prospective patients;

(2) permit the admission of a prospective patient only if he or she has a mental illness of sufficient severity to require inpatient mental health treatment; and

(3) prevent the admission of a prospective patient who:

(A) requires specialized care not available at the hospital; or

(B) has a physical medical condition that is unstable and could reasonably be expected to require inpatient treatment for the condition.

HISTORY: The provisions of this § 411.459 adopted to be effective January 1, 2004, 28 TexReg 11294

§ 411.461. Voluntary Admission

(a) Request for voluntary admission.

(1) In accordance with Texas Health and Safety Code, § 572.001(a) and (c), a request for voluntary admission of a prospective patient may only be made by:

(A) the prospective patient, if:

(i) he or she is 16 years of age or older; or

(ii) he or she is younger than 16 years of age and is or has been married; or

(B) the parent, managing conservator, or guardian of the prospective patient, if the prospective patient is younger than 18 years of age and is not and has not been married, except that a guardian or managing conservator acting as an employee or agent of the state or a political subdivision of the state may request admission of the prospective patient only with the prospective patient's consent.

(2) In accordance with Texas Health and Safety Code, § 572.001(b) and (e), a request for admission shall:

(A) be in writing and signed by the individual making the request; and

(B) include a statement that the individual making the request:

(i) agrees that the prospective patient will remain in the hospital until discharged; and

(ii) consents to diagnosis, observation, care and treatment of the prospective patient until the earlier of one of the following occurrences:

(I) the discharge of the prospective patient; or

(II) the prospective patient is entitled to leave the hospital, in accordance with Texas Health and Safety Code, § 572.004, after a request for discharge is made.

(3) The consent given under paragraph (2)(B)(ii) of this subsection does not waive a patient's rights described in the rules listed under § 411.454(g) of this title (relating to General Provisions).

(b) Capacity to consent. If a prospective patient does not have the capacity to consent to diagnosis, observation, care and treatment, as determined by a physician, then the hospital may not admit the prospective patient on a voluntary basis. When appropriate, the hospital may initiate an emergency detention proceeding in accordance with Texas Health and Safety Code, Chapter 573, or file an application for court-ordered inpatient mental health services in accordance with Texas Health and Safety Code, Chapter 574.

(c) Pre-admission screening.

(1) Prior to voluntary admission of a prospective patient, a PASP shall conduct a pre-admission screening of the prospective patient.

(2) If the PASP determines that the prospective patient does not need an admission examination, the hospital may not admit the prospective patient and shall refer the prospective patient to alternative services. If the PASP determines that the prospective patient needs an admission examination, a physician shall conduct an admission examination of the prospective patient.

(3) If the pre-admission screening is conducted by a physician, the physician may conduct the pre-admission screening as part of the admission examination referenced in subsection (d)(2)(A) of this section.

(d) Requirements for voluntary admission. a hospital may voluntarily admit a prospective patient only if:

(1) a request for admission is made in accordance with subsection (a) of this section;

(2) a physician has:

(A) in accordance with Texas Health and Safety Code, § 572.0025(f)(1), conducted, within 72 hours prior to admission, or has consulted with a physician who has conducted, within 72 hours prior to admission, an admission examination in accordance with subsection (f) of this section; and

(B) issued an order admitting the prospective patient;

(3) the prospective patient meets the hospital's admission criteria; and

(4) in accordance with Texas Health and Safety Code, § 572.0025(f)(2), the administrator or administrator's designee has signed a written statement agreeing to admit the prospective patient.

(e) Intake. In accordance with Texas Health and Safety Code § 572.0025(b), a hospital shall, prior to voluntary admission of a prospective patient, conduct an intake process, that includes:

(1) obtaining relevant information about the prospective patient, including information about finances, insurance benefits and advance directives; and

(2) explaining, orally and in writing, the prospective patient's rights described in Chapter 404, Subchapter E of this title (concerning Rights of Persons Receiving Mental Health Services), including:

(A) the hospital's services and treatment as they relate to the prospective patient; and

(B) the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, which is Advocacy, Inc., as required by Texas Health and Safety Code, § 576.008.

(f) Admission examination.

(1) The admission examination referenced in subsection (d)(2)(A) of this section shall be conducted by a physician and include a physical and psychiatric examination conducted in the physical presence of the patient or by using audiovisual telecommunications.

(2) The physical examination may consist of an assessment for medical stability.

(3) The physician may not delegate conducting the admission examination to a non-physician.

(g) Documentation of admission order. In accordance with Texas Health and Safety Code § 572.0025(f)(1), the order described in subsection (d)(2)(B) of this section shall be:

(1) issued in writing and signed by the issuing physician; or

(2) issued orally or electronically if, within 24 hours after its issuance, the hospital has a written order signed by the issuing physician.

HISTORY: The provisions of this § 411.461 adopted to be effective January 1, 2004, 28 TexReg 11294

§ 411.462. Emergency Detention

(a) Acceptance for preliminary examination. In accordance with Texas Health and Safety Code, § 573.022, a hospital may accept for a preliminary examination:

(1) an individual who has been apprehended and transported to a hospital by a peace officer in accordance with Texas Health and Safety Code, § 573.001 or § 573.012; or

(2) an individual who is 18 years of age or older and who has been transported to the hospital by the

individual's guardian of the person in accordance with Texas Health and Safety Code, § 573.003.

(b) Preliminary examination.

(1) A physician shall conduct a preliminary examination of the individual as soon as possible but not more than 24 hours after the individual was apprehended by the peace officer or arrived at the hospital after being transported by his or her guardian for emergency detention.

(2) The preliminary examination shall include:

(A) an assessment for medical stability; and

(B) a psychiatric examination to determine if the individual meets the criteria described in subsection (c)(1) of this section.

(c) Requirements for emergency detention. a hospital may admit a prospective patient for emergency detention only if:

(1) in accordance with Texas Health and Safety Code, § 573.022(a)(2), a physician determines from the preliminary examination that:

(A) the prospective patient has a mental illness;

(B) the prospective patient evidences a substantial risk of serious harm to self or others;

(C) the described risk of harm is imminent unless the prospective patient is immediately detained; and

(D) emergency detention is the least restrictive means by which the necessary detention may be accomplished;

(2) in accordance with Texas Health and Safety Code, § 573.022(a)(3), a physician makes a written statement:

(A) documenting the determination described in paragraph (1) of this subsection; and

(B) describing:

(i) the nature of the prospective patient's mental illness;

(ii) the risk of harm the individual evidences, demonstrated either by the prospective patient's behavior or by evidence of severe emotional distress and deterioration in the prospective patient's mental condition to the extent that the prospective patient cannot remain at liberty; and

(iii) the detailed information on which the physician based the determination described in paragraph (1) of this subsection;

(3) based on the determination described in paragraph (1) of this subsection, the physician issues an order admitting the prospective patient for emergency detention; and

(4) the prospective patient meets the hospital's admission criteria, as required by § 411.459 of this title (relating to Admission Criteria).

(d) Release.

(1) A hospital shall release a prospective patient accepted for a preliminary examination if:

(A) a preliminary examination of the prospective patient has not been conducted within the time frame described in subsection (b)(1) of this section; or

(B) in accordance with Texas Health and Safety Code, § 573.023(a), the prospective patient is not admitted for emergency detention in accordance with subsection (c) of this section on completion of the preliminary examination.

(2) In accordance with Texas Health and Safety Code, § 576.007, before releasing a prospective patient who is 18 years of age or older, a hospital shall make a reasonable effort to notify the prospective patient's family of the release if the prospective patient grants permission for the notification.

(3) Before releasing a patient who is younger than 16 years of age and who is not or has not been married, a hospital shall notify the patient's LAR or the LAR's designee of the release.

(4) Upon release, the hospital may release a minor younger than 16 years of age only to the minor's LAR or the LAR's designee.

(e) Intake. a hospital shall conduct an intake process as soon as possible, but not later than 24 hours after the time a patient is admitted for emergency detention.

(1) The intake process shall include but is not limited to:

(A) obtaining, as much as possible, relevant information about the patient, including information about finances, insurance benefits and advance directives; and

(B) explaining, orally and in writing, the patient's rights described in Chapter 404, Subchapter E of this title (concerning Rights of Persons Receiving Mental Health Services), including:

(i) the hospital's services and treatment as they relate to the patient; and

(ii) the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, which is Advocacy, Inc., as required by Texas Health and Safety Code, § 576.008.

(2) The hospital shall determine whether the patient comprehends the information provided in accordance with paragraph (1)(B) of this subsection. If the hospital determines that the patient comprehends the information, the hospital shall document in the patient's medical record the reasons for such determination. If the hospital determines that the patient does not comprehend the information, the hospital shall:

(A) repeat the explanation to the patient at reasonable intervals until the patient demonstrates comprehension of the information or is discharged, whichever occurs first; and

(B) document in the patient's medical record the patient's response to each explanation and whether the patient demonstrated comprehension of the information.

HISTORY: The provisions of this § 411.462 adopted to be effective January 1, 2004, 28 TexReg 11294

§ 411.463. Admission of an Individual under Protective Custody Order, for Court-ordered Inpatient Mental Health Services, or Under Order for Commitment or Order for Placement

(a) Requirements for admission under court order. a hospital may admit an individual:

(1) under a protective custody order only if a court has issued a protective custody order in accordance with Texas Health and Safety Code, § 574.022;

(2) for court-ordered inpatient mental health services only if a court has issued:

(A) an order for temporary inpatient mental health services in accordance with Texas Health and Safety Code, § 574.034; or

(B) an order for extended inpatient mental health services in accordance with Texas Health and Safety Code, § 574.035;

(3) under an order for commitment issued in accordance with the Texas Code of Criminal Procedure, Article 46B.073(d); or

(4) under an order for placement issued in accordance with Texas Family Code, § 55.33(a)(1)(B) or § 55.52(a)(1)(B).

(b) Intake. a hospital shall conduct an intake process as soon as possible, but not later than 24 hours after the time a patient is admitted under one of the orders described in subsection (a) of this section.

(1) The intake process shall include but is not limited to:

(A) obtaining, as much as possible, relevant information about the patient, including information about finances, insurance benefits and advance directives; and

(B) explaining, orally and in writing, the patient's rights described in Chapter 404, Subchapter E of this title (concerning Rights of Persons Receiving Mental Health Services), including:

(i) the hospital's services and treatment as they relate to the patient; and

(ii) the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, which is Advocacy, Inc., as required by Texas Health and Safety Code, § 576.008.

(2) The hospital shall determine whether the patient comprehends the information provided in accordance with paragraph (1)(B) of this subsection. If the hospital determines that the patient comprehends the information, the hospital shall document in the patient's medical record the reasons for such determination. If the hospital determines that the patient does not comprehend the information, the hospital shall:

(A) repeat the explanation to the patient at reasonable intervals until the patient demonstrates comprehension of the information or is discharged, whichever occurs first; and

(B) document in the patient's medical record the patient's response to each explanation and whether the patient demonstrated comprehension of the information.

HISTORY: The provisions of this § 411.463 adopted to be effective January 1, 2004, 28 TexReg 11294

§411.464. Monitoring Upon Admission

At the time a patient is admitted, a hospital shall assign and implement one of the levels of monitoring identified by the hospital in accordance with §411.477(b) of this title (relating to Protection of a Patient), based on the patient's needs.

HISTORY: The provisions of this § 411.464 adopted to be effective January 1, 2004, 28 TexReg 11294

§411.465. Voluntary Treatment Following Involuntary Admission

A hospital may provide inpatient mental health treatment to an involuntary patient after the patient is eligible for discharge as described in §411.485 of this title (relating to Discharge of an Involuntary Patient), if prior to the provision of such treatment:

(1) the hospital obtains written consent for voluntary inpatient mental health treatment that meets the requirements of a request for voluntary admission, as described in §411.461(a) of this title (relating to Voluntary Admission); and

(2) the patient's treating physician:

(A) examines the patient; and

(B) based on that examination, issues an order for voluntary inpatient mental health treatment that

meets the requirements of §411.461(g) of this title (relating to Voluntary Admission).

HISTORY: The provisions of this § 411.465 adopted to be effective January 1, 2004, 28 TexReg 11294

Division 3. Emergency Treatment

§411.468. Responding to an Emergency Medical Condition of a Patient, Prospective Patient, or Individual Who Arrives on Hospital Property Requesting Examination or Treatment

(a) Planning responses to emergency medical conditions. a hospital shall:

(1) identify potential emergency medical conditions of:

(A) a patient;

(B) a prospective patient; and

(C) an individual who arrives on hospital property, as defined in 42 CFR § 489.24(b), requesting examination or treatment for a medical condition; and

(2) develop a written plan describing the specific and appropriate action to be taken by the hospital to evaluate for and stabilize each identified potential emergency medical condition, which shall include:

(A) the administration of first aid and basic life support when clinically indicated; and

(B) the use of the supplies and equipment described in subsection (f)(2) of this section.

(b) Written record of evaluations. The hospital shall keep a written record of all evaluations of individuals who arrive on hospital property, as defined in 42 CFR § 489.24(b), requesting examination or treatment for a medical condition. The written record shall include the following information:

(1) demographic data regarding the individual evaluated, including the name, age and sex of the individual;

(2) a description of the individual's complaint or symptoms;

(3) whether the hospital determined that the individual had an emergency medical condition and, if so, a description of the condition;

(4) whether the hospital treated or refused to treat the individual;

(5) whether the individual refused or consented to treatment or transfer;

(6) whether the hospital stabilized the emergency medical condition;

(7) whether the hospital admitted or released the individual; and

(8) whether the hospital transferred the individual and, if so, the individual's destination, time of transfer and mode of transportation.

(c) Availability of physicians. At least one physician shall, at all times:

(1) be physically present at the hospital to respond to an emergency medical condition of a patient; or

(2) be available to staff members by telephone, radio, or audiovisual telecommunication to provide medical consultation.

(d) Response to emergency medical conditions. If a hospital determines that a patient, prospective patient, or an individual who arrives on hospital property requesting examination or treatment for a medical condition has an emergency medical condition, the hospital shall:

(1) take action to stabilize the emergency medical condition in accordance with the plan required by subsection (a)(2) of this section; and

(2) if appropriate, transfer the individual in accordance with the following, as applicable:

(A) § 134.43 of this title (relating to Patient Transfer Policy), or a transfer agreement made in accordance with § 134.61 of this title (relating to Patient Transfer Agreements); or

(B) § 133.44 of this title (relating to Hospital Patient Transfer Policy), or a transfer agreement made in accordance with § 133.61 of this title (relating to Hospital Patient Transfer Agreements).

(e) Qualified staff members. The hospital shall have an adequate number of staff members who are qualified and available to evaluate for and respond to emergency medical conditions in accordance with the plan required by subsection (a)(2) of this section.

(f) Supplies and equipment.

(1) The hospital shall have an adequate amount of appropriate supplies and equipment immediately available and fully operational at the hospital to respond to emergency medical conditions in accordance with the plan required by subsection (a)(2) of this section.

(2) The emergency supplies and equipment required by paragraph (1) of this subsection shall include, at a minimum:

(A) oxygen;

(B) airways, manual breathing bags, and masks; and

(C) an automated external defibrillator.

(3) If an identifiable inpatient mental health services unit in a hospital licensed under Texas Health and Safety Code, Chapter 241, and Chapter 133 of this title (relating to Hospital Licensing Rules) has immediate access to a automated external defibrillator located in another area, the identifiable inpatient mental health services unit is not required to comply with paragraph (2)(C) of this subsection.

HISTORY: The provisions of this § 411.468 adopted to be effective January 1, 2004, 28 TexReg 11294

Division 4. Service Requirements

§ 411.471. Inpatient Mental Health Treatment and Treatment Planning

(a) Inpatient mental health treatment. a hospital shall provide inpatient mental health treatment to a patient under the direction of a physician and in accordance with the patient's treatment plan and this division. The treatment plan shall be appropriate to the needs and interests of the patient and be directed toward restoring and maintaining optimal levels of physical and psychological functioning.

(b) Treatment plan content within 24 hours. a hospital, in collaboration with the patient, shall develop and implement a written treatment plan within 24 hours after the patient's admission. If the patient is unable or unwilling to collaborate with the hospital, the circumstances of such inability or unwillingness shall be documented in the patient's medical record.

(1) The treatment plan shall be based on the findings of:

(A) the physical examination described in § 411.472(e)(1)(A) or (B) of this title (relating to Medical Services);

(B) the psychiatric evaluation described in § 411.472(f) of this title (relating to Medical Services); and

(C) the initial comprehensive nursing assessment described in § 411.473(e) of this title (relating to Nursing Services).

(2) The treatment plan shall contain:

(A) a list of all diagnoses for the patient with notation as to which diagnoses will be treated at the hospital including:

(i) at least one mental illness diagnosis;

(ii) any substance use disorder diagnoses; and

(iii) any non-psychiatric conditions;

(B) a list of problems and needs that are to be addressed during the patient's hospitalization;

(C) a description of all treatment interventions intended to address the patient's problems and needs, including the medication(s) prescribed and the symptoms each medication is intended to address;

(D) identification of any additional assessments and evaluations to be conducted, which shall include the social assessment described in § 411.474(d) of this title (relating to Social Services);

(E) identification of the level of monitoring assigned to the patient; and

(F) a description of the rationale for the treatment interventions described in accordance with subparagraph (C) of this paragraph.

(c) Treatment plan content within 72 hours.

(1) Within 72 hours of the patient's admission the hospital shall:

(A) establish an IDT for a patient;

(B) conduct the social assessment described in subsection (b)(2)(D) of this section;

(C) initiate referrals for any additional assessments and evaluations identified in accordance with subsection (b)(2)(D) of this section;

(D) review the content of the treatment plan required by subsection (b)(2) of this section, and revise the plan, if necessary, based on the findings of the social assessment or as otherwise clinically indicated; and

(E) add to the treatment plan:

(i) a description of the goals of the patient relating to the problems and needs listed in accordance with subsection (b)(2)(B) of this section;

(ii) the specific treatment modalities for each treatment intervention by type and frequency;

(iii) the IDT member responsible for providing or ensuring the provision of each treatment intervention;

(iv) the time frames and measures to evaluate progress of the treatment plan toward meeting the goals of the patient;

(v) a description of the clinical criteria for the patient to be discharged; and

(vi) a description of the recommended services and supports needed by the patient after discharge as required by § 411.482(a)(3)(A) of this title (relating to Discharge Planning).

(2) The treatment plan shall be signed by all members of the IDT. If the patient is unable or unwilling to sign the treatment plan, the reason for or circumstances of such inability or unwillingness shall be documented in the patient's medical record.

(d) Treatment plan review. In addition to the review required by subsection (c)(1)(D) of this section, the treatment plan shall be reviewed and its effectiveness evaluated:

(1) when there is a significant change in the patient's condition or diagnosis or as otherwise clinically indicated:

(2) in accordance with the time frames and measures described in the treatment plan; and

(3) upon request by the patient or the patient's LAR.

(e) Treatment plan revision. In addition to a revision required by subsection (c)(1)(D) of this section, the treatment plan shall be revised, if necessary, based on the findings of any assessment, reassessment, evaluation, or re-evaluation, or as otherwise clinically indicated.

(f) Documentation of treatment plan review and revisions. A treatment plan review and revision shall be signed by all members of the IDT. If the patient is unable or unwilling to sign the review or revision, the reason for or circumstances of such inability or unwillingness shall be documented in the patient's medical record.

HISTORY: The provisions of this § 411.471 adopted to be effective January 1, 2004, 28 TexReg 11294

§ 411.472. Medical Services

(a) Medical services in treatment plan. A hospital shall provide medical services to a patient in accordance with a treatment plan developed in accordance with § 411.471 of this title (relating to Inpatient Mental Health Treatment and Treatment Planning).

(b) Director of psychiatric services. A hospital shall have a director of psychiatric services who directs, monitors, and evaluates the psychiatric services provided.

(c) Qualifications of director of psychiatric services. In accordance with Texas Health and Safety Code, § 577.008, the director of psychiatric services shall be a physician who:

(1) is certified in psychiatry by the American Board of Psychiatry and Neurology or by the American Osteopathic Board of Psychiatry and Neurology; or

(2) has three years of experience as a physician in psychiatry in a "mental hospital" as defined in Texas Health and Safety Code, § 571.003.

(d) Treating physician. A hospital shall assign a treating physician to a patient and document such assignment in the patient's medical record at the time the patient is admitted.

(e) Physical examination.

(1) A physician shall:

(A) review written findings of a physical examination of the patient conducted by another physician no more than seven days prior to the patient's admission; or

(B) conduct a physical examination of the patient.

(2) The physical examinations described in paragraph (1) of this subsection shall include a neurological screening and, if indicated, a comprehensive neurological examination.

(f) Psychiatric evaluation. A physician shall conduct an initial psychiatric evaluation of a patient. The results of the initial evaluation shall include:

(1) a description of the patient's medical history;

(2) a determination of the patient's mental status;

(3) a description of the onset of the patient's mental illness and any substance use disorder and the circumstances leading to admission;

(4) an estimation of the patient's intellectual functioning, memory functioning and orientation;

(5) a description of the patient's strengths and disabilities; and

(6) the diagnoses of the patient's mental illness and if applicable, any substance use disorders.

(g) Re-evaluation. A physician shall re-evaluate a patient:

(1) once a day for five of the first seven days after the initial psychiatric evaluation described in subsection (f) of this section is conducted and once a week thereafter; and

(2) as clinically indicated.

(h) Provision of medical services. A hospital shall provide:

(1) medical services to a patient in response to an emergency medical condition in accordance with the plan required by § 411.468 of this title (relating to Responding to an Emergency Medical Condition of a Patient, Prospective Patient or Individual Who Arrives on Hospital Property Requesting Examination or Treatment); and

(2) other medical services, as needed by the patient, or transfer the patient to a health care entity that can provide the medical services in accordance with the following, as applicable:

(A) § 134.43 of this title (relating to Patient Transfer Policy), or a transfer agreement made in accordance with § 134.61 of this title (relating to Patient Transfer Agreements); or

(B) § 133.44 of this title (relating to Hospital Patient Transfer Policy), or a transfer agreement made in accordance with § 133.61 of this title (relating to Hospital Patient Transfer Agreements).

(i) Availability of physicians. At least one physician shall, at all times:

(1) be physically present at the hospital to provide medical services to a patient; or

(2) be available to staff members by telephone, radio, or audiovisual telecommunication to provide medical consultation.

HISTORY: The provisions of this § 411.472 adopted to be effective January 1, 2004, 28 TexReg 11294

§ 411.473. Nursing Services

(a) Nursing services in treatment plan. A hospital shall provide nursing services to a patient in accordance with a treatment plan developed in accordance with § 411.471 of this title (relating to Inpatient Mental Health Treatment and Treatment Planning).

(b) Organization of nursing staff. The hospital shall have a written description of the organizational hierarchy and responsibilities of the nursing staff.

(c) Director of psychiatric nursing (DPN). A hospital shall have a DPN who:

(1) has administrative authority over the nursing staff;

(2) directs, monitors, and evaluates the nursing services provided;

(3) for a hospital licensed under Texas Health and Safety Code, Chapter 577, and Chapter 134 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units Licensing Rules), reports directly to the administrator; and

(4) for an identifiable mental health services unit in a hospital licensed under Texas Health and Safety Code, Chapter 241, and Chapter 133 of this title (relating to Hospital Licensing Rules), reports directly to the chief nursing officer as described in § 133.41 of this title (relating to Hospital Functions and Services) or reports directly to an RN who reports directly to the chief nursing officer.

(d) Qualifications of DPN. The DPN shall be:

(1) an RN with a master's degree in psychiatric-mental health from a nursing education program accredited by an organization recognized by the U.S. Department of Education and Council for Higher Education Accreditation as an accreditation agency, such as the National League for Nursing or the Commission on Collegiate Nursing Education;

(2) an RN with a bachelor's degree in nursing and a master's degree in a health-related field from an accredited college or university and have three years experience as a full-time employee or contractor (or its equivalent as a part-time employee or contractor) as an RN in a hospital; or

(3) an RN with a bachelor's degree in nursing and:

(A) have three years experience as a full-time employee or contractor (or its equivalent as a part-time employee or contractor) as an RN in a hospital; and

(B) receive four hours per month of clinical consultation from an RN with:

(i) a master's degree in psychiatric-mental health from a nursing education program accredited by an organization recognized by the U.S. Department of Education and Council for Higher Education Accreditation as an accreditation agency, such as the National League for Nursing or the Commission on Collegiate Nursing Education; or

(ii) a bachelor's degree in nursing and a master's degree in a health-related field from an accredited college or university.

(e) Assessment. An RN shall conduct and complete an initial comprehensive nursing assessment of a patient within eight hours of the patient's admission.

(f) Reassessment. An RN shall reassess a patient, based on the patient's needs, but at least every 12 hours after the initial comprehensive nursing assessment, required by subsection (e) of this section, is conducted.

(g) Staffing plan.

(1) The DPN shall develop and implement a written staffing plan that:

(A) describes the number of RNs, LVNs, and UAPs on each unit for each shift;

(B) provides for at least one RN to be physically present and on-duty at all times on each unit when a patient is present on the unit;

(C) if the hospital has only one unit, in addition to the RN required by subparagraph (B) of this paragraph, provides for at least two staff members who provide direct patient care to be physically present and on-duty at all times on the unit when a patient is present on the unit; and

(D) provides for an adequate number of registered nurses on each unit to supervise all UAPs.

(2) The staffing plan described in paragraph (1) of this subsection shall be based on the following factors:

(A) the number of patients;

(B) the characteristics of the patients, including the intensity of the patient's emotional, mental, and medical needs;

(C) the anticipated admissions, discharges and transfers;

(D) the architecture of the unit, including geographic dispersion of patients, arrangement of the unit and surveillance and communication technology;

(E) the expertise of the nursing staff;

(F) the nursing staff's familiarity with the patients;

(G) nursing staff continuity and cohesion;

(H) the amount of time required by the nursing staff to perform administrative activities; and

(I) recommendations of the advisory committee regarding the adequacy of the staffing plan made in accordance with § 411.496(b)(3) of this title (relating to Advisory Committee for Nurse Staffing).

(3) The DPN shall document his or her determinations made about each factor described in paragraph (2) of this subsection, at the time the staffing plan is developed and when the staffing plan is revised based on a change in such factors.

(4) A hospital shall retain the staffing plan and the documentation required by paragraph (3) of this subsection for two years after such documentation is created.

(5) The DPN shall revise the staffing plan, as necessary.

(6) The DPN shall report to the advisory committee established in accordance with § 411.496 of this title (relating to Advisory Committee for Nurse Staffing) any variance between the number of staff members specified in the staffing plan and the actual number of staff members on duty.

(h) Process for reporting concerns regarding staffing plan.

(1) A hospital shall develop and implement a process for RNs and LVNs to report concerns regarding the adequacy of the staffing plan to the advisory committee established in accordance with § 411.496 of this title (relating to Advisory Committee for Nurse Staffing).

(2) A hospital shall not retaliate against a nurse for reporting a concern to the advisory committee.

(i) Orientation of nursing staff.

(1) A hospital shall provide orientation to a nursing staff member when the staff member is initially assigned to a unit on either a temporary or long-term basis. The orientation shall include a review of:

(A) the location of equipment and supplies on the unit;

(B) the staff member's responsibilities on the unit;

(C) relevant information about patients on the unit;

(D) relevant schedules of staff members and patients; and

(E) procedures for contacting the staff member's supervisor.

(2) A hospital shall document the provision of orientation to nursing staff.

(j) Verification of licensure. a hospital shall verify that a member of the nursing staff, for whom a license is required, has a valid license at the time the staff member assumes responsibilities at the hospital and maintains the license throughout the staff member's employment or association with the hospital.

(k) Mandatory overtime. a hospital shall develop and implement a policy regarding the use of mandatory overtime by the nursing staff. The policy shall require:

(1) documentation of the justification for the use of mandatory overtime;

(2) monitoring and evaluation of the use of mandatory overtime; and

(3) development of a plan to reduce or eliminate the use of mandatory overtime.

HISTORY: The provisions of this § 411.473 adopted to be effective January 1, 2004, 28 TexReg 11294

§ 411.474. Social Services

(a) Social services in treatment plan. a hospital shall provide social services to a patient in accordance with a treatment plan developed in accordance with §411.471 of this title (relating to Inpatient Mental Health Treatment and Treatment Planning).

(b) Director of social services. a hospital shall have a director of social services who directs, monitors, and evaluates the social services provided.

(c) Qualifications of director of social services. The director of social services shall:

(1) be a licensed master social worker; or

(2) be a licensed social worker who is enrolled in a graduate program accredited by the Council on Social Work Education, receiving eight hours per month of clinical consultation from a licensed master social worker with three years of experience in the provision of psychiatric social work, and summarizing, in writing, the content of each consultation with the licensed master social worker including clinical issues discussed and recommendations made by the licensed master social worker regarding such issues.

(d) Assessment.

(1) A licensed master social worker, a licensed social worker, a licensed professional counselor, a licensed psychologist, a psychological associate, or a licensed marriage and family therapist shall conduct a social services assessment of a patient.

(2) If a licensed social worker, a licensed professional counselor, a licensed psychologist, a psychological associate, or a licensed marriage and family therapist conducts the social services assessment, the results of the assessment shall be signed by the licensed master social worker evidencing approval of such results.

HISTORY: The provisions of this § 411.474 adopted to be effective January 1, 2004, 28 TexReg 11294

§ 411.475. Therapeutic Activities

(a) Therapeutic activities in treatment plan. If ordered by the patient's treating physician, a hospital shall provide therapeutic activities to the patient in accordance with a treatment plan developed in accordance with §411.471 of this title (relating to Inpatient Mental Health Treatment and Treatment Planning).

(b) Assessment.

(1) If ordered by the patient's treating physician, an occupational therapist, a therapeutic recreation specialist, or a staff member under the supervision of an occupational therapist or a therapeutic recreation specialist shall conduct a therapeutic activities assessment of the patient.

(2) The assessment shall include an evaluation of the patient in the following domains:

- (A) sensory;
- (B) cognitive;
- (C) social;
- (D) physical;
- (E) emotional; and
- (F) leisure.

(3) If a staff member under the supervision of an occupational therapist or a therapeutic recreation specialist conducts the therapeutic activities assessment, the results of the assessment shall be signed by the occupational therapist or a therapeutic recreation specialist evidencing approval of such results.

(c) Qualified staff members. a hospital shall have qualified staff members who are available to provide the thera-

peutic activities necessary to address the problems identified by a patient's therapeutic activities assessment.

HISTORY: The provisions of this § 411.475 adopted to be effective January 1, 2004, 28 TexReg 11294

§ 411.476. Psychological Services

(a) Psychological services in treatment plan. If ordered by a patient's treating physician, a hospital shall provide psychological services to the patient in accordance with a treatment plan developed in accordance with §411.471 of this title (relating to Inpatient Mental Health Treatment and Treatment Planning).

(b) Assessment. If ordered by a patient's treating physician, a licensed psychologist shall conduct a psychological assessment of the patient.

HISTORY: The provisions of this § 411.476 adopted to be effective January 1, 2004, 28 TexReg 11294

§ 411.477. Protection of a Patient

(a) Modifying the environment and monitoring the patient. a hospital shall protect a patient by taking the following measures:

(1) modifying the hospital environment based on the patient's needs including:

- (A) providing furnishings that do not present safety hazards to the patient;
- (B) securing or removing objects that are hazardous to the patient; and
- (C) installing any necessary safety devices;

(2) monitoring the patient at the level of monitoring most recently specified in the patient's medical record; and

(3) making roommate assignments and other decisions affecting the interaction of the patient with other patients, based on patient needs and vulnerabilities.

(b) Levels of monitoring. a hospital shall:

(1) identify, in writing, the levels of monitoring of patients; and

(2) define each of the levels of monitoring, in writing, including a description of the responsibilities of staff members for each level of monitoring identified.

(c) Separation of patients under 18 years of age. In accordance with Texas Health and Safety Code, § 321.002, a hospital shall keep patients who are under the age of 18 years separate from patients who are over the age of 18 years.

HISTORY: The provisions of this § 411.477 adopted to be effective January 1, 2004, 28 TexReg 11294

Division 5. Discharge

§ 411.482. Discharge Planning

(a) Involvement of staff, patient, and LAR in planning activities.

(1) Following the admission of a patient to a hospital, the hospital shall conduct discharge planning for the patient.

(2) Discharge planning shall involve the IDT, which includes the patient.

(3) Discharge planning shall include, at a minimum, the following activities:

- (A) the patient's IDT recommending services and supports needed by the patient after discharge, including the placement after discharge;

(B) qualified staff members arranging for the services and supports recommended by the patient's IDT;

(C) qualified staff members counseling the patient, the patient's LAR, and as appropriate, the patient's caregivers, to prepare them for post-discharge care; and

(D) Preadmission Screening and Resident Review (PASRR) as required by paragraph (4) of this subsection.

(4) Screening and evaluation before patient discharge from hospital. In accordance with 42 Code of Federal Regulations (CFR), Part 483, Subpart C (relating to Requirements for Long Term Care Facilities) and the rules of the Department of Aging and Disability Services (DADS) set forth in 40 TAC Chapter 17, (relating to Preadmission Screening and Resident Review (PASRR)), all patients who are being considered for discharge from the hospital to a nursing facility shall be screened, and if appropriate, evaluated, prior to discharge by the hospital and admission to the nursing facility to determine whether the patient may have a mental illness, intellectual disability or developmental disability. If the screening indicates that the patient has a mental illness, intellectual disability or developmental disability, the hospital shall contact and arrange for the local mental health authority designated pursuant to Texas Health and Safety Code, § 533.035, to conduct prior to hospital discharge an evaluation of the patient in accordance with the applicable provisions of the PASRR rules. The purpose of PASRR is:

(A) to ensure that placement of the patient in a nursing facility is necessary;

(B) to identify alternate placement options when applicable; and

(C) to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability.

(b) Discharge summary. The patient's treating physician shall prepare a written discharge summary that includes:

(1) a description of the patient's treatment at the hospital and the response to that treatment;

(2) a description of the patient's condition at discharge;

(3) a description of the patient's placement after discharge;

(4) a description of the services and supports the patient will receive after discharge;

(5) a final diagnosis based on all five axes of the DSM;

(6) a description of the amount of medication the patient will need until the patient is evaluated by a physician; and

(7) in accordance with Texas Health and Safety Code, § 574.081(c) and (h), for involuntary patients admitted under an order described in § 411.463(a)(2) of this title (related to Admission of an Individual Under Protective Custody Order, for Court-ordered Inpatient Mental Health Services, or Under Order for Commitment or Order for Placement), the name of the individual or entity responsible for providing and paying for the medication referenced in paragraph (6) of this subsection, which is not required to be the hospital.

(c) Documentation of refusal. If it is not feasible for any of the activities listed in subsection (a)(3) of this section to be performed because the patient, the patient's LAR, or the patient's caregivers refuse to participate in the discharge

planning, the circumstances of the refusal shall be documented in the patient's medical record.

HISTORY: The provisions of this § 411.482 adopted to be effective January 1, 2004, 28 TexReg 11294; amended to be effective May 24, 2013, 38 TexReg 3028

§ 411.483. Discharge Notices and Release of Minors

(a) Discharge notice to family or LAR.

(1) In accordance with Texas Health and Safety Code, § 576.007, before discharging a patient who is an adult, a hospital shall make a reasonable effort to notify the patient's family of the discharge if the patient grants permission for the notification.

(2) Except as provided by 42 CFR Part 2 and subsection (b) of this section, before discharging a patient who is 16 or 17 years of age and who is not or has not been married, a hospital shall make a reasonable effort to notify the patient's LAR of the discharge.

(3) Except as provided by subsection (b) of this section, before discharging a patient who is younger than 16 years of age and who is not or has not been married, a hospital shall notify the patient's LAR of the discharge.

(b) Disclosure harmful to patient. As permitted by Texas Health and Safety Code, § 611.0045(b), a hospital may deny a patient's LAR access to any portion of the patient's record if the hospital determines that the disclosure of such portion would be harmful to the patient's physical, mental, or emotional health.

(c) Release of minors. Except as required by § 411.485(e) of this title, (relating to Discharge of an Involuntary Patient), upon discharge, the hospital may release a minor younger than 16 years of age only to the minor's LAR or the LAR's designee.

(d) Notice of protection and advocacy system. Upon discharge, the hospital shall provide the patient with written notification of the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, which is Advocacy, Inc., as required by Texas Health and Safety Code, § 576.008.

HISTORY: The provisions of this § 411.483 adopted to be effective January 1, 2004, 28 TexReg 11294

§ 411.484. Discharge of a Voluntary Patient Requesting Discharge

(a) Request for discharge. If a hospital is informed that a voluntary patient desires to leave the hospital or a voluntary patient or the patient's LAR requests that the patient be discharged, the hospital shall, in accordance with Texas Health and Safety Code, § 572.004:

(1) inform the patient or the patient's LAR that the request must be in writing and signed, timed, and dated by the requestor; and

(2) if necessary and as soon as possible, assist the patient in creating a written request for discharge and present it to the patient for the patient's signature.

(b) Responding to a written request for discharge. If a written request for discharge from a voluntary patient or the patient's LAR is made known to a hospital, the hospital shall:

(1) within four hours after the request is made known to the hospital, notify the treating physician or, if the treating physician is not available during that time period, notify another physician who is a hospital staff member of the request;

(2) file the request in the patient's medical record; and

(3) if the request is from a patient admitted under § 411.461(a)(1)(B) of this title (relating to Voluntary Admission), notify the patient's LAR of the request, except as provided by 42 CFR Part 2.

(c) Discharge or examination. In accordance with Texas Health and Safety Code, § 572.004(c) and (d), if the physician who is notified in accordance with subsection (b)(1) of this section:

(1) does not have reasonable cause to believe that the patient may meet the criteria for court-ordered inpatient mental health services or emergency detention, a hospital shall discharge the patient within the four-hour time period described in subsection (b)(1) of this section; or

(2) has reasonable cause to believe that the patient may meet the criteria for court-ordered inpatient mental health services or emergency detention, the physician shall examine the patient as soon as possible within 24 hours after the request for discharge is made known to the hospital.

(d) Discharge if not examined within 24 hours or if criteria not met.

(1) If a patient, who a physician believes may meet the criteria for court-ordered inpatient mental health services or emergency services, is not examined within 24 hours after the request for discharge is made known to the hospital, the hospital shall discharge the patient.

(2) In accordance with Texas Health and Safety Code, § 572.004(d), if the physician conducting the examination described in subsection (c)(2) of this section determines that the patient does not meet the criteria for court-ordered inpatient mental health services or emergency detention, the hospital shall discharge the patient upon completion of the examination.

(e) Discharge or filing application if criteria met. In accordance with Texas Health and Safety Code, § 572.004(d), if the physician conducting the examination described in subsection (c)(2) of this section determines that the patient meets the criteria for court-ordered inpatient mental health services or emergency detention, the hospital shall, by 4:00 p.m. on the next business day:

(1) file an application for court-ordered inpatient mental health services or emergency detention and obtain a court order for further detention of the patient; or

(2) discharge the patient.

(f) Notification by physician. In accordance with Texas Health and Safety Code, § 572.004(d), if the hospital intends to detain a patient to file an application and obtain a court order for further detention of the patient, a physician shall:

(1) notify the patient of such intention; and

(2) document the reasons for the decision to detain the patient in the patient's medical record.

(g) Withdrawal of request for discharge. In accordance with Texas Health and Safety Code, § 572.004(f), a hospital is not required to complete the discharge process described in this section if the patient makes a written statement to withdraw the request for discharge.

HISTORY: The provisions of this § 411.484 adopted to be effective January 1, 2004, 28 TexReg 11294

§ 411.485. Discharge of an Involuntary Patient

(a) Discharge from emergency detention.

(1) Except as provided by § 411.465 of this title (relating to Voluntary Treatment Following Involuntary Admission) and in accordance with Texas Health and

Safety Code, § 573.023(b) and § 573.021(b), a hospital shall immediately discharge a patient under emergency detention if either of the following occurs:

(A) the administrator or the administrator's designee determines, based on a physician's determination, that the patient no longer meets the criteria described in subsection § 411.462(c)(1) of this title (relating to Emergency Detention); or

(B) except as provided in paragraphs (2) and (3) of this subsection, 24 hours elapse from the time the patient was presented to the hospital and the hospital has not obtained a court order for further detention of the patient.

(2) In accordance with Texas Health and Safety Code, § 573.021(b), if the 24-hour period described in paragraph (1)(B) of this subsection ends on a Saturday, Sunday, or legal holiday, or before 4:00 p.m. on the next business day after the patient was presented to the hospital, the patient may be detained until 4:00 p.m. on such business day.

(3) In accordance with Texas Health and Safety Code, § 573.021(b), the 24-hour period described in paragraph (1)(B) of this subsection does not include any time during which the patient is receiving necessary non-psychiatric medical care in the hospital's emergency room or non-psychiatric emergency care in another area of the hospital.

(b) Discharge under protective custody order. Except as provided by § 411.465 of this title (relating to Voluntary Treatment Following Involuntary Admission) and in accordance with Texas Health and Safety Code, § 574.028, a hospital shall immediately discharge a patient under a protective custody order if any of the following occurs:

(1) the administrator or the administrator's designee determines that, based on a physician's determination, the patient no longer meets the criteria described in Texas Health and Safety Code, § 574.022(a);

(2) the administrator or the administrator's designee does not receive notice that the patient's continued detention is authorized after a probable cause hearing held within the time period prescribed by Texas Health and Safety Code, § 574.025(b);

(3) a final order for court-ordered inpatient mental health services has not been entered within the time period prescribed by Texas Health and Safety Code, § 574.005; or

(4) an order to release the patient is issued in accordance with Texas Health and Safety Code, § 574.028(a).

(c) Discharge under court-ordered inpatient mental health services.

(1) Except as provided by § 411.465 of this title (relating to Voluntary Treatment Following Involuntary Admission), and in accordance with Texas Health and Safety Code, § 574.085 and § 574.086(a), a hospital shall immediately discharge a patient under a temporary or extended order for inpatient mental health services if either of the following occurs:

(A) the order for inpatient mental health services expires; or

(B) the administrator or the administrator's designee determines that, based on a physician's determination, the patient no longer meets the criteria for court-ordered inpatient mental health services.

(2) In accordance with Texas Health and Safety Code, § 574.086(b), before discharging a patient in accordance with paragraph (1) of this subsection, the administrator or administrator's designee shall consider whether the

patient should receive court-ordered outpatient mental health services in accordance with a modified order described in Texas Health and Safety Code, § 574.061.

(d) Discharge under Texas Code of Criminal Procedure order for commitment. a patient admitted under an order for commitment issued in accordance with the Texas Code of Criminal Procedure, Article 46B.073(d) shall be discharged in accordance with the Texas Code of Criminal Procedure, Chapter 46B, Subchapter D.

(e) Discharge under Texas Family Code order for placement. a patient admitted under an order for placement issued in accordance with Texas Family Code, § 55.33(a)(1)(B) or § 55.52(a)(1)(B) shall be discharged in accordance with the Texas Family Code, Chapter 55.

HISTORY: The provisions of this § 411.485 adopted to be effective January 1, 2004, 28 TexReg 11294

Division 6. Documentation

§ 411.488. Content of Medical Record

(a) Medical record. a hospital shall maintain a medical record for a patient. The medical record shall include, at a minimum:

(1) documentation of whether the patient is a voluntary patient, on emergency detention, or under a court order, including the physician or court order, as appropriate;

(2) documentation of the reasons the patient, LAR, family members, or other caregivers state that the patient was admitted to the hospital;

(3) justification for each mental illness diagnosis and any substance use disorder diagnosis;

(4) the level of monitoring assigned and implemented in accordance with § 411.464 of this title (relating to Monitoring Upon Admission) and any changes to such level prior to the implementation of the patient's treatment plan;

(5) the patient's treatment plan;

(6) the name of the patient's treating physician;

(7) the names of the members of the patient's IDT, if required by the patient's length of stay;

(8) written findings of the physical examination described in § 411.472(e)(1)(A) or (B) of this title (relating to Medical Services);

(9) written findings of:

(A) the psychiatric evaluation described in § 411.472(f) of this title (relating to Medical Services); and

(B) the assessments described in § 411.473(e) of this title (relating to Nursing Services), § 411.474(d) of this title (relating to Social Services), § 411.475(b) of this title (relating to Therapeutic Activities), and § 411.476(b) of this title (relating to Psychological Services); and

(C) any other assessment of the patient conducted by a staff member;

(10) the progress notes for the patient as described in subsection (b) of this section;

(11) documentation of the monitoring of the patient by the staff members responsible for such monitoring, including observations of the patient at pre-determined intervals;

(12) documentation of the discharge planning activities required by § 411.482(a)(3) of this title (relating to Discharge Planning); and

(13) the discharge summary as required by § 411.482(b) of this title (relating to Discharge Planning).

(b) Progress notes. The progress notes referenced in subsection (a)(10) of this section must be documented in accordance with this subsection.

(1) The appropriate members of the patient's IDT shall make written notes of the patient's progress to include, at a minimum:

(A) documentation of the patient's response to treatment provided under the treatment plan;

(B) documentation of the patient's progress toward meeting the goals listed in the patient's treatment plan; and

(C) documentation of the findings of any re-evaluation or reassessment conducted by a staff member.

(2) Requirements regarding the frequency of making progress notes are as follows:

(A) a physician shall document the findings of a re-evaluation described in § 411.472(g) of this title (relating to Medical Services) at the time each re-evaluation is conducted; and

(B) an RN shall document the findings of a reassessment described in § 411.473(f) of this title (relating to Nursing Services) at the time each reassessment is conducted.

HISTORY: The provisions of this § 411.488 adopted to be effective January 1, 2004, 28 TexReg 11294

Division 7. Staff Development

§ 411.490. Staff Member Training

(a) Training of staff members. a hospital shall provide training to a staff member in accordance with the following:

(1) All staff members shall receive training in:

(A) identifying, preventing, and reporting abuse and neglect of patients and unprofessional or unethical conduct in the hospital in accordance with the memorandum of understanding set forth in 40 TAC § 148.205 (relating to Training Requirements Relating to Abuse, Neglect and Unprofessional or Unethical Conduct);

(B) dignity and rights of a patient in accordance with Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services); and

(C) confidentiality of a patient's information in accordance with Texas Health and Safety Code, Chapter 611 or Chapter 241, Subchapter G, as applicable, 42 CFR Part 2, and 45 CFR Parts 160 and 164.

(2) An RN, LVN, and UAP shall receive training in:

(A) monitoring for patient safety in accordance with § 411.477 of this title (relating to Protection of a Patient);

(B) infection control in accordance with § 134.41(d) of this title (relating to Facility Functions and Services); and

(C) the hospital's mandatory overtime policy required by § 411.473(k) of this title (relating to Nursing Services).

(3) An RN and an LVN shall receive training in the process for reporting concerns regarding the adequacy of the staffing plan as described in § 411.473(h) of this title (relating to Nursing Services).

(4) A staff member routinely providing treatment to, working with, or providing consultation about a patient who is younger than 18 years of age shall receive training in the aspects of growth and development (including physical, emotional, cognitive, educational and social) and the treatment needs of patients in the following age groups:

- (A) early childhood (1-5 years of age);
- (B) late childhood (6-13 years of age); and
- (C) adolescent (14-17 years of age).

(5) A staff member routinely providing treatment to, working with, or providing consultation about a patient diagnosed with COPSD shall receive training in substance use disorders.

(6) A staff member routinely providing treatment to, working with, or providing consultation about a geriatric patient shall receive training in the social, psychological and physiological changes associated with aging.

(7) In accordance with Texas Health and Safety Code, § 572.0025(e), a PASP shall receive at least eight hours of pre-admission screening and intake training as described in subsection (c) of this section.

(8) In accordance with Texas Health and Safety Code, § 572.0025(e), a staff member whose responsibilities include conducting the hospital's intake process for a patient shall receive at least eight hours of pre-admission screening and intake training as described in subsection (c) of this section.

(9) A staff member who may initiate an involuntary intervention shall receive training in and demonstrate competency in performing such interventions in accordance with Chapter 415, Subchapter F of this title (relating to Interventions in Mental Health Programs).

(b) A staff member providing direct patient care shall maintain certification in a course, developed by the American Heart Association or the American Red Cross, in recognizing and caring for breathing and cardiac emergencies. The course shall teach the following skills appropriate to the age of the hospital's patients:

- (1) rescue breathing with and without devices;
- (2) airway obstruction;
- (3) cardiopulmonary resuscitation; and
- (4) use of an automated external defibrillator.

(c) Pre-admission screening and intake training. The pre-admission screening and intake training required by subsections (a)(7) and (8) of this section shall provide instruction to staff members regarding:

- (1) assessing, interviewing, and diagnosing an individual with a mental illness and an individual diagnosed with COPSD;
- (2) obtaining relevant information about the patient, including information about finances, insurance benefits and advance directives;
- (3) explaining, orally and in writing, the patient's rights described in Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);
- (4) explaining, orally and in writing, the hospital's services and treatment as they relate to the patient;
- (5) informing the patient in writing of the existence, telephone number and address of the protection and advocacy system established in Texas, which is Advocacy, Inc.; and
- (6) determining whether the patient comprehends the information provided in accordance with paragraphs (3)-(5) of this subsection.

(d) Frequency of training. a hospital shall provide the training described in subsection (a) of this section, periodically, as follows:

(1) A staff member shall receive the training required by subsection (a)(1)(A) of this section at the intervals described in the memorandum of understanding set forth in 40 TAC § 148.205 (relating to Training Requirements Relating to Abuse, Neglect and Unprofessional or Unethical Conduct).

(2) A staff member shall receive the training required by subsection (a)(1)(B) of this section:

(A) before assuming responsibilities at the hospital; and

(B) annually throughout the staff member's employment or association with the hospital;

(3) A staff member shall receive the training required by subsections (a)(1)(C) and (a)(2)-(6) of this section:

(A) before assuming responsibilities at the hospital; and

(B) at reasonable intervals throughout the staff member's employment or association with the hospital.

(4) A staff member shall have the certification required by subsection (b) of this section:

(A) before assuming responsibilities at the hospital; or

(B) not later than 30 days after the staff member is hired by the hospital if another staff member who has such certification is physically present and on-duty on the same unit on which the uncertified staff member is on-duty.

(5) A PASP shall receive the training required by subsection (a)(7) of this section:

(A) prior to the PASP conducting a pre-admission screening; and

(B) annually throughout the PASP's employment or association with the hospital.

(6) A staff member shall receive the training required by subsection (a)(8) of this section:

(A) prior to conducting the intake process; and

(B) annually throughout the staff member's employment or association with the hospital.

(7) A staff member shall receive the training required by subsection (a)(9) of this section at the intervals described in Chapter 415, Subchapter F of this title (relating to Interventions in Mental Health Programs).

(e) Documentation of training.

(1) A hospital shall document that a staff member has successfully completed the training described in subsection (a) of this section including:

(A) the date of the training;

(B) the length of the training session; and

(C) the name of the instructor.

(2) A hospital shall maintain certification or other evidence issued by the American Heart Association or the American Red Cross that a staff member has successfully completed the training described in subsection (b) of this section.

(f) Performance in accordance with training. a staff member shall perform his or her responsibilities in accordance with the training and certification required by this section.

HISTORY: The provisions of this § 411.490 adopted to be effective January 1, 2004, 28 TexReg 11294

Division 8. Performance Improvement

§ 411.493. Quality Assessment and Performance Improvement Program

(a) Scope and content of program. a hospital shall develop, implement, and maintain an effective, ongoing, hospital-wide, data-driven quality assessment and performance improvement program. The program shall:

- (1) reflect the complexity of the hospital's organization and services;
- (2) involve all of the hospital's departments and services;
- (3) specify the frequency and detail of data collected; and
- (4) focus on high-risk, high-volume, and problem-prone areas in the hospital.

(b) Approval by governing body. The hospital's quality assessment and performance improvement program shall be approved by the governing body.

(c) Staff member participation. The DPN, the director of psychiatric services, and other appropriate staff members shall participate in the development and implementation of the quality assessment and performance improvement program.

(d) Quality assessment and performance improvement program activities.

(1) As part of its quality assessment and performance improvement activities a hospital shall collect and aggregate data to:

- (A) monitor the effectiveness and safety of services and the quality of care; and
- (B) identify opportunities for improvement and changes that will lead to improvement.

(2) The hospital shall collect and aggregate all data, on an ongoing basis, for each of the following performance indicators at a minimum:

- (A) sentinel events;
- (B) allegations of abuse and neglect as defined in § 134.46 of this title (relating to Abuse and Neglect Issues);
- (C) findings of abuse and neglect made by the Texas Department of Health in accordance with § 134.46 of this title (relating to Abuse and Neglect Issues);
- (D) violations of patient rights described in Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);
- (E) nosocomial infections;
- (F) injuries of patients;
- (G) medication errors;
- (H) unauthorized departures of patients;
- (I) deaths of patients;
- (J) surveys of patients, patient's families, and LARs regarding satisfaction with hospital services; and
- (K) complaints and grievances made by patients, and patient's families, and LARs.

(3) The hospital shall analyze the aggregated data, at least quarterly, to assess the need for performance improvement.

(4) When a need for performance improvement is identified, the hospital shall develop and implement an action plan to address the identified need.

(5) The hospital shall evaluate the success of the action plan to determine if the positive outcomes are achieved and sustained.

(6) If the hospital determines that the positive outcomes have not been achieved or sustained, the hospital shall modify the action plan and re-evaluate its implementation until the outcomes are achieved and sustained.

(e) Evidence of program. The hospital shall maintain and demonstrate evidence of the quality assessment and performance improvement program for review by an external review entity, including the Texas Department of Health, the Centers for Medicare and Medicaid Services, and the Joint Commission on Accreditation of Healthcare Organizations.

HISTORY: The provisions of this § 411.493 adopted to be effective January 1, 2004, 28 TexReg 11294

§ 411.494. Reporting and Investigating Sentinel Events

A hospital shall develop and implement written procedures to identify, report, and investigate sentinel events. The procedures shall include the following:

(1) a description of the process by which a staff member reports a sentinel event, including a requirement that a sentinel event be reported by a staff member within at least 1 hour after a staff member becomes aware of the incident;

(2) a requirement that, within 24 hours of a sentinel event being reported, the administrator designate a committee to investigate the sentinel event that includes a physician, an RN, and any other staff members determined appropriate by the administrator; and

(3) a requirement that, within 45 days of the sentinel event being reported, the committee will determine and document:

- (A) the cause(s) of the sentinel event;
- (B) whether the cause(s) is random or is a pattern of error in the hospital's processes or systems;
- (C) any improvements to the hospital's processes or systems that may reduce the occurrence of similar incidents in the future;
- (D) how such improvements will be implemented including a timeline for implementation;
- (E) the staff members responsible for such implementation; and
- (F) a method to determine whether the improvements identified were effective in reducing the occurrence of similar incidents.

HISTORY: The provisions of this § 411.494 adopted to be effective January 1, 2004, 28 TexReg 11294

§ 411.495. Response to External Reviews

A hospital shall develop and implement a written plan to evaluate the effectiveness of any plan of correction the hospital submits to an external review entity, including the Texas Department of Health, the Centers for Medicare and Medicaid Services, and the Joint Commission on Accreditation of Healthcare Organizations.

HISTORY: The provisions of this § 411.495 adopted to be effective January 1, 2004, 28 TexReg 11294

§ 411.496. Advisory Committee for Nurse Staffing

(a) Advisory committee members.

(1) A hospital shall establish an advisory committee that meets the requirements of Texas Health and Safety Code, §§ 161.031-161.033.

(2) At least one-third of the advisory committee shall be RNs who provide direct patient care at least 50% of their work time and at least one of the RNs shall be

from either infection control, quality assurance, or risk management.

(3) For an identifiable mental health services unit in a hospital licensed under Texas Health and Safety Code, Chapter 241, and Chapter 133 of this title (relating to Hospital Licensing Rules), the advisory committee may be the advisory committee required by § 133.41 of this title (relating to Hospital Function and Services).

(b) Advisory committee responsibilities. The advisory committee shall:

(1) consider input from RNs and LVNs regarding the adequacy of the staffing plan required by § 411.473(g) of this title (relating to Nursing Services), including any concerns reported in accordance with the process required by § 411.473(h) of this title (relating to Nursing Services);

(2) consider variances between planned and actual numbers of staff members, as indicated by a report to the advisory committee by the DPN made in accordance with § 411.473(g)(6) of this title (relating to Nursing Services);

(3) make recommendations regarding the adequacy of the staffing plan required by § 411.473(g) of this title (relating to Nursing Services);

(4) evaluate, at least annually, the staffing plan required by § 411.473(g) of this title (relating to Nursing Services) including, in part, evaluating the aggregated data required by § 411.493(d)(2) of this title (relating to Quality Assessment and Performance Improvement Program) to determine if such data has a relationship to the adequacy of the staffing plan; and

(5) document in the minutes of its meetings the actions required in paragraphs (1)-(4) of this subsection.

(c) Confidentiality of advisory committee records. As provided by Texas Health and Safety Code, § 161.032, the records and proceedings of the advisory committee are confidential and not subject to disclosure under Texas Government Code, Chapter 552, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release.

HISTORY: The provisions of this § 411.496 adopted to be effective January 1, 2004, 28 TexReg 11294

Division 9. References and Distribution

§ 411.499. References

The following federal and state statutes and rules are referenced in this subchapter:

- (1) Texas Health and Safety Code:
 - (A) Chapters 164, 241, 572, 573, 574, 576, 577, and 611; and
 - (B) §§ 161.031-161.033, § 321.002, and § 571.003;
- (2) Texas Family Code, Chapter 55;
- (3) Texas Government Code:
 - (A) Chapter 552, and
 - (B) § 662.021;
- (4) Texas Occupations Code, Chapters 155, 204, 301, 302, 454, 501, 502, 503, and 505, and § 157.001;
- (5) Texas Code of Criminal Procedure, Chapter 46B;
- (6) Code of Federal Regulations:
 - (A) Title 42 Part 2 and Title 45 Parts 160 and 164; and
 - (B) Title 42, § 489.24;
- (7) 40 TAC Chapter 148;
- (8) 25 TAC Chapters 133 and 134;

(9) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(10) Chapter 405, Subchapter E of this title (relating to Electroconvulsive Therapy (ECT));

(11) Chapter 415, Subchapter F of this title (relating to Interventions in Mental Health Programs); and

(12) Chapter 405, Subchapter FF of this title (relating to Consent to Treatment with Psychoactive Medication);

HISTORY: The provisions of this § 411.499 adopted to be effective January 1, 2004, 28 TexReg 11294

§ 411.500. Distribution

(a) This subchapter will be distributed to:

(1) members of the Texas Board Mental Health and Mental Retardation;

(2) executive, management, and program staff of TDMHMR Central Office; and

(3) psychiatric hospitals.

(b) Each psychiatric hospital will ensure distribution of this subchapter to all appropriate staff.

(c) The provisions of this subchapter will be distributed to the Texas Board of Health and appropriate staff at the Texas Department of Health.

HISTORY: The provisions of this § 411.500 adopted to be effective January 1, 2004, 28 TexReg 11294

§ 411.601. Purpose

The purpose of this subchapter is to describe standards to ensure the proper care and treatment of prospective patients and patients in crisis stabilization units licensed under Chapter 577, of the Texas Health and Safety Code, and Chapter 134 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units Licensing Rules).

HISTORY: The provisions of this § 411.601 adopted to be effective January 1, 2004, 28 TexReg 11323

Subchapter M.

Standards of Care and Treatment in Crisis Stabilization Units

Division 1. General Requirements

§ 411.602. Application

This subchapter applies to crisis stabilization units licensed under Chapter 577, of the Texas Health and Safety Code, and Chapter 134 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units Licensing Rules).

HISTORY: The provisions of this § 411.602 adopted to be effective January 1, 2004, 28 TexReg 11323

§ 411.603. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Administrator—The individual, appointed by a governing body, who has authority to represent the CSU and, as delegated by the governing body, has responsibility for operating the CSU in accordance with the CSU's written policies and procedures.

(2) Administrator's designee—An individual designated in a CSU's written policies and procedures to act for a specified purpose on behalf of the administrator.

(3) Admission—The acceptance of an individual to a CSU's custody and care for crisis stabilization services, based on:

(A) a physician's order issued in accordance with § 411.609(d)(2)(B) of this title (relating to Voluntary Admission);

(B) a physician's order issued in accordance with § 411.610(c)(3) of this title (relating to Emergency Detention); or

(C) a protective custody order issued in accordance with Texas Health and Safety Code, § 574.022.

(4) Business day—Any day except a Saturday, Sunday, or legal holiday.

(5) Day—Calendar day.

(6) CSU or crisis stabilization unit—A crisis stabilization unit licensed under Chapter 577, of the Texas Health and Safety Code and Chapter 134 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units Licensing Rules).

(7) Crisis stabilization services—Short-term residential treatment designed to reduce acute symptoms of mental illness of a patient and prevent admission of the patient to a psychiatric hospital. Such treatment includes but is not limited to medical services and nursing services.

(8) Discharge—The release by a CSU of a patient from the custody and care of the CSU.

(9) Emergency medical condition—A medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the health of the individual or others in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part; or

(D) in the case of a pregnant woman who is having contractions:

(i) that there is inadequate time to effect a safe transfer to a hospital before delivery; or

(ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

(10) General hospital—A general hospital licensed under Chapter 241, of the Texas Health and Safety Code and Chapter 133 of this title (relating to Hospital Licensing Rules).

(11) Governing body—The governing authority of a CSU that is responsible for the CSU's organization, management, control and operation, including appointment of the administrator.

(12) LAR or legally authorized representative—An individual authorized by law to act on behalf of a individual with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(13) Legal holiday—A holiday listed in the Texas Government Code, § 662.021 and an officially designated county holiday applicable to a court in which proceedings under the Texas Mental Health Code are held.

(14) LVN or licensed vocational nurse—An individual who is licensed as a licensed vocational nurse by the Texas Board of Vocational Nurse Examiners in accordance with Texas Occupations Code, Chapter 302. Effective February 1, 2004, an LVN is an individual who is licensed as a vocational nurse by the Texas Board of

Nurse Examiners in accordance with Texas Occupational Code, Chapter 301.

(15) Medical services—Services provided or delegated by a physician acting within the scope of his or her practice, as described in Texas Occupations Code, Chapter 155.

(16) Mental illness—An illness, disease, or condition (other than a sole diagnosis of epilepsy, senility, substance use disorder, mental retardation, autism, or pervasive developmental disorder) that:

(A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.

(17) Monitoring—One or more staff members observing a patient on a continual basis or at pre-determined intervals and intervening when necessary to protect the patient from harming self or others.

(18) Nursing services—Services provided, assigned to an LVN, or delegated to a UAP by a registered nurse acting within the scope of his or her practice, as described in Texas Occupations Code, Chapter 301.

(19) Nursing staff—Staff members of a CSU who are registered nurses, licensed vocational nurses or unlicensed assistive personnel.

(20) PASP or pre-admission screening professional—A staff member whose responsibilities include conducting a pre-admission screening and who meets the definition of "QMHP-CS or qualified mental health professional-community services" set forth in § 412.303 of this title (relating to Definitions).

(21) Patient—An individual who has been admitted to a CSU and has not been discharged.

(22) Physician—An individual who is:

(A) licensed as a physician by the Texas State Board of Medical Examiners in accordance with Texas Occupations Code, Chapter 155; or

(B) authorized to perform medical acts under an institutional permit at a Texas postgraduate training program approved by the Accreditation Council on Graduate Medical Education, the American Osteopathic Association, or the Texas State Board of Medical Examiners.

(23) Pre-admission screening—The clinical process used to gather information from a prospective patient, including a medical history, any history of substance use, and the problem for which the prospective patient is seeking treatment, to determine if a physician should conduct an admission examination.

(24) Prospective patient—An individual:

(A) for whom a request for voluntary admission has been made, in accordance with § 411.609(a) of this title (relating to Voluntary Admission); or

(B) who has been accepted by a CSU for a preliminary examination, in accordance with § 411.610(a) of this title (relating to Emergency Detention).

(25) Psychiatric hospital—

(A) A state mental health facility;

(B) a private psychiatric hospital licensed under Texas Health and Safety Code, Chapter 577, and Chapter 134 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units Licensing Rules); or

(C) an identifiable mental health services unit in a hospital licensed under Texas Health and Safety Code,

Chapter 241, and Chapter 133 of this title (relating to Hospital Licensing Rules).

(26) Psychosocial rehabilitative services—services which assist a patient in regaining and maintaining daily living skills required to function effectively in the community.

(27) RN or registered nurse—An individual who is licensed as a registered nurse by the Texas Board of Nurse Examiners in accordance with Texas Occupations Code, Chapter 301.

(28) Restraint—A “restraint” as defined in Chapter 415, Subchapter F of this title (concerning Interventions in Mental Health Programs).

(29) Seclusion—“Seclusion” as defined in Chapter 415, Subchapter F of this title (concerning Interventions in Mental Health Programs).

(30) Sentinel event—Any of the following occurrences that is unexpected:

- (A) the death of a patient;
- (B) the serious physical injury of a patient;
- (C) the serious psychological injury of a patient; or
- (D) circumstances that present the imminent risk of death, serious physical injury, or serious psychological injury of a patient.

(31) Stabilize—To provide such medical treatment of the condition necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a CSU or, if the emergency medical condition for a woman is that she is in labor, that the woman has delivered the child and the placenta.

(32) Staff members—Any and all personnel of a CSU including full-time and part-time employees, contractors, students, volunteers, and professionals granted privileges by the CSU.

(33) State mental health facility—A state hospital or state center with a mental health residential component that is operated by TDMHMR.

(34) Substance use disorder—The use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning and which currently meets the criteria for substance abuse or substance dependence as described in the current edition of the Diagnostic Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association.

(35) TAC—The Texas Administrative Code.

(36) TDMHMR—The Texas Department of Mental Health and Mental Retardation.

(37) Transfer—The discharge of a patient from the CSU and the simultaneous movement of the patient to:

(A) a psychiatric hospital in accordance with §411.630(a) of this title (relating to Transfer Because of Dangerous Behavior, Restraint or Seclusion, Commitment Orders, or Medical Condition);

(B) a general hospital in accordance with §411.617(c) of this title (relating to Responding to an Emergency Medical Condition of a Prospective Patient or a Patient) or §411.630(b) of this title (relating to Transfer Because of Dangerous Behavior, Restraint or Seclusion, Commitment Orders, or Medical Condition);

(C) a health care entity in accordance with §411.630(b) of this title (relating to Transfer Because of Dangerous Behavior, Restraint or Seclusion, Commitment Orders, or Medical Condition); or

(D) a health care entity in accordance with §411.622(h)(4) of this title (relating to Medical Services).

(38) Treating physician—A physician who coordinates and oversees the implementation of a patient’s comprehensive treatment plan.

(39) Unit—A discrete and identifiable area of a CSU that includes patients’ rooms or other patient living areas and is separated from another similar area:

(A) by a locked door;

(B) by a floor; or

(C) because the other similar area is in a different building.

(40) UAP or unlicensed assistive personnel—An individual, not licensed as a health care provider, who provides certain health related tasks or functions in a complementary or assistive role to an RN in providing direct patient care or carrying out common nursing functions.

(41) Voluntary patient—A patient who is receiving crisis stabilization services based on an admission in accordance with:

(A) §411.609 of this title (relating to Voluntary Admission); or

(B) who is receiving crisis stabilization services in accordance with §411.613 of this title (relating to Voluntary Treatment Following Involuntary Admission).

HISTORY: The provisions of this § 411.603 adopted to be effective January 1, 2004, 28 TexReg 11323

§ 411.604. General Provisions

(a) Written policies and procedures. a CSU shall develop written policies and procedures that ensure compliance with this subchapter.

(b) Compliance by staff. All staff members shall comply with this subchapter and the policies and procedures of the CSU required by subsection (a) of this section.

(c) Responsibility of CSU. a CSU shall be responsible for a staff member’s compliance with this subchapter and the policies and procedures of the CSU required by subsection (a) of this section.

(d) Enforcement of policies and procedures. a CSU shall take appropriate measures to ensure a staff member’s compliance with this subchapter and the policies and procedures of the CSU required by subsection (a) of this section.

(e) Implementation of physician orders. a CSU shall implement all orders issued by a physician for a patient or provide adequate written justification for failing to implement the orders.

(f) Physician delegation. Except as provided by §411.609(f)(3) of this title (relating to Voluntary Admission) or applicable state law, a physician may delegate any of the medical services described in this subchapter in accordance with Texas Occupations Code, § 157.001.

(g) Compliance with rules. a CSU shall comply with the following TDMHMR rules:

(1) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(2) Chapter 405, Subchapter E of this title (relating to Electroconvulsive Therapy);

(3) Chapter 415, Subchapter F of this title (relating to Interventions in Mental Health Programs); and

(4) Chapter 405, Subchapter FF of this title (relating to Consent to Treatment with Psychoactive Medication).

HISTORY: The provisions of this § 411.604 adopted to be effective January 1, 2004, 28 TexReg 11323

DIVISION 2. ADMISSION

§ 411.608. Admission Criteria

A CSU shall develop and implement written admission criteria that:

- (1) are uniformly applied to all prospective patients;
- (2) permit the admission of a prospective patient only if:
 - (A) the prospective patient has a mental illness;
 - (B) the services provided in the CSU may reduce the prospective patient's acute symptoms and may prevent psychiatric hospitalization of the prospective patient; and
 - (C) the level of monitoring of the prospective patient in the CSU or restrictions of the environment of the CSU is adequate to prevent the prospective patient from causing serious harm to the prospective patient or others; and
- (3) prevent the admission of a prospective patient who:
 - (A) is under the age of 18 unless he or she is or has been married;
 - (B) is the subject of an order for temporary inpatient mental health services issued in accordance with Texas Health and Safety Code, § 574.034;
 - (C) is the subject of an order for extended inpatient mental health services issued in accordance with Texas Health and Safety Code, § 574.035;
 - (D) requires specialized care not available at the CSU; or
 - (E) has a physical medical condition that is unstable and could reasonably be expected to require inpatient treatment for the condition.

HISTORY: The provisions of this § 411.608 adopted to be effective January 1, 2004, 28 TexReg 11323

§ 411.609. Voluntary Admission

(a) Request for voluntary admission.

- (1) A request for voluntary admission of a prospective patient may only be made by the prospective patient.
- (2) In accordance with Texas Health and Safety Code, § 572.001(b) and (e), a request for admission shall:
 - (A) be in writing and signed by the prospective patient; and
 - (B) include a statement that:
 - (i) the prospective patient agrees to remain in the CSU; and
 - (ii) consents to diagnosis, observation, care and treatment until the earlier of one of the following occurrences:
 - (I) the discharge of the prospective patient; or
 - (II) the prospective patient is entitled to leave the CSU, in accordance with Texas Health and Safety Code, § 572.004, after a request for discharge is made.
 - (3) The consent given under paragraph (2)(B)(ii) of this subsection does not waive a patient's rights described in the rules listed under § 411.604(g) of this title (relating to General Provisions).

(b) Capacity to consent. If a prospective patient does not have the capacity to consent to diagnosis, observation, care and treatment, as determined by a physician, the CSU may not admit the prospective patient on a voluntary basis. When appropriate, the CSU may initiate an emergency detention proceeding in accordance with Texas Health and

Safety Code, Chapter 573, or file an application for court-ordered Inpatient Mental Health Services in accordance with Texas Health and Safety Code, Chapter 574.

(c) Pre-admission screening.

(1) Prior to voluntary admission of a prospective patient, a PASP shall conduct a pre-admission screening of the prospective patient.

(2) If the PASP determines that the prospective patient does not need an admission examination, the CSU may not admit the prospective patient and shall refer the prospective patient to alternative services, if appropriate. If the PASP determines that the prospective patient needs an admission examination, a physician shall conduct an admission examination of the prospective patient.

(3) If the pre-admission screening is conducted by a physician, the physician may conduct the pre-admission screening as part of the admission examination referenced in subsection (d)(2)(A) of this section.

(d) Requirements for voluntary admission. A CSU may voluntarily admit a prospective patient only if:

(1) a request for admission is made in accordance with subsection (a) of this section;

(2) a physician has:

(A) in accordance with Texas Health and Safety Code, § 572.0025(f)(1), conducted, within 72 hours prior to admission, or has consulted with a physician who has conducted, within 72 hours prior to admission, an admission examination in accordance with subsection (f); and

(B) issued an order admitting the prospective patient;

(3) the prospective patient meets the CSU's admission criteria; and

(4) in accordance with Texas Health and Safety Code, § 572.0025(f)(2), the administrator or administrator's designee has signed a written statement agreeing to admit the prospective patient.

(e) Intake. In accordance with Texas Health and Safety Code § 572.0025(b), a CSU shall, prior to voluntary admission of a prospective patient, conduct an intake process, that includes:

(1) obtaining, as much as possible, relevant information about the prospective patient, including information about finances, insurance benefits and advance directives; and

(2) explaining, orally and in writing, the prospective patient's rights described in Chapter 404, Subchapter E of this title (concerning Rights of Persons Receiving Mental Health Services), including:

(A) the CSU's services and treatment as they relate to the prospective patient; and

(B) the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, which is Advocacy, Inc., as required by Texas Health and Safety Code, § 576.008.

(f) Admission examination.

(1) The admission examination referenced in subsection (d)(2)(A) of this section shall be conducted by a physician and include a physical and psychiatric examination conducted in the physical presence of the patient or by using audiovisual telecommunications.

(2) The physical examination may consist of an assessment for medical stability.

(3) The physician may not delegate conducting the admission examination to a non physician.

(g) Documentation of admission order. In accordance with Texas Health and Safety Code, § 572.0025(f)(1), the order described in subsection (d)(2)(B) of this section shall be:

- (1) issued in writing and signed by the issuing physician; or
- (2) issued orally or electronically if, within 24 hours after its issuance, the CSU has a written order signed by the issuing physician.

HISTORY: The provisions of this § 411.609 adopted to be effective January 1, 2004, 28 TexReg 11323

§ 411.610. Emergency Detention

(a) Acceptance for preliminary examination. In accordance with Texas Health and Safety Code, § 573.022, a CSU may accept for a preliminary examination:

- (1) an individual who has been apprehended and transported to the CSU by a peace officer in accordance with Texas Health and Safety Code, § 573.001 or § 573.012; or
- (2) an individual 18 years of age or older who has been transported to the CSU by the individual's guardian of the person in accordance with Texas Health and Safety Code, § 573.003.

(b) Preliminary examination.

(1) A physician shall conduct a preliminary examination of the individual as soon as possible but not more than 24 hours after the individual was apprehended by the peace officer or arrived at the CSU after being transported by his or her guardian for emergency detention.

(2) The preliminary examination shall include:

- (A) an assessment for medical stability; and
- (B) a psychiatric examination to determine if the individual meets the criteria described in subsection (c)(1) of this section.

(c) Requirements for emergency detention. a CSU may admit a prospective patient for emergency detention only if:

(1) in accordance with Texas Health and Safety Code, § 573.022(a)(2), a physician determines from the preliminary examination that:

- (A) the prospective patient has a mental illness;
- (B) the prospective patient evidences a substantial risk of serious harm to self or others;
- (C) the described risk of harm is imminent unless the prospective patient is immediately detained; and
- (D) emergency detention is the least restrictive means by which the necessary detention may be accomplished;

(2) in accordance with Texas Health and Safety Code, § 573.022(a)(3), a physician makes a written statement:

- (A) documenting the determination described in paragraph (1) of this subsection; and
- (B) describing:
 - (i) the nature of the prospective patient's mental illness;
 - (ii) the risk of harm the individual evidences, demonstrated either by the prospective patient's behavior or by evidence of severe emotional distress and deterioration in the prospective patient's mental condition to the extent that the prospective patient cannot remain at liberty; and
 - (iii) the detailed information on which the physician based the determination described in paragraph (1) of this subsection;

(3) based on the determination described in paragraph (1) of this subsection, the physician issues an

order admitting the prospective patient for emergency detention; and

(4) the prospective patient meets the CSU's admission criteria, as required by § 411.608 of this title (relating to Admission Criteria).

(d) Release.

(1) A CSU shall release a prospective patient accepted for a preliminary examination if:

(A) a preliminary examination of the prospective patient has not been conducted within the time frame described in subsection (b)(1) of this section; or

(B) in accordance with Texas Health and Safety Code, § 573.023(a), the prospective patient is not admitted for emergency detention in accordance with subsection (c) of this section on completion of the preliminary examination.

(2) In accordance with Texas Health and Safety Code, § 576.007, before releasing a prospective patient who is 18 years of age or older, the CSU shall make a reasonable effort to notify the prospective patient's family of the release, if the prospective patient grants permission for the notification.

(e) Intake. a CSU shall conduct an intake process as soon as possible, but not later than 24 hours after the time a patient is admitted for emergency detention.

(1) The intake process shall include but is not limited to:

(A) obtaining, as much as possible, relevant information about the patient, including information about finances, insurance benefits and advance directives; and

(B) explaining, orally and in writing, the patient's rights described in Chapter 404, Subchapter E of this title (concerning Rights of Persons Receiving Mental Health Services), including:

(i) the CSU's services and treatment as they relate to the patient; and

(ii) the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, which is Advocacy, Inc., as required by Texas Health and Safety Code, § 576.008.

(2) The CSU shall determine whether the patient comprehends the information provided in accordance with paragraph (1)(B) of this subsection. If the CSU determines that the patient comprehends the information, the CSU shall document in the patient's medical record the reasons for such determination. If the CSU determines that the patient does not comprehend the information, the CSU shall:

(A) repeat the explanation to the patient at reasonable intervals until the patient demonstrates comprehension of the information or is discharged, whichever occurs first; and

(B) document in the patient's medical record the patient's response to each explanation and whether the patient demonstrated comprehension of the information.

HISTORY: The provisions of this § 411.610 adopted to be effective January 1, 2004, 28 TexReg 11323

§ 411.611. Admission Under Protective Custody Order

(a) Requirements for protective custody. a CSU may admit an individual under a protective custody order only if a court has issued a protective custody order in accordance with Texas Health and Safety Code, § 574.022.

(b) Intake. a CSU shall conduct an intake process as soon as possible, but not later than 24 hours after the time a patient is admitted under a protective custody order.

(1) The intake process shall include but is not limited to:

(A) obtaining, as much as possible, relevant information about the patient, including information about finances, insurance benefits and advance directives; and

(B) explaining, orally and in writing, the patient's rights described in Chapter 404, Subchapter E of this title (concerning Rights of Persons Receiving Mental Health Services), including:

(i) the CSU's services and treatment as they relate to the patient; and

(ii) the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, which is Advocacy, Inc., as required by Texas Health and Safety Code, § 576.008.

(2) The CSU shall determine whether the patient comprehends the information provided in accordance with paragraph (1)(B) of this subsection. If the CSU determines that the patient comprehends the information, the CSU shall document in the patient's medical record the reasons for such determination. If the CSU determines that the patient does not comprehend the information, the CSU shall:

(A) repeat the explanation to the patient at reasonable intervals until the patient demonstrates comprehension of the information or is discharged, whichever occurs first; and

(B) document in the patient's medical record the patient's response to each explanation and whether the patient demonstrated comprehension of the information.

(c) Intake process not required. If a CSU conducted the intake process for the patient while the patient was admitted for emergency detention and within 24 hours prior to the issuance of the protective custody order, the CSU is not required to comply with subsection (b) of this section.

HISTORY: The provisions of this § 411.611 adopted to be effective January 1, 2004, 28 TexReg 11323

§ 411.612. Monitoring Upon Admission

At the time a patient is admitted, a CSU shall assign and implement one of the levels of monitoring identified by the CSU in accordance with § 411.624(b) of this title (relating to Protection of a Patient), based on the patient's needs.

HISTORY: The provisions of this § 411.612 adopted to be effective January 1, 2004, 28 TexReg 11323

§ 411.613. Voluntary Treatment Following Involuntary Admission

A CSU may provide crisis stabilization services to a patient admitted to the CSU in accordance with § 411.610 of this title (relating to Emergency Detention) or § 411.611 of this title (relating to Admission under Protective Custody Order) after the patient is eligible for discharge as described in § 411.633(a)(1) and (b) of this title (relating to Discharge of an Involuntary Patient), if, prior to the provision of such services:

(1) the CSU obtains written consent from the patient for voluntary crisis stabilization services that meets the requirements of a request for voluntary admission, as described in § 411.609(a) of this title (relating to Voluntary Admission); and

(2) the patient's treating physician:

(A) examines the patient; and

(B) based on that examination, issues an order for voluntary crisis stabilization services that meets the requirements of § 411.609(g) of this title (relating to Voluntary Admission).

HISTORY: The provisions of this § 411.613 adopted to be effective January 1, 2004, 28 TexReg 11323

Division 3. Emergency Treatment

§ 411.617. Responding to an Emergency Medical Condition of a Prospective Patient or a Patient

(a) Planning responses to emergency medical conditions. a CSU shall:

(1) identify common emergency medical conditions of patients and prospective patients likely to be encountered by the CSU; and

(2) develop a written plan, approved in writing by the director of psychiatric services required by § 411.622(b) of this title (relating to Medical Services), describing the specific and appropriate action to be taken by the CSU to stabilize each identified common emergency medical condition, which shall include:

(A) the administration of first aid and basic life support when clinically indicated;

(B) the use of the supplies and equipment described in subsection (f) of this section; and

(C) when the action to be taken is facilitating transfer of the patient or prospective patient, a description of the method of transportation and the name and location of the hospital to which a patient or prospective patient will be transferred.

(b) Availability of physicians. At least one physician shall, at all times:

(1) be physically present at a CSU to respond to an emergency medical condition of a patient; or

(2) be available to staff members by telephone, radio, or audiovisual telecommunication to provide medical consultation.

(c) Response to emergency medical conditions.

(1) If a CSU determines that a patient or a prospective patient has an emergency medical condition, the CSU shall take action to stabilize the emergency medical condition within the capability of the CSU and in accordance with the plan required by subsection (a)(2) of this section, which may include summoning community emergency services for transfer to a general hospital.

(2) If the patient or prospective patient is transferred to a general hospital from the CSU, an RN shall, as soon as possible:

(A) inform the general hospital to which the transfer is made, by telephone, of:

(i) the general condition and medical diagnoses of the patient or prospective patient;

(ii) the medications administered and treatments given to the patient or prospective patient by the CSU; and

(iii) the prognosis of the patient or prospective patient; and

(B) provide a copy of the patient's or prospective patient's medical records to the general hospital to which the transfer is made.

(d) Transfer agreement. a CSU shall have a written agreement with a general hospital that the hospital will accept, for medical treatment and care, a prospective patient

or patient transferred from the CSU in accordance with subsection (c) of this section.

(e) Qualified staff members. The CSU shall have an adequate number of staff members who are qualified and available to respond to emergency medical conditions in accordance with the plan required by subsection (a)(2) of this section.

(f) Supplies and equipment.

(1) The CSU shall have an adequate amount of appropriate supplies and equipment immediately available and fully operational at the CSU to respond to emergency medical conditions in accordance with the plan required by subsection (a)(2) of this section.

(2) The emergency supplies and equipment required by paragraph (1) of this subsection shall include, at a minimum:

- (A) oxygen;
- (B) manual breathing bags and masks; and
- (C) an automated external defibrillator.

HISTORY: The provisions of this § 411.617 adopted to be effective January 1, 2004, 28 TexReg 11323

Division 4. Service Requirements

§411.621. Crisis Stabilization Services and Treatment Planning

(a) Crisis stabilization services. a CSU shall provide a patient crisis stabilization services under the direction of a physician and in accordance with the patient's treatment plan, and this division.

(b) Treatment plan. a CSU, in collaboration with the patient, shall develop and implement a written treatment plan within 24 hours after the patient's admission. If the patient is unable or unwilling to collaborate with the CSU, the circumstances of such inability or unwillingness shall be documented in the patient's medical record.

(1) The treatment plan shall be based on the findings of:

(A) the physical examination described in §411.622(e)(1)(A) or (B) of this title (relating to Medical Services);

(B) the psychiatric evaluation described in §411.622(f) of this title (relating to Medical Services); and

(C) the initial comprehensive nursing assessment described in §411.623(c) of this title (relating to Nursing Services).

(2) The treatment plan shall contain:

(A) a list of all diagnoses for the patient with notation as to which diagnoses will be treated at the CSU including:

- (i) at least one mental illness diagnosis;
- (ii) any substance use disorder diagnoses; and
- (iii) any non-psychiatric conditions;

(B) a description of all treatment interventions intended to address the patient's condition, including:

- (i) the medications prescribed and the symptoms each medication is intended to address;
- (ii) psychosocial rehabilitative services; and
- (iii) counseling or psychotherapies;

(C) identification of the level of monitoring assigned to the patient;

(D) identification of any additional assessments and evaluations to be conducted; and

(E) a description of any potential barriers to the patient's discharge.

(c) Treatment plan review and revisions.

(1) The treatment plan shall be:

(A) reviewed and its effectiveness evaluated:

(i) at least every 72 hours after being implemented;

(ii) any time there is a change in the patient's condition based on findings from a re-evaluation described in §411.622(g) of this title (relating to Medical Services), or from an evaluation or a reassessment described in §411.623(d) of this title (relating to Nursing Services); and

(iii) upon request by the patient or the patient's LAR; and

(B) revised, if necessary, based on findings from a re-evaluation described in §411.622(g) of this title (relating to Medical Services) or a reassessment described in §411.623(d) of this title (relating to Nursing Services), or information regarding recommended services and supports needed by the patient after discharge.

(2) A CSU shall, prior to the implementation of revisions to the treatment plan, inform the patient of any revisions to the treatment plan.

HISTORY: The provisions of this § 411.621 adopted to be effective January 1, 2004, 28 TexReg 11323

§411.622. Medical Services

(a) Medical services in treatment plan. a CSU shall provide a patient medical services in accordance with a treatment plan developed in accordance with §411.621(b) of this title (relating to Crisis Stabilization Services and Treatment Planning).

(b) Director of psychiatric services. a CSU shall have a director of psychiatric services who directs, monitors, and evaluates the psychiatric services provided.

(c) Qualifications of director of psychiatric services. The director of psychiatric services shall be a physician who:

(1) is certified in psychiatry by the American Board of Psychiatry and Neurology or by the American Osteopathic Board of Psychiatry and Neurology; or

(2) has three years of experience as a physician in psychiatry in a "mental hospital" as defined in Texas Health and Safety Code, § 571.003.

(d) Treating physician. a CSU shall assign a treating physician to a patient and document such assignment in the patient's medical record at the time the patient is admitted.

(e) Physical examination.

(1) A physician shall:

(A) review written findings of a physical examination of the patient conducted by another physician no more than seven days prior to the patient's admission; or

(B) conduct a physical examination of the patient.

(2) The physical examinations described in paragraph (1) of this subsection must include a neurological screening and, if indicated, a comprehensive neurological examination.

(f) Psychiatric evaluation. a physician shall conduct an initial psychiatric evaluation of a patient to include:

(1) a description of the patient's medical history;

(2) a determination of the patient's mental status;

(3) a description of the onset of the mental illness and any substance use disorder and the circumstances leading to admission;

(4) an estimation of the patient's intellectual functioning, memory functioning and orientation;

(5) a description of the patient's strengths and disabilities in a descriptive, not interpretive fashion; and

(6) the diagnoses of the patient's mental illness, and, if applicable, any substance use disorders.

(g) Re-evaluation. a physician shall re-evaluate a patient:

(1) at least two times a week after the initial psychiatric evaluation described in subsection (f) of this section is conducted; and

(2) as clinically indicated.

(h) Provision of medical services. a CSU shall, as appropriate under the circumstances:

(1) provide medical services to a patient in response to an emergency medical condition in accordance with the plan required by § 411.617(a)(2) of this title (relating to Responding to an Emergency Medical Condition of a Prospective Patient or a Patient);

(2) provide other medical services, as needed by the patient;

(3) refer the patient to an appropriate health care provider; or

(4) transfer the patient to a health care entity that can provide the medical services.

(i) Availability of physicians. At least one physician shall, at all times, be available to staff members to provide medical consultation:

(1) by telephone, radio, or audiovisual telecommunication; or

(2) by being physically present at the CSU.

HISTORY: The provisions of this § 411.622 adopted to be effective January 1, 2004, 28 TexReg 11323

§ 411.623. Nursing Services

(a) Nursing services in treatment plan. a CSU shall provide nursing services to a patient in accordance with a treatment plan developed in accordance with § 411.621(b) of this title (relating to Crisis Stabilization Services and Treatment Planning).

(b) Chief nursing supervisor. a CSU shall have a chief nursing supervisor who is an RN and who directs, monitors, and evaluates the nursing services provided.

(c) Assessment. An RN shall conduct and complete an initial comprehensive nursing assessment of a patient within eight hours before or after the patient's admission.

(d) Evaluation or reassessment.

(1) An LVN shall evaluate or an RN shall reassess a patient, based on the patient's needs, but at least every eight hours after the initial comprehensive nursing assessment required by subsection (c) of this section is conducted.

(2) If an LVN evaluates the patient every eight hours as permitted by paragraph (1) of this subsection, an RN shall reassess a patient at least every 24 hours after the initial comprehensive nursing assessment required by subsection (c) of this section is conducted.

(e) Staffing plan.

(1) The chief nursing supervisor shall develop and implement a written staffing plan that:

(A) describes the number of RNs, LVNs, and UAPs on each unit for each shift;

(B) provides for at least one LVN or one RN to be physically present and on-duty at all times on each unit when a patient is present on the unit;

(C) if an RN is not physically present and on-duty at all times on each unit when a patient is present on the unit, provides for an RN to be physically present at the CSU within 10 minutes of being contacted by a staff member;

(D) if the CSU has only one unit, in addition to one LVN or one RN required by subparagraph (B) of this paragraph, at least two staff members who provide direct patient care to be physically present and on-duty at all times on the unit when a patient is present on the unit; and

(E) provides for an adequate number of RNs on each unit to supervise all UAPs.

(2) The staffing plan described in paragraph (1) of this subsection shall be based on, at a minimum, the number of patients and the characteristics of the patients, including patient acuity.

(3) The chief nursing supervisor shall document his or her determinations made about the factors described in paragraph (2) of this subsection, at the time the staffing plan is developed and when the staffing plan is revised based on a change in such factors.

(4) A CSU shall retain the staffing plan and the documentation required by paragraph (3) of this subsection for two years after such documentation is created.

(5) The chief nursing supervisor shall revise the staffing plan, as necessary.

(f) Orientation of nursing staff.

(1) A CSU shall provide orientation to a nursing staff member when the staff member is initially assigned to a unit on either a temporary or long-term basis. The orientation shall include a review of:

(A) the location of equipment and supplies on the unit;

(B) the staff member's responsibilities on the unit;

(C) relevant information about patients on the unit;

(D) relevant schedules of staff members and patients; and

(E) procedures for contacting the staff member's supervisor.

(2) A CSU shall document the provision of orientation to nursing staff.

(g) Verification of licensure. a CSU shall verify that a member of the nursing staff, for whom a license is required, has a valid license at the time the staff member assumes responsibilities at the CSU and maintains the license throughout the staff member's employment or association with the CSU

HISTORY: The provisions of this § 411.623 adopted to be effective January 1, 2004, 28 TexReg 11323

§ 411.624. Protection of a Patient

(a) Modifying the environment and monitoring the patient. a CSU shall protect a patient by taking the following measures:

(1) modifying the CSU environment based on the patient's needs including:

(A) providing furnishings that do not present safety hazards to the patient;

(B) securing or removing objects that are hazardous to the patient; and

(C) installing any necessary safety devices;

(2) monitoring the patient at the level of monitoring most recently specified in the patient's medical record; and

(3) making roommate assignments and other decisions affecting the interaction of the patient with other patients, based on patient needs and vulnerabilities.

(b) Levels of monitoring. a CSU shall:

(1) identify, in writing, the levels of monitoring of a patient; and

(2) define each of the levels of monitoring, in writing, including a description of the responsibilities of staff members for each level of monitoring identified.

(c) Separation of patients under 18 years of age. In accordance with Texas Health and Safety Code, § 321.002, a CSU shall keep patients who are under the age of 18 years separate from patients who are over the age of 18 years.

HISTORY: The provisions of this § 411.624 adopted to be effective January 1, 2004, 28 TexReg 11323

Division 5. Discharge

§ 411.628. Discharge Planning

(a) Involvement of staff, patient, and LAR in planning activities.

(1) Following the admission of a patient to a CSU, the CSU shall conduct discharge planning for the patient.

(2) Discharge planning shall involve qualified staff, the patient, the patient's LAR, and any other individual authorized by the patient or LAR, unless clinically contraindicated.

(3) Discharge planning shall include, at a minimum, the following activities:

(A) qualified staff members recommending services and supports needed by the patient after discharge, including the placement after discharge;

(B) qualified staff members arranging for the recommended services and supports;

(C) Preadmission Screening and Resident Review (PASRR) as required by paragraph (4) of this subsection; and

(D) qualified staff members counseling the patient, the patient's LAR, and as appropriate, the patient's caregivers, to prepare them for post-discharge care.

(4) Screening and evaluation before patient discharge from the CSU. In accordance with 42 Code of Federal Regulations (CFR), Part 483, Subpart C (relating to Requirements for Long Term Care Facilities) and the rules of the Department of Aging and Disability Services (DADS) set forth in 40 TAC Chapter 17, (relating to Preadmission Screening and Resident Review (PASRR)), all patients who are being considered for discharge from the CSU to a nursing facility shall be screened, and if appropriate, evaluated, prior to discharge by the CSU and admission to the nursing facility to determine whether the patient may have a mental illness, intellectual disability or developmental disability. If the screening indicates that the patient has a mental illness, intellectual disability or developmental disability, the CSU shall contact and arrange for the local mental health authority designated pursuant to Texas Health and Safety Code, § 533.035, to conduct prior to CSU discharge an evaluation of the patient in accordance with the applicable provisions of the PASRR rules. The purpose of PASRR is:

(A) to ensure that placement of the patient in a nursing facility is necessary;

(B) to identify alternate placement options when applicable; and

(C) to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability.

(b) Discharge summary. The patient's treating physician shall prepare a written discharge summary that includes:

(1) a description of the patient's treatment at the CSU and the response to that treatment;

(2) a description of the patient's condition at discharge;

(3) a description of the patient's placement after discharge;

(4) a description of the services and supports the patient will receive after discharge;

(5) a final diagnosis based on all five axes of the DSM;

(6) a description of the amount of medication the patient will need until the patient is evaluated by a physician; and

(7) the name of the individual or entity responsible for providing and paying for the medication referenced in paragraph (6) of this subsection, which is not required to be the CSU.

(c) Contact with the local mental health authority. In conducting the discharge planning activities described in subsections (a)(3)(A) and (B) of this section, a CSU shall consult with personnel at the local mental health authority who are responsible for ensuring continuity of care for individuals upon discharge from the CSU.

(d) Documentation of refusal. If it is not feasible for any of the activities listed in subsection (a)(3) of this section to be performed because the patient, the patient's LAR, or the patient's caregivers refuse to participate in the discharge planning, the circumstances of the refusal shall be documented in the patient's medical record.

HISTORY: The provisions of this § 411.628 adopted to be effective January 1, 2004, 28 TexReg 11323; amended to be effective May 24, 2013, 38 TexReg 3028

§ 411.629. Discharge Notices

(a) Discharge notice to family. In accordance with Texas Health and Safety Code, § 576.007, before discharging a patient, a CSU shall make a reasonable effort to notify the patient's family of the discharge if the patient grants permission for the notification.

(b) Notice of protection and advocacy system. Upon discharge, the CSU must provide the patient with written notification of the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, which is Advocacy, Inc., as required by Texas Health and Safety Code, § 576.008.

HISTORY: The provisions of this § 411.629 adopted to be effective January 1, 2004, 28 TexReg 11323

§ 411.630. Transfer Because of Dangerous Behavior, Restraint or Seclusion, Commitment Orders, or Medical Condition

(a) Transfer to psychiatric hospital. a CSU must immediately facilitate transfer of a patient to a psychiatric hospital, which may include contacting law enforcement or obtaining permission from the court that issued the protective custody order to transfer the patient, as appropriate, if:

(1) a physician determines that the patient is likely to cause serious danger to self or others in the CSU;

(2) during a 24 hour period:

(A) the patient is placed in seclusion:

(i) more than twice; or

(ii) for more than a total of four hours; or

(B) a restraint is applied to the patient for more than 60 consecutive minutes; or

(3) the patient becomes the subject of:

(A) an order for temporary inpatient mental health services issued in accordance with Texas Health and Safety Code, § 574.034; or

(B) an order for extended inpatient mental health services issued in accordance with Texas Health and Safety Code, § 574.035.

(b) Transfer to general hospital or other health care entity. a CSU must immediately facilitate transfer of a patient to a general hospital or another health care entity, as appropriate, if the patient:

(1) requires specialized care not available at the CSU; or

(2) has a physical medical condition that is unstable and could reasonably be expected to require inpatient treatment for the condition.

HISTORY: The provisions of this § 411.630 adopted to be effective January 1, 2004, 28 TexReg 11323

§ 411.631. Discharge of a Voluntary Patient

(a) Request for discharge. If a CSU is informed that a voluntary patient desires to leave the CSU or a voluntary patient or the patient’s LAR requests that the patient be discharged, the CSU shall, in accordance with Texas Health and Safety Code, § 572.004:

(1) inform the patient or the patient’s LAR that the request must be in writing and signed, timed, and dated by the requestor; and

(2) if necessary and as soon as possible, assist the patient in creating a written request for discharge and present it to the patient for the patient’s signature.

(b) Responding to a written request for discharge. If a written request for discharge from a voluntary patient or the patient’s LAR is made known to a CSU, the CSU shall:

(1) within four hours after the request is made known to the CSU, notify the treating physician or, if the treating physician is not available during that time period, notify another physician who is a CSU staff member of the request; and

(2) file the request in the patient’s medical record.

(c) Discharge or examination. In accordance with Texas Health and Safety Code, § 572.004(c) and (d):

(1) if the physician who is notified in accordance with subsection (b)(1) of this section does not have reasonable cause to believe that the patient may meet the criteria for court-ordered inpatient mental health services or emergency detention, a CSU shall discharge the patient within the four-hour time period described in subsection (b)(1) of this section; or

(2) if the physician who is notified in accordance with subsection (b)(1) of this section has reasonable cause to believe that the patient may meet the criteria for court-ordered inpatient mental health services or emergency detention, the physician shall examine the patient as soon as possible within 24 hours after the request for discharge is made known to the CSU.

(d) Discharge if not examined within 24 hours or if criteria not met.

(1) If a patient, who a physician believes may meet the criteria for court-ordered inpatient mental health services or emergency services, is not examined within 24 hours after the request for discharge is made known to the CSU, the CSU shall discharge the patient.

(2) In accordance with Texas Health and Safety Code, § 572.004(d), if the physician conducting the examination described in subsection (c)(2) of this section determines that the patient does not meet the criteria for court-ordered inpatient mental health services or

emergency detention, the CSU shall discharge the patient upon completion of the examination.

(e) Discharge or filing application if criteria met. In accordance with Texas Health and Safety Code, § 572.004(d), if the physician conducting the examination described in subsection (c)(2) of this section determines that the patient meets the criteria for court-ordered inpatient mental health services or emergency detention, the CSU shall, by 4:00 p.m. on the next business day:

(1) file an application for court-ordered inpatient mental health services or emergency detention and obtain a court order for further detention of the patient; or

(2) discharge the patient.

(f) Notification by physician. In accordance with Texas Health and Safety Code, § 572.004(d), if the CSU intends to detain a patient to file an application and obtain a court order for further detention of the patient, a physician shall:

(1) notify the patient of such intention; and

(2) document the reasons for the decision to detain the patient in the patient’s medical record.

(g) Withdrawal of request for discharge. In accordance with Texas Health and Safety Code, § 572.004(f), a CSU is not required to complete the discharge process described in this section if the patient makes a written statement to withdraw the request for discharge.

HISTORY: The provisions of this § 411.631 adopted to be effective January 1, 2004, 28 TexReg 11323

§ 411.632. Maximum Length of Stay for a Voluntary Patient

A CSU shall discharge a voluntary patient on the 14th day after the patient’s admission, unless:

(1) the patient is discharged earlier:

(A) in accordance with § 411.631 of this title (relating to Discharge of a Voluntary Patient); or

(B) based on an order by the patient’s treating physician; or

(2) the patient is transferred earlier:

(A) in accordance with § 411.630 of this title (relating to Transfer Because of Dangerous Behavior, Restraint or Seclusion, Commitment Orders, or Medical Condition);

(B) in accordance with § 411.617(c) of this title (relating to Responding to an Emergency Medical Condition of a Prospective Patient or a Patient); or

(C) in accordance with § 411.622(h)(4) of this title (relating to Medical Services).

HISTORY: The provisions of this § 411.632 adopted to be effective January 1, 2004, 28 TexReg 11323

§ 411.633. Discharge of an Involuntary Patient

(a) Discharge from emergency detention.

(1) Except as provided by § 411.613 of this title (relating to Voluntary Treatment Following Involuntary Admission) and in accordance with Texas Health and Safety Code, § 573.023(b) and § 573.021(b), a CSU shall immediately discharge a patient under emergency detention if either of the following occurs:

(A) the administrator or the administrator’s designee determines, based on a physician’s determination, that the patient no longer meets the criteria described in subsection § 411.610(c)(1) of this title (relating to Emergency Detention); or

(B) except as provided in paragraph (2) of this subsection, 24 hours elapse from the time the patient was presented to the CSU and the CSU has not

obtained a court order for further detention of the patient.

(2) In accordance with Texas Health and Safety Code, § 573.021(b), if the 24-hour period described in paragraph (1)(B) of this subsection ends on a Saturday, Sunday, or legal holiday, or before 4:00 p.m. on the next business day after the patient was presented to the CSU, the patient may be detained until 4:00 p.m. on such business day.

(3) In accordance with Texas Health and Safety Code, § 573.021(b), the 24-hour period described in paragraph (1)(B) of this subsection does not include any time during which the patient is receiving necessary non-psychiatric medical care in the CSU.

(b) Discharge under protective custody order. Except as provided by § 411.613 of this title (relating to Voluntary Treatment Following Involuntary Admission) and in accordance with Texas Health and Safety Code, § 574.028, a CSU shall immediately discharge a patient under an order of protective custody if any of the following occurs:

(1) the CSU administrator or designee determines that, based on a physician's determination, the patient no longer meets the criteria described in Texas Health and Safety Code, § 574.022(a);

(2) the CSU administrator or designee does not receive notice that the patient's continued detention is authorized after a probable cause hearing held within the time period prescribed by Texas Health and Safety Code, § 574.025(b);

(3) a final order for court-ordered inpatient mental health services has not been entered within the time period prescribed by Texas Health and Safety Code, § 574.005; or

(4) an order to release the patient is issued in accordance with Texas Health and Safety Code, § 574.028(a).

HISTORY: The provisions of this § 411.633 adopted to be effective January 1, 2004, 28 TexReg 11323

Division 6. Documentation

§ 411.637. Content of Medical Record

(a) Medical record. a CSU shall maintain a medical record for a patient. The medical record shall include, at a minimum:

(1) documentation of whether the patient is a voluntary patient, on emergency detention, or under a protective custody order, including the physician or court order, as appropriate;

(2) documentation of the reasons the patient, LAR, family members, or other caregivers state that the patient was admitted to the CSU;

(3) justification for each mental illness diagnosis and any substance use disorder diagnosis;

(4) the level of monitoring assigned and implemented in accordance with § 411.612 of this title (relating to Monitoring Upon Admission) and any changes to such level prior to the implementation of the patient's written treatment plan;

(5) the patient's written treatment plan;

(6) the name of the patient's treating physician;

(7) written findings of the physical examination described in § 411.622(e)(1)(A) or (B) of this title (relating to Medical Services);

(8) written findings of the psychiatric evaluation described in § 411.622(f) of this title (relating to Medical

Services), the assessment described in § 411.623(c) of this title (relating to Nursing Services), and any other assessment of the patient conducted by a staff member;

(9) a summary of the revisions made to the written treatment plan in accordance with § 411.621(c) of this title (relating to Crisis Stabilization Services and Treatment Planning);

(10) the progress notes for the patient as described in subsection (b) of this section;

(11) documentation of the monitoring of the patient by the staff members responsible for such monitoring, including observations of the patient at pre-determined intervals;

(12) documentation of the discharge planning activities required by § 411.628(a)(3) of this title (relating to Discharge Planning); and

(13) the discharge summary as required by § 411.628(b) of this title (relating to Discharge Planning).

(b) Progress notes. The progress notes referenced in subsection (a)(10) of this section must be documented in accordance with this subsection.

(1) A physician, RN, and other staff members shall make written notes of a patient's progress to include:

(A) documentation of the patient's response to treatment provided under the treatment plan;

(B) documentation of the findings of a re-evaluation described in § 411.622(g) of this title (relating to Medical Services);

(C) documentation of the findings of an evaluation or a reassessment described in § 411.623(d) of this title (relating to Nursing Services), including any change in the patient's level of monitoring; and

(D) documentation of the findings of any other reassessment of the patient conducted by a staff member.

(2) Requirements regarding the frequency of making progress notes are as follows:

(A) a physician shall document the findings of a re-evaluation described in § 411.622(g) of this title (relating to Medical Services) at the time each re-evaluation is conducted; and

(B) an RN or LVN, as appropriate, shall make the documentation described in paragraph (1)(C) of this subsection at the time each evaluation or reassessment is conducted.

HISTORY: The provisions of this § 411.637 adopted to be effective January 1, 2004, 28 TexReg 11323

Division 7. Staff Development

§ 411.641. Staff Member Training

(a) Training of staff members. a CSU shall provide training to a staff member in accordance with the following:

(1) All staff members shall receive training in:

(A) identifying, preventing, and reporting abuse and neglect of patients and unprofessional or unethical conduct in the CSU in accordance with the memorandum of understanding set forth in 40 TAC § 148.205 (relating to Training Requirements Relating to Abuse, Neglect and Unprofessional or Unethical Conduct);

(B) dignity and rights of a patient in accordance with Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services); and

(C) confidentiality of a patient's information in accordance with Texas Health and Safety Code, Chapter 611 or Chapter 241, Subchapter G, as applicable, 42 CFR Part 2, and 45 CFR Parts 160 and 164.

(2) An RN, LVN, and UAP shall receive training in:

(A) monitoring for patient safety in accordance with § 411.624 of this title (relating to Protection of a Patient); and

(B) infection control in accordance with § 134.41(d) of this title (relating to Facility Functions and Services).

(3) A staff member routinely providing treatment to, working with, or providing consultation about a geriatric patient shall receive training in the social, psychological and physiological changes associated with aging.

(4) In accordance with Texas Health and Safety Code, § 572.0025(e), a PASP shall receive at least eight hours of pre-admission screening and intake training as described in subsection (c) of this section.

(5) In accordance with Texas Health and Safety Code, § 572.0025(e), a staff member whose responsibilities include conducting the CSU's intake process shall receive at least eight hours of pre-admission screening and intake training as described in subsection (c) of this section.

(6) A staff member who may initiate an involuntary intervention shall receive training in and demonstrate competency in performing such interventions in accordance with Chapter 415, Subchapter F of this title (relating to Interventions in Mental Health Programs).

(b) A staff member providing direct patient care shall maintain certification in a course, developed by the American Heart Association or the American Red Cross, in recognizing and caring for breathing and cardiac emergencies. The course shall teach the following skills appropriate to the age of the CSU's patients:

(1) rescue breathing with and without devices;

(2) airway obstruction;

(3) cardiopulmonary resuscitation; and

(4) use of an automated external defibrillator.

(c) Pre-admission screening and intake training. The pre-admission screening and intake training required by subsections (a)(4) and (5) of this section shall provide instruction to staff members regarding:

(1) conducting a pre-admission screening;

(2) obtaining relevant information about the patient, including information about finances, insurance benefits and advance directives;

(3) explaining, orally and in writing, the patient's rights described in Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(4) explaining, orally and in writing, the CSU's services and treatment as they relate to the patient;

(5) in accordance with Texas Health and Safety Code, § 576.008, informing the patient in writing of the existence, telephone number and address of the protection and advocacy system established in Texas, which is Advocacy, Inc.; and

(6) determining whether the patient comprehends the information provided in accordance with paragraphs (3)-(5) of this subsection.

(d) Frequency of training. a CSU shall provide the training described in subsection (a) of this section, periodically, as follows:

(1) A staff member shall receive the training required by subsection (a)(1)(A) of this section at the intervals

described in the memorandum of understanding set forth in 40 TAC § 148.205 (relating to Training Requirements Relating to Abuse, Neglect and Unprofessional or Unethical Conduct).

(2) A staff member shall receive the training required by subsection (a)(1)(B) of this section:

(A) before assuming responsibilities required by the CSU; and

(B) annually throughout the staff member's employment or association with the CSU.

(3) A staff member shall receive the training required by subsections (a)(1)(C) and (a)(2) and (3) of this section:

(A) before assuming his or her responsibilities at the CSU; and

(B) at reasonable intervals throughout the staff member's employment or association with the CSU.

(4) A staff member shall have the certification required by subsection (b) of this section:

(A) before assuming responsibilities at the CSU; or

(B) not later than 30 days after the staff member is hired by the CSU if another staff member who has such certification is physically present and on-duty on the same unit on which the uncertified staff member is on-duty.

(5) A PASP shall receive the training required by subsection (a)(4) of this section:

(A) prior to the PASP conducting a pre-admission screening; and

(B) annually throughout the PASP's employment or association with the CSU.

(6) A staff member shall receive the training required by subsection (a)(5) of this section:

(A) prior to conducting the intake process; and

(B) annually throughout the staff member's employment or association with the CSU.

(7) A staff member shall receive the training required by subsection (a)(6) of this section at the intervals described in Chapter 415, Subchapter F of this title (relating to Interventions in Mental Health Programs).

(e) Documentation of training.

(1) A CSU shall document that a staff member has successfully completed the training described in subsection (a) of this section including:

(A) the date of the training;

(B) the length of the training session; and

(C) the name of the instructor.

(2) A CSU shall maintain certification or other evidence issued by the American Heart Association or the American Red Cross that a staff member has successfully completed the training described in subsection (b) of this section.

(f) Performance in accordance with training. a staff member shall perform his or her responsibilities in accordance with the training and certification required by this section.

HISTORY: The provisions of this § 411.641 adopted to be effective January 1, 2004, 28 TexReg 11323

Division 8.

Sentinel Events and External Reviews

§ 411.645. Reporting and Investigating Sentinel Events

A CSU shall develop and implement written procedures to identify, report and investigate sentinel events. The procedures shall include the following:

(1) a description of the process by which a staff member reports a sentinel event, including a requirement that a sentinel event be reported by a staff member within at least one hour after a staff member becomes aware of the incident;

(2) a requirement that, within 24 hours of a sentinel event being reported, the administrator designate a committee to investigate the sentinel event that includes a physician, an RN, and any other staff members determined appropriate by the administrator; and

(3) a requirement that, within 45 days of the sentinel event being reported, the committee will determine and document:

(A) the cause(s) of the sentinel event;

(B) whether the cause(s) is random or is a pattern of error in the CSU's processes or systems;

(C) any improvements to the CSU's processes or systems that may reduce the occurrence of similar incidents in the future;

(D) how such improvements will be implemented including a timeline for implementation;

(E) the staff members responsible for such implementation; and

(F) a method to determine whether the improvements identified were effective in reducing the occurrence of similar incidents.

HISTORY: The provisions of this § 411.645 adopted to be effective January 1, 2004, 28 TexReg 11323

§ 411.646. Response to External Reviews

A CSU shall develop and implement a written plan to evaluate the effectiveness of any plan of correction the CSU submits to an external review entity, such as the Texas Department of Health.

HISTORY: The provisions of this § 411.646 adopted to be effective January 1, 2004, 28 TexReg 11323

Division 9. References and Distribution

§ 411.649. References

The following statutes and TDMHMR rules are referenced in this subchapter:

(1) Texas Health and Safety Code:

(A) Chapters 241, 572, 573, 574, 576, 577, and 611; and

(B) § 321.002 and § 571.003;

(2) Texas Government Code, § 662.021;

(3) Texas Occupations Code, Chapters 155, 301, and 302, and § 157.001;

(4) 40 TAC § 148.205;

(5) 25 TAC Chapters 133 and 134, and § 412.303;

(6) Code of Federal Regulations Title 42 Part 2, and Title 45 Parts 160 and 164;

(7) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(8) Chapter 405, Subchapter E of this title (relating to Electroconvulsive Therapy (ECT));

(9) Chapter 415, Subchapter F of this title (relating to Interventions for Mental Health Programs); and

(10) Chapter 405, Subchapter FF of this title (relating to Consent to Treatment with Psychoactive Medication).

HISTORY: The provisions of this § 411.649 adopted to be effective January 1, 2004, 28 TexReg 11323

§ 411.650. Distribution

(a) This subchapter will be distributed to:

(1) members of the Texas Mental Health and Mental Retardation Board;

(2) management and program staff in TDMHMR's Central Office;

(3) CEOs of all state mental health facilities; and

(4) CEOs of all crisis stabilization units.

(b) CEOs are responsible for distributing this subchapter to appropriate staff members.

HISTORY: The provisions of this § 411.650 adopted to be effective January 1, 2004, 28 TexReg 11323

Subchapter N.

Standards in Services to Individuals With Co-Occurring Psychiatric and Substance Use Disorders (COPSD)

§ 411.651. Purpose

The purpose of this subchapter is to improve existing mental health services provided by the entities defined in § 411.653 of this title (relating to Definitions) by establishing standards to ensure the effective and coordinated provision of services to individuals who require specialized support or treatment due to co-occurring psychiatric and substance use disorders (COPSD).

HISTORY: The provisions of this § 411.651 adopted to be effective September 7, 2003, 28 TexReg 7396; amended to be effective November 17, 2011, 36 TexReg 7669

§ 411.652. Application

(a) The provisions of this subchapter apply to entities defined in § 411.653 of this title (relating to Definitions).

(b) The provisions of this subchapter are in addition to requirements contained in other DSHS rules. This subchapter does not supercede other DSHS rules that may also apply to the provision of services to individuals as defined in § 411.653 of this title.

HISTORY: The provisions of this § 411.652 adopted to be effective September 7, 2003, 28 TexReg 7396; amended to be effective November 17, 2011, 36 TexReg 7669

§ 411.653. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Access—An individual's ability to obtain the psychiatric and substance use disorder services needed.

(2) Adolescent—A person who is 13 through 17 years of age.

(3) Adult—A person who is 18 years of age or older.

(4) Child—A person who is 3 through 12 years of age.

(5) Contract—A legally enforceable written agreement for the purchase of services.

(6) Co-occurring psychiatric and substance use disorders (COPSD)—The co-occurring diagnoses of psychiatric disorders and substance use disorders.

(7) Diagnostic and Statistical Manual of Mental Disorders (DSM)—The most recent edition of the American Psychiatric Association's official classification of mental disorders.

(8) Entity or entities—The terms used to refer to the following:

(A) local mental health authorities (LMHAs);

(B) Managed care organizations (MCOs);

(C) state mental health facilities (SMHF); and

(D) Medicaid providers who are required to comply with Chapter 419, Subchapter L of this title, governing Mental Health Rehabilitative Services, or Chapter 412, Subchapter I of this title, governing Mental Health Case Management Services.

(9) Family member—Anyone an individual identifies as being involved in the individual's life (e.g., the individual's parent, spouse, child, sibling, significant other, or friend).

(10) Individual—

(A) For an LMHA—An adult with COPSD, adolescent with COPSD, or child with COPSD seeking or receiving services from or through the LMHA or its provider.

(B) For an MCO—An enrolled adult with COPSD, adolescent with COPSD, or child with COPSD seeking or receiving services from or through the MCO or its provider.

(C) For an SMHF—An adult with COPSD, adolescent with COPSD, or child with COPSD seeking or receiving services from or through the SMHF or its provider.

(D) For a provider of rehabilitative services or a provider of mental health case management services reimbursed by Medicaid—An adult with COPSD, adolescent with COPSD, or child with COPSD seeking or receiving rehabilitative services or mental health case management services reimbursed by Medicaid.

(11) Integrated assessment—An assessment of an individual to gather both substance use and psychiatric information.

(12) Legally authorized representative (LAR)—A person authorized by law to act on behalf of an individual with regard to a matter (e.g., a parent, guardian, or managing conservator of a child or adolescent, a guardian of an adult, or a personal representative of a deceased individual).

(13) Local mental health authority (LMHA)—An entity designated as the local mental health authority by the DSHS in accordance with the Health and Safety Code, § 533.035(a).

(14) Managed care organization (MCO)—An entity that has a current Department of Insurance certificate of authority to operate as a health maintenance organization (HMO) under Insurance Code, Subchapter C of Chapter 843, or as an approved nonprofit health corporation under Insurance Code, Chapter 884.

(15) Psychiatric disorder—An emotional disturbance in a child or adolescent or a psychiatric disorder in an adult who is a member of the mental health priority population as defined in the Health and Human Services System Strategic Plan 2011 - 2015.

(16) Readiness to change—An individual's emotional and cognitive awareness of the need to change, coupled with a commitment to change.

(17) Services—Services provided to treat a psychiatric or substance use disorder.

(18) Staff—Full- or part-time employees, contractors, and interns of an entity.

(19) Substance use disorder—The use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning and which meets criteria described in the current Diagnostic and Statistical Manual of Mental Disorders for substance abuse or substance dependence.

(20) Support services—Services delivered to an individual, legally authorized representative (LAR) or family member(s) to assist the individual in functioning

in the living, learning, working, and socializing environments.

(21) Treatment plan—A written document developed by the provider, in consultation with the individual (and LAR on the individual's behalf), that is based on assessments of the individual and which addresses the individual's strengths, needs, goals, and preferences regarding service delivery as referenced in §412.322 of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization) of Chapter 412, Subchapter G of this title, governing Mental Health Community Services Standards.

HISTORY: The provisions of this § 411.653 adopted to be effective September 7, 2003, 28 TexReg 7396; amended to be effective November 17, 2011, 36 TexReg 7669

§ 411.654. Services to Individuals with COPSD

(a) Entities, entities' contracted providers, and each of their respective staff providing service to an individual with COPSD shall ensure that services are provided in compliance with applicable licensure, scope of practice and other law and:

(1) address both psychiatric and substance use disorders;

(2) are provided within established practice guidelines for this population; and

(3) facilitate individuals or LARs in accessing available services they need and choose, including self-help groups.

(b) The services provided to an individual with COPSD shall comply with applicable licensure, scope of practice and other law and be provided:

(1) by staff who are competent in the areas identified in §411.658 of this title (relating to Specialty Competencies of Staff Providing Services to Individuals with COPSD);

(2) in an individual or small group setting;

(3) in an age, gender, and culturally appropriate manner; and

(4) in accordance with the individual's treatment plan.

HISTORY: The provisions of this § 411.654 adopted to be effective September 7, 2003, 28 TexReg 7396; amended to be effective November 17, 2011, 36 TexReg 7669

§ 411.655. Responsibility for Compliance

(a) Entities must comply with this subchapter.

(b) Entities that are LMHAs, MCOs, or SMHFs must require providers, by contract, to comply with §411.654 of this title (relating to Services to Individuals with COPSD), §411.657 of this title (relating to Access to Services), §411.658 of this title (relating to Specialty Competencies of Staff Providing Services to Individuals with COPSD), and §411.660 of this title (relating to Screening, Assessment, and Treatment Planning).

(c) Entities must monitor staff and contract providers who provide services to an individual with COPSD for compliance with the applicable provisions of §§411.657 - 411.660 of this title.

(d) An entity that is an MCO must comply and must require staff to comply with Chapter 404, Subchapter E of this title, governing Rights of Persons Receiving Mental Health Services.

HISTORY: The provisions of this § 411.655 adopted to be effective September 7, 2003, 28 TexReg 7396; amended to be effective November 17, 2011, 36 TexReg 7669

§ 411.656. DSHS Responsibilities

(a) DSHS must make available training resources for the competencies identified in § 411.658 of this title (relating to Specialty Competencies of Staff Providing Services to Individuals with COPSD).

(b) DSHS must require LMHAs and SMHFs to develop quality management systems that ensure an appropriate integrated assessment for each individual and the appropriate delivery of services.

HISTORY: The provisions of this § 411.656 adopted to be effective September 7, 2003, 28 TexReg 7396; amended to be effective November 17, 2011, 36 TexReg 7669

§ 411.657. Access to Services

(a) In determining an individual's initial and ongoing eligibility for any service, an entity may not exclude an individual based on the following factors:

- (1) the individual's past or present mental illness or substance use diagnosis or services;
- (2) medications prescribed to the individual in the past or present;
- (3) the presumption of the individual's inability to benefit from treatment;
- (4) the specific substance used by the individual;
- (5) the individual's continued substance use; or
- (6) the individual's level of success in prior treatment episodes.

(b) Entities must ensure that an individual's refusal of a particular service does not preclude the individual from accessing other needed mental health or substance abuse services.

(c) The LMHAs, MCOs, and SMHFs must ensure that individuals have access to staff who meet specialty competencies described in § 411.658 of this title (relating to Specialty Competencies of Staff Providing Services to Individuals with COPSD).

(d) Entities must establish and implement procedures to ensure the continuity of screening, assessment, and treatment services provided to individuals.

HISTORY: The provisions of this § 411.657 adopted to be effective September 7, 2003, 28 TexReg 7396; amended to be effective November 17, 2011, 36 TexReg 7669

§ 411.658. Specialty Competencies of Staff Providing Services to Individuals with COPSD

(a) Entities must ensure that services to individuals are age and culturally appropriate and are provided by staff within their scope of practice who have the following minimum knowledge, technical, and interpersonal competencies prior to providing services.

- (1) Knowledge competencies:
 - (A) knowledge of the fact that psychiatric and substance use disorders are potentially recurrent relapsing disorders, and that although abstinence is the goal, relapses can be opportunities for learning and growth;
 - (B) knowledge of the impact of substance use disorders on developmental, social, and physical growth and development of children and adolescents;
 - (C) knowledge of interpersonal and family dynamics and their impact on individuals;
 - (D) knowledge of the current Diagnostic and Statistical Manual of Mental Disorders diagnostic criteria for psychiatric disorders and substance use disorders and the relationship between psychiatric disorders and substance use disorders;

(E) knowledge regarding the increased risks of self-harm, suicide, and violence in individuals;

(F) knowledge of the elements of an integrated treatment plan and community support plan for individuals;

(G) basic knowledge of pharmacology as it relates to individuals;

(H) basic understanding of the neurophysiology of addiction;

(I) basic knowledge of withdrawal symptoms and their potential risk factors to clients;

(J) knowledge of the phases of recovery for individuals;

(K) knowledge of the relationship between COPSD and Axis III disorders; and

(L) basic knowledge of self-help in recovery.

(2) Technical competencies:

(A) ability to perform age-appropriate assessments of individuals; and

(B) ability to formulate an individualized treatment plan and community support plan for individuals.

(3) Interpersonal competencies:

(A) ability to tailor interventions to the process of recovery for individuals;

(B) ability to tailor interventions with readiness to change; and

(C) ability to support individuals who choose to participate in 12-step recovery programs.

(b) Within 90 days of the effective date of this subchapter, entities must ensure that staff who provide services to individuals with COPSD, and who have not previously done so, have demonstrated the competencies described in subsection (a) of this section. These competencies may be evidenced by compliance with current licensure requirements of the governing or supervisory boards for the respective disciplines involved in serving individuals with COPSD or by documentation regarding the attainment of the competencies described in subsection (a) of this section. For unlicensed staff delivering these services, these competencies are evidenced by documentation regarding their attainment as required in subsection (a) of this section.

HISTORY: The provisions of this § 411.658 adopted to be effective September 7, 2003, 28 TexReg 7396; amended to be effective November 17, 2011, 36 TexReg 7669

§ 411.659. Quality Management

(a) The LMHAs and MCOs must develop and implement a plan for quality management of services to individuals with COPSD as required in § 412.317 (relating to Quality Management) of Chapter 412, Subchapter G of this title, governing Mental Health Community Services Standards.

(b) The SMHFs must develop and implement a plan for quality management of services to individuals. The plan must be incorporated into the Improving Organizational Performance System (IOPS) and must identify clinical measures. The plan must describe the following:

- (1) activities for measuring, assessing, and improving processes for delivering services in accordance with this subchapter; and
- (2) methods for evaluating and improving outcomes for individuals receiving services.

HISTORY: The provisions of this § 411.659 adopted to be effective September 7, 2003, 28 TexReg 7396; amended to be effective November 17, 2011, 36 TexReg 7669

§ 411.660. Screening, Assessment, and Treatment Planning

(a) Screening and assessment. When a screening determines an assessment is necessary, an integrated assessment must be conducted to consider relevant past and current medical, psychiatric, and substance use information, including:

(1) information from the individual (and LAR on the individual's behalf) regarding the individual's strengths, needs, natural supports, responsiveness to previous treatment, as well as preferences for and objections to specific treatments;

(2) the needs and desire of the individual for family member involvement in treatment and services if the individual is an adult without an LAR; and

(3) recommendations and conclusions regarding treatment needs and eligibility for services for individuals.

(b) Treatment plan development.

(1) The individual (and LAR on the individual's behalf, if applicable) must be involved in all aspects of planning the individual's treatment. If the individual has requested the involvement of a family member, then the provider must attempt to involve the family member in all aspects of planning the individual's treatment.

(2) The treatment plan must identify services to be provided and must include measurable outcomes that address COPSD.

(3) The treatment plan must identify the LAR's or family members' need for education and support services related to the individual's mental illness and substance abuse and a method to facilitate the LAR's or family members' receipt of the needed education and support services.

(4) The individual, LAR, and, if requested, family member, must be given a copy of the treatment plan.

(c) Treatment plan review. Each individual's treatment plan must be reviewed in accordance with DSHS-defined timeframes and the review must be documented.

(d) Progress notes. The medical record notes must contain a description of the individual's progress towards goals identified in the treatment plan, as well as other clinically significant activities or events.

(e) Episode of care summary. Upon discharge or transfer of an individual from one entity to another, the individual's medical record must identify the services provided according to this subchapter and the items referenced in §412.322 (relating to Provider Responsibilities for Treatment Planning and Service Authorization) of Chapter 412, Subchapter G of this title, governing Mental Health Community Services Standards.

HISTORY: The provisions of this § 411.660 adopted to be effective September 7, 2003, 28 TexReg 7396; amended to be effective November 17, 2011, 36 TexReg 7669

CHAPTER 412.

Local Mental Health Authority Responsibilities

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Subchapter A.

Mental Health Prevention Standards

§ 412.1. Purpose

The purpose of this subchapter is to set forth the standards and provide the criteria for mental health prevention training provided to local mental health authorities (LMHAs) and the local behavioral health authority (LBHA), which is a managed care organization (MCO) (collectively LMHA, LBHA and MCO are referred to in this subchapter as LMHAs), their respective contractors, and educators located within the LMHA's service area, as required by Texas Health and Safety Code, Chapter 1001, Subchapter H, §§ 1001.201 - 1001.206.

HISTORY: The provisions of this § 412.1 adopted to be effective June 3, 2014, 39 TexReg 4258

§ 412.2. Application

This subchapter applies to local mental health authorities and local behavioral health authorities.

HISTORY: The provisions of this § 412.2 adopted to be effective June 3, 2014, 39 TexReg 4258

§ 412.3. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Department—The Department of State Health Services (DSHS).

(2) Local mental health authority (LMHA)—An entity designated as the local mental health authority by the department in accordance with the Texas Health and Safety Code, § 533.035(a). For purposes of this subchapter, the term includes an entity designated as a local behavioral health authority.

(3) Local behavioral health authority (LBHA)—An entity designated as a local behavioral health authority by the department in accordance with Texas Health and Safety Code, § 533.0356.

(4) Educator—A person who is required to hold a certificate issued under the Education Code, Subchapter B, Chapter 21, specifically; a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, school nurse, or school counselor.

(5) Managed care organization (MCO)—An entity that has a current Texas Department of Insurance certificate of authority to operate as a Health Maintenance Organization (HMO) in the Texas Insurance Code, Chapter 843, or as an approved nonprofit health corporation in the Texas Insurance Code, Chapter 844, and that provides mental health community services pursuant to a contract with the department.

(6) Mental health first aid (MHFA)—The assistance provided to a person who is developing a mental health issue or who is experiencing a mental health crisis until appropriate professional treatment is received or until the crisis resolves.

HISTORY: The provisions of this § 412.3 adopted to be effective June 3, 2014, 39 TexReg 4258

§ 412.4. Mental Health First Aid Training Protocols

(a) Any person approved to train LMHA employees or contractors as MHFA trainers shall be qualified to provide training in:

(1) the potential risk factors and warning signs for various mental illnesses, including depression, anxiety, trauma, psychosis, eating disorders, substance abuse disorders, and self-injury;

(2) the prevalence of various mental illnesses in the United States and the need to reduce the stigma associated with mental illness;

(3) an action plan used by employees or contractors that involves the use of skills, resources, and knowledge to assess a situation and develop and implement an appropriate intervention to assist a person experiencing a mental health crisis to obtain appropriate, professional care; and

(4) the evidence-based professional, peer, social, and self-help resources available to help individuals with mental illness.

(b) All persons or entities that train LMHA employees or contractors as MHFA trainers shall be certified by an authority of:

(1) MHFA-USA;

(2) MHFA-Australia; or

(3) other entity(ies) approved by the department.

HISTORY: The provisions of this § 412.4 adopted to be effective June 3, 2014, 39 TexReg 4258

§ 412.5. Local Mental Health Authority Responsibilities

(a) The LMHA is responsible for ensuring their contractors provide MHFA training to educators and non-educators consistent with the MHFA protocol. The LMHA shall ensure that training is taught without modification, substitution or subtraction of the MHFA-USA or MHFA-Australia, as applicable, content or format unless authorized by the department-approved training entities set forth in § 412.4(b) of this title (relating to Mental Health First Aid Training Protocols).

(b) The LMHA is responsible for ensuring their contractors comply with the provisions of this subchapter and applicable provisions of the contract between the department and the LMHA.

HISTORY: The provisions of this § 412.5 adopted to be effective June 3, 2014, 39 TexReg 4258

Subchapter B.

Contracts Management in Local Authorities

§ 412.51. Purpose

The purpose of this subchapter is to comply with the Texas Health and Safety Code, § 534.052, § 534.055, and § 534.065.

HISTORY: The provisions of this § 412.51 adopted to be effective April 22, 2001, 26 TexReg 2845

§ 412.52. Application

This subchapter applies to all contracts for goods and services awarded by a local authority.

HISTORY: The provisions of this § 412.52 adopted to be effective April 22, 2001, 26 TexReg 2845

§ 412.53. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Application—Documents prepared by a respondent in response to a request for applications.

(2) Best value—The optimum combination of economy and quality that is the result of fair, efficient, and practical procurement decision-making and which achieves the following objectives:

(A) promote fairness and competition for local authority contracts;

(B) support the delivery of services and benefits that best meets the needs of clients of programs administered by the local authority;

(C) promote timely, high quality, and responsive performance by contractors; and

(D) encourage and reward the continuing participation of quality contractors.

(3) Business entity—A sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

(4) Consumer—A person in the priority population or otherwise designated in the performance contract as eligible for community services.

(5) Contract—A written agreement, including a purchase order, between a local authority and a business entity that obligates the entity to provide goods or services in exchange for money or other valuable consideration.

(6) Contract management—Initiating, procuring, awarding, monitoring, and enforcing a contract.

(7) Contract term—The period of time during which a contract is in effect, identified by a starting and ending date.

(8) Contractor—A business entity that has a contract for goods or services with a local authority.

(9) Goods—Tangible personal property and intellectual property.

(10) Intellectual property—Any intangible asset that consists of human knowledge and ideas (e.g., software).

(11) Local authority—An entity designated by the TDMHMR commissioner in accordance with the Texas Health and Safety Code, § 533.035(a).

(12) Local service area—A geographic area composed of one or more Texas counties delimiting the population which may receive community services from a local authority.

(13) Participated—To have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.

(14) Particular matter—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.

(15) Performance contract—The contract between TDMHMR and a local authority in which TDMHMR agrees to pay the local authority a specified sum and in which the local authority agrees to provide local

match, for, at a minimum, ensuring and/or monitoring the provision of specified mental health and mental retardation services in a local service area.

(16) Priority population—Those groups of persons with mental illness and mental retardation identified in TDMHMR's current strategic plan as being most in need of mental health and mental retardation services.

(17) Proposal—Documents prepared by a respondent in response to a request for proposals.

(18) Respondent—A business entity that submits an oral, written, or electronic response to a solicitation. The term is intended to include “applicant,” “offeror,” “proposer,” and other similar terminology to describe a business entity that responds to a solicitation.

(19) Response—An oral, written, or electronic “offer,” “proposal,” “quote,” “application,” or other applicable expression of interest to a solicitation.

(20) Services—

(A) Community services—Mental health and mental retardation services required to be available in each local service area pursuant to the Texas Health and Safety Code, § 534.053(a), for which TDMHMR contracts through the performance contract as well as all other services specified in the performance contract.

(B) Non-community services—All services other than community services.

(21) Solicitation—A notification of the local authority's intent to purchase community services (e.g., request for proposals and request for applications).

(22) TDMHMR—The Texas Department of Mental Health and Mental Retardation.

HISTORY: The provisions of this § 412.53 adopted to be effective April 22, 2001, 26 TexReg 2845

§ 412.54. Accountability

(a) All purchases of goods and services must be made pursuant to a contract.

(b) Conflicts of interests and standards of conduct for local authority employees and officers.

(1) Conflicts of interest. Local authority employees and officers may not have a conflict of interest in contracts management. An employee or officer has a conflict of interest when the employee, officer, a partner of the employee or officer, or a person related within the second degree of consanguinity or affinity to the employee or officer, has or intends to have:

(A) employment with a respondent or contractor;

(B) paid consultation with a respondent or contractor;

(C) membership on a respondent's or contractor's board of directors;

(D) ownership of 10% or more of the voting stock of shares of a respondent or contractor;

(E) ownership of 10% or more of \$ 5,000 or more of the fair market value of a respondent or contractor; or

(F) income from a respondent or contractor in excess of 10% of the employee's, officer's, or related person's gross income for the previous year.

(2) Standards of conduct. The local authority must develop and enforce standards of conduct governing its employees' and officers' who participate in contracts management, which prohibits such employees and officers from:

(A) accepting or soliciting any gift, favor, service, or benefit from a business entity, respondent, or contractor that might reasonably tend to influence the employee or officer in the discharge of official

duties relating to contract management, or that the employee or officer knows or should know is being offered with the intent to influence the employee's or officer's official duties; or

(B) intentionally or knowingly soliciting, accepting, or agreeing to accept any benefit for having exercised official powers or for having performed official duties in favor of another business entity, respondent, or contractor.

(c) Conflicts of interests and standards of conduct for a respondent and its officers and employees.

(1) Conflict of interest. a respondent and its officers and employees responsible for development of a response or performance of a contract for which the respondent is submitting a response may not be related within the second degree of consanguinity or affinity to a local authority employee or officer participating in the contract management for the contract for which the respondent is submitting a response.

(2) Standards of conduct.

(A) A respondent and its officers and employees may not attempt to induce any business entity to submit or not to submit a response.

(B) A respondent and its officers and employees must arrive at its response independently and without consultation, communication, or agreement for the purposes of restricting competition.

(C) A respondent and its officers and employees may not have a relationship with any person, at the time of submitting the response or during the contract term, that may interfere with fair competition.

(D) A respondent and its officers and employees may not participate in the development of specific criteria for award of the contract, nor participate in the selection of the response to be awarded the contract.

(d) The local authority may not contract with a former officer or employee of the local authority if the contract relates to a particular matter (as defined) in which the former officer or employee participated (as defined) 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, unless:

(1) the former employee was compensated on the last day 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) the former officer or employee is employed by a state agency or another local authority.

(e) The local authority must ensure that its contractors comply with all contract provisions regardless of whether a contractor subcontracts some or all of the contract.

(f) A local authority may make advance payments to a contractor provided the payments meet a public purpose, ensure adequate consideration, and sufficient controls are in place to ensure accomplishment of the public purpose. With the exception of contracts paid on a capitated basis, at the end of each contract term the contractor must return to the local authority any state or federal funds received from or through TDMHMR which have not been encumbered.

(g) The local authority is prohibited from contracting with a business entity that is currently:

(1) held in abeyance or barred from the award of a federal or state contract; or

(2) is not in good standing for state tax, pursuant to the Texas Business Corporation Act, Texas Civil Statutes, Article 2.45.

(h) The local authority must ensure each contractor is provided information relating to the local authority's policies and procedures that are relevant to the contractor.

(i) The local authority shall ensure quality community services are provided to consumers, including during the transition from one contractor to another.

(j) When purchasing goods and services, the local authority shall comply with the Uniform Grant and Contracts Management Standards (UGMS) promulgated by the Governor's Office of Budget and Planning (pursuant to the Texas Government Code, Chapter 783, and 1 TAC, Part 1, Chapter 5, Subchapter A, Division 4), except to the extent that any provision in §412.55(a)(2) of this title (relating to Contract Procurement) conflicts with UGMS, Part III (State Uniform Administrative Requirements for Grants and Cooperative Agreements), Subpart C (Post-Award Requirements; Changes Property, and Subawards), Section __.36(d) (Procurement), then §412.55(a)(2) of this title (relating to Contract Procurement) shall control. In UGMS:

- (1) the terms "recipient" and "grantee" apply to TDMHMR;
- (2) the terms "subrecipient" and "subgrantee" apply to the local authority; and
- (3) the terms "vendor" and "subcontractor" apply to a contractor (as defined in this subchapter), unless the contractor operates as a "subgrantee" as defined under UGMS, Part III (State Uniform Administrative Requirements for Grants and Cooperative Agreements), Subpart a (General), Section __.3 (Definitions).

HISTORY: The provisions of this § 412.54 adopted to be effective April 22, 2001, 26 TexReg 2845

§ 412.55. Procurement

(a) Procurement method. The local authority must develop and enforce procurement procedures that comply with this subchapter.

(1) Goods and non-community services. The local authority must acquire goods and non-community services by any procurement method described in the Uniform Grant and Contracts Management Standards (UGMS), Section __.36(d), that provides the best value to the local authority.

(2) Community services. The local authority must acquire community services by a procurement method described in this subchapter that provides the best value to the local authority. All community services must be procured competitively in accordance with §412.58 of this title (relating to Competitive Procurement of Community Services Contracts) unless the local authority determines that the community service(s):

- (A) can be procured non-competitively in accordance with §412.59 of this title (relating to Non-competitive Procurement of Community Services Contracts); or
- (B) should be procured through open enrollment in accordance with §412.60 of this title (relating to Open Enrollment).

(b) Relevant factors. The local authority must consider all relevant factors in determining best value, which may include:

- (1) any installation cost;
- (2) the delivery terms;
- (3) the quality and reliability of the respondent's goods or services;
- (4) the extent to which the goods or services meet the local authority's needs;

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

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

(7) the total long term cost to the local authority of acquiring the respondent's goods or services;

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

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

(10) the acquisition price;

(11) whether the respondent can perform the contract or provide the service(s) within the contract term, without delay or interference;

(12) the respondent's history of compliance with the laws relating to its business operations and the affected service(s) and whether it is currently in compliance;

(13) whether the respondent's financial resources are sufficient to perform the contract and to provide the service(s);

(14) whether necessary or desirable support and ancillary services are available to the respondent;

(15) the character, responsibility, integrity, reputation, and experience of the respondent;

(16) the quality of the facilities and equipment available to or proposed by the respondent;

(17) the ability of the respondent to provide continuity of services;

(18) the ability of the respondent to meet all applicable written policies, principles, and regulations; and

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

(c) Award. All contracts must be awarded based on best value, as determined by considering all relevant factors.

(d) Renewal of community services contracts. The local authority may renew a community services contract only if the contract meets best value as determined by considering all relevant factors.

HISTORY: The provisions of this § 412.55 adopted to be effective April 22, 2001, 26 TexReg 2845

§ 412.56. Community Services Contracting Requirements

(a) The local authority is prohibited from amending a community services contract:

- (1) to increase the contract amount by more than 25%; or
- (2) to add a new community service unless the contract was procured through open enrollment.

(b) Upon written request by an unsuccessful respondent, the local authority must provide information concerning why the respondent's response was not selected for award.

(c) The local authority must develop written procedures that provide respondents an opportunity to protest a contract award.

(1) The procedures must allow respondents to protest matters relating to:

- (A) alleged conflict of interests;

(B) alleged failure of the local authority to comply with statute or rule; and

(C) alleged failure of the local authority to comply with its procurement procedures.

(2) The procedures must describe the local authority's process for reviewing and resolving protests.

(d) The local authority must maintain for five years or until the end of any litigation concerning the contract the following contract management documentation:

(1) justification for non-competitive procurement as permitted in § 412.59(a) of this title (relating to Non-competitive Procurement of Community Services Contracts), if applicable;

(2) the solicitation and any modifications or revisions made to the solicitation;

(3) all responses to the solicitation and any modifications or revisions made to such responses;

(4) the evaluations of all responses and evidence that the local authority considered all relevant factors;

(5) written correspondence between the local authority and respondents prior to contract award;

(6) optional or required credentials (certifications, licenses, accreditations), if any;

(7) written protests, if any, and their disposition;

(8) the executed contract;

(9) written correspondence between the local authority and the contractor concerning the contractor's performance; and

(10) copies of any audits performed or required by the local authority.

HISTORY: The provisions of this § 412.56 adopted to be effective April 22, 2001, 26 TexReg 2845

§ 412.57. Provisions for Community Services Contracts

(a) The local authority must ensure that all its community services contracts are consistent with the local authority's performance contract and with the model contracts designed by TDMHMR as required by the Texas Health and Safety Code, § 534.055(c).

(b) The local authority must include in all of its community services contracts that are funded by TDMHMR provisions stating:

(1) the contract term;

(2) the community service(s) to be purchased;

(3) the identification of all parties;

(4) the total allowable payment or, if the community service is procured through open enrollment or is on a capitated basis, the rate of payment;

(5) the method of payment;

(6) that the contractor must comply with all applicable federal and state laws, rules, and regulations, including:

(A) Title VI of the Civil Rights Act of 1964;

(B) Section 504 of the Rehabilitation Act of 1973;

(C) the Americans with Disabilities Act of 1990 (ADA); and

(D) the Age Discrimination in Employment Act of 1967;

(7) that if, as a result of a change to a TDMHMR rule or state or federal law, the contractual obligations of the contractor are materially changed or a significant financial burden is placed on the contractor, then the parties may renegotiate in good faith to amend the contract;

(8) that no consumer will be excluded from participation in, denied the benefits of, or unlawfully discriminated against, in any program or activity funded

by the contract on the grounds of race, color, ethnicity, national origin, religion, sex, age, disability, or political affiliation in accordance with applicable laws;

(9) that all documents pertinent to the contract, including consumer records, will be retained by the contractor for a period of five years;

(10) that all consumer-identifying information will be maintained by the contractor as confidential in accordance with applicable law and Chapter 414, Subchapter a of this title (relating to Client-Identifying Information);

(11) that the contractor, its licensed staff, and other appropriate staff (such as QMHP-CS) will be credentialed before services are delivered to consumers by such contractor and staff;

(12) a dispute resolution process;

(13) the clearly defined performance expectations which directly relate to the community service's objectives, including goals, outputs, and measurable outcomes, and that the contractor must provide services in accordance with such expectations;

(14) that any allegation of abuse, neglect, or exploitation of a consumer under the contract will be reported in accordance with applicable law, TDMHMR rules, and Texas Department of Protective and Regulatory Services rules;

(15) that AIDS/HIV workplace guidelines, similar to those adopted by TDMHMR and AIDS/HIV confidentiality guidelines and consistent with state and federal law, will be adopted and implemented by the contractor;

(16) that the contractor will comply with the relevant TDMHMR rules, certifications, accreditations, and licenses, that are specified in the contract;

(17) that services will be provided in accordance with consumers' treatment plans;

(18) that pursuant to Texas Health and Safety Code, § 534.061, TDMHMR, the local authority, and their designees, including independent financial auditors, shall have, with reasonable notice, unrestricted access to all facilities, records, data, and other information under the control of the contractor as necessary to enable the local authority to audit, monitor, and review all financial and programmatic activities and services associated with the contract;

(19) any sanctions and remedies the local authority may take in response to the contractor's failure to comply with the contract provisions; and

(20) that the contractor will immediately notify the local authority of any change, or potential change, in its status that could affect its inclusion in the provider network.

(c) The local authority must include in all of its community services contracts for residential services that are funded by TDMHMR provisions stating:

(1) that the contractor shall provide evidence of criminal history record information on the contractor's applicants, employees, and volunteers, pursuant to the Texas Health and Safety Code, § 533.007 and Chapter 250; the Texas Government Code, § 411.115; and Chapter 414, Subchapter K of this title (relating to Criminal History Clearances); and

(2) that if an applicant, employee, or volunteer of the contractor has a criminal history relevant to his or her employment as described in Chapter 414, Subchapter K of this title (relating to Criminal History Clearances), then the contractor will take appropriate action with respect to the applicant, employee, or volunteer, including

terminating or removing the employee or volunteer from direct contact with consumers served by the contractor.

(d) Community services contracts that require the contractor to assume responsibility for the funds of a consumer must contain provisions requiring the contractor to have and abide by a written policy, which is subject to approval by the local authority, for protecting and accounting for such funds in accordance with generally accepted accounting principles.

HISTORY: The provisions of this § 412.57 adopted to be effective April 22, 2001, 26 TexReg 2845

§ 412.58. Competitive Procurement Methods for Community Services

Competitive procurement methods for community services are as follows.

(1) Informal solicitation.

(A) Determination. The local authority may competitively procure community services through informal solicitation if the contract amount does not exceed \$ 25,000.

(B) Solicitation.

(i) The local authority must solicit business entities that provide the type of community service(s) being procured and attempt to obtain at least three responses for the service's specifications. Solicitation and responses may be oral, written, or electronic.

(ii) Documentation for informal solicitation must include:

(I) the names and telephone numbers of the business entities contacted and the date of contact;

(II) the specifications for the community service(s); and

(III) all responses.

(C) Award. The award of a contract procured through informal solicitation is made in accordance with § 412.55(c) of this title (relating to Contract Procurement).

(2) Request for proposals (RFP).

(A) Determination. The local authority may competitively procure community services through an RFP.

(B) Solicitation.

(i) The local authority must make a reasonable effort to give notice of its intent to contract for community services to providers of the community service(s) in the authority's local service area. The local authority must publish an RFP Notice in a local newspaper or professional association newsletter or announce by direct mail to all known providers of those community service(s) at least 10 calendar days, but not more than 90 calendar days, prior to the due date for the submission of proposals. An RFP Notice must include:

(I) the contract term;

(II) a general description of the community service(s) to be purchased;

(III) the geographic area to be served;

(IV) any limitations on who may submit a proposal;

(V) the procedures for obtaining an RFP; and

(VI) the date and time by which proposals must be received by the local authority.

(ii) The local authority must provide an RFP to each business entity that requests one. The local authority may not restrict competition by unreasonably eliminating or limiting participation in the procurement process. An RFP must include:

(I) a detailed description of the community service(s) to be purchased, the consumer eligibility criteria, and all other information included in the RFP Notice;

(II) the approximate number of consumers to be served pursuant to the contract;

(III) method of payment;

(IV) a detailed description of information to be included in a proposal;

(V) instructions for the submission of questions concerning the procurement;

(VI) instructions for the submission of proposals;

(VII) respondent eligibility requirements for contract award (e.g., credentials for providing the community service(s), such as applicable certifications, licenses; evidence of compliance or ability to comply with relevant TDMHMR rules; evidence of accessibility; evidence of financial solvency; and evidence of liability insurance);

(VIII) assurances that:

(-a-) the respondent has no conflict of interest and meets the standards of conduct requirements pursuant to § 412.54(c) of this title (relating to Accountability);

(-b-) the respondent is not currently held in abeyance or barred from the award of a federal or state contract; and

(-c-) the respondent is not delinquent in a tax owed the state under Chapter 171, Tax Code, pursuant to the Texas Business Corporation Act, Texas Civil Statutes, Article 2.45;

(IX) the criteria for evaluation of proposals and contract award; and

(X) all relevant factors the local authority will use to determine best value.

(iii) A proposal must include:

(I) the respondent's name, address, telephone number, and type of business entity; and

(II) all information required in paragraphs (2)(B)(ii)(IV), (VII), and (VIII) of this subsection.

(iv) Changes to an RFP may be made by the local authority prior to the date designated for submission of proposals if everyone who has obtained an RFP is notified of the changes and is provided equal opportunity to respond.

(v) The local authority must keep all information contained in proposals confidential until a contract has been awarded.

(vi) Any changes to a proposal must be made by the respondent in writing and must be received by the local authority prior to the submission date and time.

(vii) The local authority may validate any information in a proposal by using outside sources or materials.

(C) Award.

(i) For a proposal to be considered for award, the respondent must follow the instructions and meet the requirements specified in the RFP.

(ii) After the proposal submission date, the local authority may obtain clarification or confirmation of information submitted in a proposal if such information is necessary to complete the award process; however, no respondent may be given information which would give that respondent a competitive advantage over any other respondent.

(iii) Negotiations may be conducted with a respondent to complete the procurement process or to complete an evaluation of a proposal.

(I) If only one proposal is received that may be considered for award, the local authority and the respondent may negotiate the contract requirements as necessary to complete the procurement process.

(II) If more than one proposal is received that may be considered for award, the local authority may negotiate to further evaluate proposals and to select one or more respondents for award; however, no respondent may be given information which will give that respondent a competitive advantage over any other respondent.

(iv) The award of a contract procured through an RFP must be made in accordance with § 412.55(c) of this title (relating to Contract Procurement).

(v) The local authority may cancel an RFP without award.

HISTORY: The provisions of this § 412.58 adopted to be effective April 22, 2001, 26 TexReg 2845

§ 412.59. Non-competitive Procurement of Community Services

(a) Determination. The local authority may procure community services non-competitively only if:

(1) the procurement is pursuant to the Texas Health and Safety Code, § 533.017;

(2) the services are proprietary to a single source or only one source can or will provide the service;

(3) the services will be provided by a governmental entity;

(4) there exists an emergency situation in which a delay may result in harm to a consumer who is to receive the community service;

(5) the services are for less than \$ 5000 and the total amount was not divided to qualify for a non-competitive procurement; or

(6) a competitive procurement was attempted and either no qualified response or only one qualified response was received.

(b) Award. The award of a contract procured non-competitively must be made in accordance with § 412.55(c) of this title (relating to Contract Procurement).

HISTORY: The provisions of this § 412.59 adopted to be effective April 22, 2001, 26 TexReg 2845

§ 412.60. Open Enrollment

(a) Determination. The local authority may issue a Request for Applications (RFA) to procure community services through open enrollment in accordance with this section.

(b) Solicitation.

(1) The local authority must publish in a local newspaper or professional association newsletter an RFA Notice to providers of all community services the local authority intends to procure through open enrollment. In addition, the local authority must continuously and prominently display such RFA Notice at the local authority's administrative office(s). At least once every two years the local authority must publish in a local newspaper or professional association newsletter an RFA Notice to providers of all community services currently procured through open enrollment. The RFA Notice must include:

(A) a brief description of the types of community services the local authority intends to procure through open enrollment;

(B) the geographic area to be served;

(C) the procedure for obtaining an application; and

(D) the date and time by which applications must be submitted, if any.

(2) A local authority must provide an application to each business entity that requests one. An RFA must include:

(A) a detailed description of each type of community service the local authority intends to procure through open enrollment, the consumer eligibility criteria, and all other information included in the RFA Notice;

(B) the rate of payment for each type of community service and the method used to determine that rate;

(C) a detailed description of the information to be included in an application;

(D) instructions for the submission of applications;

(E) respondents eligibility requirements for contract award (e.g., credentials for providing the community service(s), such as applicable certifications, licenses; evidence of compliance or ability to comply with relevant TDMHMR rules; evidence of accessibility; evidence of providing quality services; evidence of financial solvency; and evidence of liability insurance); and

(F) assurances that:

(i) the respondent is not currently held in abeyance or barred from the award of a federal or state contract; and

(ii) the respondent is currently in good standing for state tax, pursuant to the Texas Business Corporation Act, Texas Civil Statutes, Article 2.45.

(3) An application must include the following information:

(A) the respondent's name, address, telephone number, and type of business entity;

(B) all information required in paragraph (2)(C), (E), and (F) of this subsection; and

(C) a statement that the respondent agrees to provide the specified community service(s) at the rate of payment described in the RFA.

(c) Award.

(1) The local authority may obtain clarification or confirmation of information submitted in an application.

(2) The local authority must award a contract to all respondents whose applications are complete and who meet all requirements specified in the RFA.

(3) All contracts for each type of community service provided through open enrollment must contain the same contract term, conditions, provisions, and requirements, including a statement that the contractor is prohibited from:

(A) offering any gift with a value in excess of \$ 10 to potential consumers; and

(B) soliciting potential consumers through direct-mail or by telephone.

HISTORY: The provisions of this § 412.60 adopted to be effective April 22, 2001, 26 TexReg 2845

§ 412.61. Consumer Access to Participating Community Services Contractors in Provider Network

(a) The local authority must maintain, and make available to consumers, current information about each community services contractor participating in its provider network. The information must represent all participating contractors fairly and must be organized and relevant to consumers.

(b) The local authority must allow consumers to choose freely, without influence by any local authority staff or representative, any contractor participating in the provider

network that provides the type of community service which the local authority has authorized for the consumer.

HISTORY: The provisions of this § 412.61 adopted to be effective April 22, 2001, 26 TexReg 2845

§ 412.62. Monitoring and Enforcing Community Services Contracts

(a) Monitoring. The local authority must maintain a contracts management system that ensures each community services contractor performs in accordance with the provisions of the contract. The local authority shall monitor each community services contractor's compliance with the contract and evaluate the contractor's provision of services, including:

- (1) competency of the contractor to provide care;
- (2) consumers' access to services;
- (3) safety of the environment in which services are provided;
- (4) continuity of care;
- (5) compliance with the performance expectations (referenced in §412.57(b)(13) of this title (relating to Provisions for Community Services Contracts));
- (6) satisfaction of consumers and family members with services provided; and
- (7) utilization of resources.

(b) Enforcing. The local authority shall enforce each community services contract. The local authority shall develop policies and procedures regarding contract enforcement that address the use of at least the following enforcement actions:

- (1) training;
- (2) technical assistance for contractors;
- (3) a plan of correction; and
- (4) sanctions, which may include:
 - (A) withholding or recouping funds;
 - (B) imposing financial penalties;
 - (C) requiring service delivery at no additional cost to the local authority;
 - (D) suspending participation in the provider network;
 - (E) contract amendment; and
 - (F) contract termination.

HISTORY: The provisions of this § 412.62 adopted to be effective April 22, 2001, 26 TexReg 2845

§ 412.63. References

The following laws and rules are referenced in this subchapter:

- (1) Texas Health and Safety Code, Chapter 250, § 533.007, § 533.017, § 533.035, § 534.052, § 534.055, § 534.061, § 534.065, and § 534.066;
- (2) Tax Code, Chapter 171;
- (3) Texas Civil Statutes, Article 2.45;
- (4) Texas Government Code, Chapter 783, and § 411.115;
- (5) Title VI of the Civil Rights Act of 1964;
- (6) Section 504 of the Rehabilitation Act of 1973;
- (7) the Americans with Disabilities Act of 1990 (ADA);
- (8) the Age Discrimination in Employment Act of 1967;
- (9) 1 TAC, Part 1, Chapter 5, Subchapter A, Division 4;
- (10) Chapter 414, Subchapter a of this title (relating to Client-Identifying Information); and
- (11) Chapter 414, Subchapter K of this title (relating to Criminal History Clearances).

HISTORY: The provisions of this § 412.63 adopted to be effective April 22, 2001, 26 TexReg 2845

§ 412.64. Distribution

This subchapter shall be distributed to:

- (1) members of the Texas MHMR Board;
- (2) executive, management, and program staff of Central Office;
- (3) chairpersons, board of trustees or governing body, and executive directors, all local authorities; and
- (4) advocacy organizations.

HISTORY: The provisions of this § 412.64 adopted to be effective April 22, 2001, 26 TexReg 2845

Subchapter C.

Charges for Community Services

§ 412.101. Purpose

The purpose of this subchapter is to comply with the Texas Health and Safety Code, § 534.067, by establishing a uniform fee collection policy for local mental health authorities that:

- (1) is equitable;
- (2) provides for collections; and
- (3) maximizes contributions to local revenue.

HISTORY: The provisions of this § 412.101 adopted to be effective September 1, 2002, 27 TexReg 2041; amended to be effective September 15, 2005, 30 TexReg 5806

§ 412.102. Application

(a) This subchapter applies to all local mental health authorities for community services contracted for through the performance contract that the authority provides directly or through subcontractors to members of the priority population. This subchapter also applies to persons in the priority population, and parents of persons under age 18 years in the priority population, who are seeking or receiving services.

(b) This subchapter does not apply to:

- (1) programs and services that are prohibited by statute or regulation from charging fees to persons served (e.g., Early Childhood Intervention Program);
- (2) the department's In-Home and Family Support Program;
- (3) inpatient services in a state mental health facility and non-crisis residential services as described in the performance contract; and
- (4) specialized services mandated by the Omnibus Budget Reconciliation Act (OBRA) of 1987, as amended by OBRA 90, for preadmission screening and annual resident reviews (PASARR) provided to non-Medicaid eligible persons.

(c) In this subchapter all references to a parent means the requirement is applicable to the parent of a person under age 18 years who is in the priority population and who is seeking or receiving services.

HISTORY: The provisions of this § 412.102 adopted to be effective September 1, 2002, 27 TexReg 2041; amended to be effective September 15, 2005, 30 TexReg 5806

§ 412.103. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

- (1) Ability to pay—The person has third-party coverage that will pay for needed services, the person's

maximum monthly fee is greater than zero, or the person has identified payment for a needed service or services in an approved plan utilizing Social Security work incentive provisions (i.e., Plan to Achieve Self-Sufficiency; Impairment Related Work Expense).

(2) Community services or services—Except for inpatient services in a state mental health facility and non-crisis residential services, the required and optional mental health services described in the performance contract, including:

(A) 24-hour emergency screening and rapid crisis stabilization services;

(B) community-based crisis residential services or inpatient services in a mental health facility that is not a state mental health facility;

(C) community-based assessments, including the development of interdisciplinary treatment plans, and diagnosis and evaluation services;

(D) family support services, including respite care;

(E) case management services;

(F) medication-related services, including medication clinics, laboratory monitoring, medication education, mental health maintenance education, and the provision of medication; and

(G) psychosocial rehabilitation programs, including social support activities, independent living skills, and vocational training.

(3) Department—The Department of State Health Services.

(4) Extraordinary expenses—Major medical or health related expenses, major casualty losses, and child care expenses for the previous year or projections for the next year.

(5) Family members—

(A) For an unmarried person under the age of 18 years—The person, the person's parents, and the dependents of the parents, if residing in the same household;

(B) For an unmarried person age 18 years or older—The person and his/her dependents;

(C) For a married person of any age—The person, his/her spouse, and their dependents.

(6) Full subsidy eligible individual—An individual who has income below 135 percent of the federal poverty level applicable to the individual's family size and has resources that do not exceed the limits specified in 42 CFR § 423.773(b). A full subsidy individual is eligible to receive premium and cost-sharing subsidies for Medicare Part D prescription drug plans. All individuals who are dually eligible for Medicaid and Medicare are full subsidy eligible individuals.

(7) Gross income—Revenue from all sources before taxes and other payroll deductions. The term does not include child support received.

(8) Inability to pay—The person's maximum monthly fee is zero and the person:

(A) does not have third-party coverage;

(B) has third-party coverage, but has exceeded the maximum benefit of the covered service(s) or the third-party coverage will not pay because the services needed by the person are not covered services; or

(C) has not identified payment for a needed service or services in an approved plan utilizing Social Security work incentive provisions (i.e., Plan to Achieve Self-Sufficiency; Impairment Related Work Expense).

(9) Income-based public insurance—Government funded third-party coverage that bases eligibility on income e.g., CHIP and Medicaid.

(10) LMHA or local mental health authority—An entity designated as the local mental health authority by the department in accordance with the Texas Health and Safety Code, § 533.035(a).

(11) Performance contract—A written agreement between the department and a LMHA for the provision of one or more functions as described in the Texas Health and Safety Code, § 533.035(a).

(12) Person—A person in the priority population who is seeking or receiving services through a LMHA.

(13) Priority population—Those groups of persons with mental illness identified in the department's current strategic plan as being most in need of mental health services.

(14) Significant financial change—Any change in the person's (or parent's) financial documentation, as described in §412.105(d) of this title (relating to Accountability), that affects the person's (or parent's) ability to pay. Examples of a significant financial change are:

(A) a reduction in income due to the loss of a job or due to a reduction in hours worked on a job;

(B) an increase in income because of an inheritance or a salary increase;

(C) an increase or decrease in the number of family members;

(D) the gain or loss of third-party coverage; and

(E) an increase or decrease in extraordinary expenses.

(15) Standard charge—A fixed price for a community service or unit of service.

(16) State mental health facility—A state hospital or a state center with an inpatient component.

(17) Team—The interdisciplinary team, multidisciplinary team, or treatment team.

(18) Third-party coverage—A public or private payer of community services for a specific person that is not the person (e.g., Medicaid, Medicare, private insurance, CHIP, TRICARE).

HISTORY: The provisions of this § 412.103 adopted to be effective September 1, 2002, 27 TexReg 2041; amended to be effective September 15, 2005, 30 TexReg 5806

§ 412.104. Principles

The department supports the following principles:

(1) Persons are charged for services based on their ability to pay.

(2) Procedures for determining ability to pay are fair, equitable, and consistently implemented.

(3) Paying for services in accordance with his/her ability to pay reinforces the role of the person as a customer.

(4) Earned revenues are optimized.

(5) The department is the payer of last resort.

HISTORY: The provisions of this § 412.104 adopted to be effective September 1, 2002, 27 TexReg 2041; amended to be effective September 15, 2005, 30 TexReg 5806

§ 412.105. Accountability

(a) Prohibition from denying services. Local mental health authorities are prohibited from denying services to a person:

(1) because of the person's inability to pay for the services;

(2) in crisis because:

- (A) a financial assessment has not been completed;
- (B) financial responsibility has not been determined;
- (C) the person has a past-due account; or
- (D) the person had his/her services involuntarily reduced or terminated for non-payment under §412.109(d) of this title (relating to Payments, Collections, and Non-payment); or

(3) pending resolution of an issue relating solely to payment for services, including failure of the person (or parent) to comply with any requirement in subsections (c), (d), (e), and (g) of this section.

(b) Identifying funding sources. Local authorities are responsible for identifying and accessing available funding sources other than the department, and for assisting persons (and parents) in identifying and accessing available funding sources other than the department, to pay for services. Available funding sources may include third-party coverage, state and/or local governmental agency funds (e.g., crime victims fund), Qualified Medicare Beneficiary (QMB) Program, indigent pharmaceutical programs, or a trust that provides for the person's healthcare and rehabilitative needs.

(c) Requirement for parents to enroll their children in income-based public insurance. Parents of children who may be eligible for Medicaid or the Children's Health Insurance Program (CHIP) must enroll their children in Medicaid or CHIP or provide documentation that they have been denied Medicaid or CHIP benefits or that their Medicaid or CHIP enrollment is pending. The LMHA shall provide assistance as needed to facilitate the enrollment process.

(d) Financial documentation. If requested by the LMHA, persons (or parents) must provide the following financial documentation:

- (1) annual or monthly gross income/earnings, if any;
- (2) extraordinary expenses (as defined) paid during the past 12 months or projected for the next 12 months;
- (3) number of family members (as defined); and
- (4) proof of any third-party coverage.

(e) Authorizing third-party coverage payment to the LMHA. Persons (and parents) with third-party coverage must execute an assignment of benefits authorizing third-party coverage payment to the LMHA.

(f) Failure to comply.

(1) Except as provided by paragraph (2) of this subsection, if the person (or parent) fails to comply with any requirement in subsections (c) - (e) or (h) of this section, then the LMHA will charge the person (or parent) the standard charge(s) for services. If, within 30 days after the person (or parent) initially failed to comply, the person (or parent) complies with the requirements, then the LMHA will adjust the person's account to retroactively reflect compliance.

(2) The LMHA will not charge the person the standard charge(s) for services if the LMHA makes a decision, based on a clinical determination that is documented and includes input from the person's team, that the person's failure to comply is related to the person's mental illness. The clinical determination must be reassessed at least every three months. If the LMHA decides that a person's failure to comply is related to the person's mental illness, then the LMHA must develop and implement a plan to reduce or eliminate the barriers related to the person's failure to comply.

(g) Requirement for adult persons to apply for SSI to become eligible for Medicaid. Adult persons who may be eligible for Medicaid must apply for Supplemental Security

Income (SSI) or provide documentation that they have been denied SSI or that their SSI application is pending. The LMHA shall provide assistance as needed to facilitate all aspects of the application process. If the adult person is unable to act in accordance with the requirement because of the person's mental illness, then the LMHA must develop and implement a plan to reduce or eliminate the barriers related to the person's inability to act in accordance with the requirement.

(h) Requirement for persons to enroll in Medicare Part D prescription drug plan.

(1) A person who is a full subsidy eligible individual under Medicare Part D must choose and enroll in a Medicare Part D prescription drug plan.

(2) The LMHA shall educate persons who are not full subsidy eligible individuals about the benefits of enrollment in a Medicare Part D prescription drug plan. The LMHA shall assess whether enrollment in a Medicare Part D prescription drug plan will be cost effective to the person and to the LMHA and shall provide the results of this assessment to the person to assist him or her determine whether to enroll in a Medicare Part D prescription drug plan. If the person decides to enroll in a Medicare Part D prescription drug plan, The LMHA may pay the person's incurred costs under the Medicare Part D prescription drug plan.

(3) The LMHA shall provide assistance as needed to facilitate all aspects of the Medicare Part D enrollment process. If the person is unable to act in accordance with the requirements set forth in paragraph (1) or (2) of this subsection because of the person's mental illness, lack of adequate notification, or other circumstances beyond the individual's control, the LMHA shall continue to provide medications and must develop and implement a plan to reduce or eliminate the barriers related to the person's inability to act in accordance with the requirement.

HISTORY: The provisions of this § 412.105 adopted to be effective September 1, 2002, 27 TexReg 2041; amended to be effective September 15, 2005, 30 TexReg 5806

§ 412.106. Determination of Ability to Pay

(a) Financial assessment. The LMHA must conduct and document a financial assessment for each person within the first 30 days of services. The LMHA must update each person's financial assessment at least annually and whenever a significant financial change (as defined) occurs as long as the person continues to receive services. The financial assessment is accomplished using the financial documentation listed in §412.105(d) of this title (relating to Accountability), which represents the finances of the:

- (1) person who is age 18 years or older and the person's spouse; or
- (2) parents of the person who is under age 18 years.

(b) Maximum monthly fee. a person's maximum monthly fee is based on the financial assessment and calculated using the Monthly Ability-To-Pay Fee Schedule, referenced as Exhibit a in §412.113 of this title (relating to Exhibit). The calculation is based on the number of family members and annual gross income, reduced by extraordinary expenses paid during the past 12 months or projected for the next 12 months. No other sliding scale is used.

(1) A maximum monthly fee that is greater than zero is established for persons who are determined as having an ability to pay. If two or more members of the same family are receiving services, then the maximum monthly fee is for the family.

(2) A maximum monthly fee of zero is established for persons who are determined as having an inability to pay.

(c) Third-party coverage.

(1) Third-party coverage that will pay. a person with third-party coverage that will pay for needed services is determined as having an ability to pay for those services.

(2) Third-party coverage that will not pay.

(A) If the person's third-party coverage will not pay for needed services because the LMHA does not have an approved provider on its network, then the LMHA will propose to refer the person to his/her third-party coverage to identify a provider for which the third-party coverage will pay unless:

(i) the LMHA is identified as being responsible for providing court-ordered outpatient services to the person;

(ii) the LMHA is able to negotiate adequate payment for services with the person's third-party coverage; or

(iii) the person (or parent) voluntarily agrees to pay the standard charge(s) for the needed service(s).

(B) If the LMHA proposes to refer the person to his/her third-party coverage as described in paragraph (2)(A) of this subsection, then the LMHA will provide written notification to the person (or parent) in accordance with § 412.109(e)(1) of this title (relating to Payments, Collections, and Non-payment), which provides an opportunity to appeal. The LMHA must also comply with § 412.109(e)(2) - (3) as initiated by the person (or parent).

(C) If the LMHA refers the person to his/her third-party coverage, then the LMHA will assist the person (or parent) in identifying a provider for which the third-party coverage will pay.

(D) If a person who has been referred to his/her third-party coverage is unable to identify or access needed services from an approved provider or if access will be unduly delayed, then the LMHA will:

(i) assist the person (or parent) in resolving the matter with the third-party coverage (e.g., contacting customer service at the third-party coverage, filing a complaint with the third-party coverage or the Texas Department of Insurance); and

(ii) if clinically indicated, ensure the provision of the needed services to the person pending resolution.

(E) The LMHA will maintain documentation of:

(i) all referrals as described in paragraph (2)(C) of this subsection;

(ii) all assistance as described in paragraph (2)(D) (i) of this subsection; and

(iii) whether the person received services pending resolution as described in paragraph (2)(D)(ii) of this subsection.

(d) Social Security work incentive provisions. a person who identified payment for specific needed services in his/her approved plan utilizing Social Security work incentive provisions (i.e., Plan to Achieve Self-Sufficiency; Impairment Related Work Expense) is determined as having an ability to pay for the specific services. Persons are not required to identify payment for any service for which they may be eligible as part of their approved plan for utilizing the Social Security work incentive provisions.

(e) Notification. After a financial assessment is conducted, the LMHA must provide written notification to the person (or parents) that includes:

(1) the determination of whether the person (or parent) has an ability or an inability to pay;

(2) a copy of the financial assessment form that is signed by the person (or parent) and a copy of the Monthly Ability-to-Pay Fee Schedule, with the applicable areas indicated (i.e., annual gross income, number of family members);

(3) the amount of the maximum monthly fee;

(4) the name and phone number of at least one LMHA staff who the person (or parent) may contact during office hours to discuss the information contained in the written notification; and

(5) a statement that the person (or parent) may voluntarily pay more than the maximum monthly fee.

§ 412.107. Standard Charges

Each LMHA must establish, at least annually, a reasonable standard charge for each community service as indicated in the performance contract. The standard charge must cover, at a minimum, the LMHA's cost of ensuring the provision of the service.

HISTORY: The provisions of this § 412.107 adopted to be effective September 1, 2002, 27 TexReg 2041; amended to be effective September 15, 2005, 30 TexReg 5806

§ 412.108. Billing Procedures

(a) Monthly account.

(1) The LMHA will maintain a monthly account for each person that lists all services provided to the person during the month and the standard charges for the services. Each service listed will indicate whether the service is:

(A) covered by Medicare third-party coverage;

(B) covered by non-Medicare third-party coverage;

(C) not covered by third-party coverage; or

(D) identified for payment in the person's approved plan utilizing Social Security work incentive provisions.

(2) If a person has exceeded the maximum third-party coverage benefit of a particular covered service, then that service is indicated as not covered by third-party coverage.

(b) Accessing funding sources. The LMHA must access all available funding sources before using the department's funds to pay for a person's services. Funding sources may include third-party coverage, state and/or local governmental agency funds (e.g., crime victims fund), Qualified Medicare Beneficiary (QMB) Program, indigent pharmaceutical programs, or a trust that provides for the person's healthcare and rehabilitative needs.

(c) Billing third-party coverage. The LMHA will bill the person's third-party coverage the monthly account amount for covered services. If the LMHA has negotiated a reimbursement amount with the third-party coverage that is different from the monthly account amount, then the LMHA may bill the third-party coverage the negotiated reimbursement amount for covered services.

(d) Billing the person (or parents).

(1) No third-party coverage. If the monthly account amount for services not covered by third-party coverage:

(A) exceeds the person's maximum monthly fee (MMF), then the amount is reduced to equal the MMF and the LMHA bills person (or parent) the MMF; or

(B) is less than the person's MMF, then the LMHA bills the person (or parent) the monthly account amount for services not covered by third-party coverage.

(2) Medicare third-party coverage. Nothing in this paragraph is intended to conflict with any applicable law, rule, or regulation with which a LMHA must comply.

(A) The following amounts are added to equal the total amount applied toward the person's MMF: (i) the amount of all applicable co-payments and co-insurance for services listed in the monthly account as covered by Medicare third-party coverage; (ii) the amount Medicare third-party coverage was billed but did not pay because the deductible hasn't been met; and (iii) the monthly account amount for services not covered by third-party coverage.

(B) If the total amount applied toward the person's MMF as described in paragraph (2)(A) of this subsection: (i) exceeds the person's MMF, then the amount is reduced to equal the MMF and the LMHA bills person (or parent) the MMF; or (ii) is less than the person's MMF, then the LMHA bills the person (or parent) the total amount applied toward the MMF.

(3) Non-Medicare third-party coverage.

(A) Cost-sharing exceeds MMF. If the amount of all applicable co-payments, co-insurance, and deductibles for services listed in the monthly account as covered by non-Medicare third-party coverage exceeds the person's MMF, then the LMHA bills the person (or parent) all applicable co-payments, co-insurance, and deductibles.

(B) Cost-sharing does not exceed MMF. (i) If the amount of all applicable co-payments, co-insurance, and deductibles for services listed in the monthly account as covered by non-Medicare third-party coverage does not exceed the person's MMF, then the following amounts are added to equal the total amount applied toward the person's MMF:

(I) the amount of all applicable co-payments, co-insurance, and deductibles; and

(II) the monthly account amount for services not covered by third-party coverage. (ii) If the total amount applied toward the person's MMF as described in paragraph (3)(B) of this subsection:

(I) exceeds the person's MMF, then the amount is reduced to equal the MMF and the LMHA bills person (or parent) the MMF; or

(II) is less than the person's MMF, then the LMHA bills the person (or parent) the total amount applied toward the MMF.

(C) Annual cost-sharing limit. If the person (or parent) has reached his/her annual cost-sharing limit (i.e., maximum out-of-pocket expense) as verified by the non-Medicare third-party coverage, then the LMHA will not bill the person (or parent) any co-payments, co-insurance, or deductibles, as applicable to the annual cost-sharing limit, for services covered by the non-Medicare third-party coverage for the remainder of the policy-year.

(4) Social Security work incentive provisions.

(A) If the person identified a payment amount for specific services in his/her approved plan utilizing Social Security work incentive provisions (i.e., Plan to Achieve Self-Sufficiency; Impairment Related Work Expense), then the LMHA bills the person the monthly account amount for the specific services up to the identified payment amount. If the monthly account amount for the specific services is greater than the identified payment amount, then the remaining balance is applied toward the person's MMF.

(B) The following amounts are added to equal the total amount applied toward the person's MMF: (i) any

remaining balance as described in paragraph (4)(A) of this subsection; and (ii) the monthly account amount for services not covered by third-party coverage.

(C) If the total amount applied toward the person's MMF as described in paragraph (4)(B) of this subsection: (i) exceeds the person's MMF, then the amount is reduced to equal the MMF and the LMHA bills person (or parent) the MMF; or (ii) is less than the person's MMF, then the LMHA bills the person (or parent) the total amount applied toward the MMF.

(e) Statements.

(1) The LMHA will send to persons (and parents) who have been determined as having the ability to pay monthly or quarterly statements that include:

(A) an itemized list, at least by date and by type, of all services provided during the period;

(B) the standard charge for each service;

(C) the total charge for the period;

(D) the amount paid (or to be paid) by each funding source; and

(E) the amount to be paid by the person (or parent).

(2) Unless requested otherwise, the LMHA does not send statements to persons (or parents) who have an ability to pay if they maintain a zero balance (i.e., the person (or parent) does not currently owe any money).

(3) Unless requested otherwise, the LMHA does not send statements to persons (or parents) who have an inability to pay.

HISTORY: The provisions of this § 412.108 adopted to be effective September 1, 2002, 27 TexReg 2041; amended to be effective September 15, 2005, 30 TexReg 5806; amended to be effective February 19, 2017, 42 TexReg 561

§ 412.109. Payments, Collections, and Non-payment

(a) Payment and collection.

(1) Persons (and parents) are responsible for promptly paying all charges owed to the LMHA.

(2) The LMHAs are responsible for making reasonable efforts to collect payments from all available funding sources before accessing the department's funds to pay for persons' services.

(b) Financial hardship. If a person (or parent) claims financial hardship as provided in this subsection, then the LMHA must determine whether a significant financial change (as defined) has occurred. If a significant financial change has occurred, then the LMHA must immediately update the person's (or parent's) financial assessment as required in § 412.106(a) of this title (relating to Determination of Ability to Pay).

(1) If a person (or parent) claims, and provides documentation, that financial hardship prevents prompt payment of all charges owed, then the LMHA may arrange for the person (or parent) to pay a lesser amount each month.

(2) If a person (or parent) claims that financial hardship prevents prompt payment of all charges owed, then the LMHA must arrange for the person (or parent) to pay a lesser amount each month only if the person has third-party coverage that is neither income-based public insurance nor Medicare and the person's cost-sharing exceeds his/her MMF. The lesser amount:

(A) will be no more than the person's MMF, if the person's MMF is greater than zero; or

(B) will be no more than \$ 5.00, if the person's MMF is zero.

(3) Although the person (or parent) may pay a lesser amount each month because a portion of the charges will

be deferred, the person (or parent) is still responsible for paying all charges owed.

(c) Discontinuing charges to persons (or parents) for services. If the LMHA makes a decision, based on a clinical determination that is documented and includes input from the person's team, that being charged for services and receiving statements will result in a reduction in the functioning level of the person or the person's (or parent's) refusal or rejection of the needed services, then the LMHA will discontinue charging the person (or parent) for services and stop sending statements. The clinical determination must be reassessed at least every three months. If the LMHA decides to discontinue charging the person (or parent) for services, then the LMHA must develop and implement a plan to address the issues related to the person's functioning level or the person's (or parent's) refusal or rejection of the needed services.

(d) Involuntary reduction or termination of services for non-payment by person (or parent).

(1) The LMHA will address the past-due account of a person (or parent) who is not making payments to ensure reasonable efforts to secure payments are initiated with the person (or parent). For example, if the LMHA determines that non-payment is related to financial hardship, then the LMHA may assist the person (or parent) in making arrangements to pay a lesser amount each month in accordance with subsection (a)(2) of this section or if the LMHA makes a decision, based on a clinical determination that is documented and includes input from the person's team, that non-payment is related to the person's mental illness, then the person's treatment/service plan may be modified to address the non-payment.

(2) If the LMHA makes a decision, based on a clinical determination that is documented and includes input from the person's team, that non-payment is not related to the person's mental illness and, despite reasonable efforts to secure payment, the person (or parent) does not pay, then the LMHA may propose to involuntarily reduce or terminate the person's services. The LMHA may not propose to involuntarily reduce or terminate the person's services if the proposed action would cause the person's mental or physical health to be at imminent risk of serious deterioration or the LMHA is identified as being responsible for providing court-ordered outpatient services to the person.

(3) If the LMHA proposes to involuntarily reduce or terminate the person's services, then the LMHA must:

(A) maintain clinical documentation that the proposed action would not cause the person's mental or physical health to be at imminent risk of serious deterioration;

(B) provide written notification to the person (or parent) in accordance with subsection (e)(1) of this section and comply with subsection (e)(2) - (3) as initiated by the person (or parent).

(e) Notification, Appeal, and Review.

(1) Notification. The LMHA will notify the person (or parent) in writing of the proposed action (i.e., to involuntarily reduce or terminate the person's services or refer the person to his/her third-party coverage) and the right to appeal the proposed action in accordance with § 401.464 of this title (relating to Notification and Appeals Process). The notification will describe the time frames and process for requesting an appeal and include a copy of this subchapter. If the person (or parent) requests an appeal within the prescribed time frame, then the LMHA may not take the proposed action while

the appeal is pending. The LMHA may take the proposed action if the person (or parent) does not request a review within the prescribed time frame.

(2) Appeal and appeal decision. The appeal is conducted in accordance with § 401.464(g) of this title. The local mental health authority will notify the person (or parent) in writing of the appeal decision in accordance with § 401.464(h) of this title and the right to have the appeal decision reviewed by the department's Mental Health and Substance Abuse Client's Rights Office (1-800-252-8154) if the person (or parent) is dissatisfied with the appeal decision. The notification must describe the time frames and process for requesting a review.

(3) Review of appeal decision. If the person (or parent) is dissatisfied with the appeal decision, then the person (or parent) may request a review by the department's Mental Health and Substance Abuse Client's Rights Office. A request for review must be submitted to the department's Mental Health and Substance Abuse Client's Rights Office, Mail Code 2019, P.O. Box 12668, Austin, TX 78751, within 10 working days of receipt of the appeal decision. If the person (or parent) requests a review within the prescribed time frame, then the LMHA may not take the proposed action while the review is pending. The LMHA may take the proposed action if the person (or parent) does not request a review within the prescribed time frame and the appeal decision upholds the decision to take the proposed action.

(A) A person (or parent) who requests a review may choose to have the reviewer conduct the review:

(i) by telephone conference with the person (or parent) and a representative from the LMHA and make a decision based upon verbal testimony made during the telephone conference and any documents provided by the person (or parent) and the LMHA; or

(ii) by making a decision based solely upon documents provided by the person (or parent) and the LMHA without the presence of any of the parties involved.

(B) The review:

(i) will be conducted no sooner than 10 working days and no later than 30 working days of receipt of the request for review unless an extension is granted by the director of the department's Mental Health and Substance Abuse Client's Rights Office;

(ii) will include an examination of the pertinent information concerning the proposed action and may include consultation with the department's Mental Health and Substance Abuse Client's Rights Office clinical staff and staff who are responsible for the policy contained in this subchapter;

(iii) will result in a final decision which will uphold, reverse, or modify the original decision to take the proposed action; and

(iv) is the final step of the appeal process for involuntarily reducing or terminating the person's services for non-payment and for referring the person to his/her third-party coverage.

(C) Within five working days after the review, the reviewer will send written notification of the final decision to the person (or parent) and the LMHA.

(D) The LMHA will take appropriate action consistent with the final decision.

(f) Prohibition of financial penalties. The LMHA may not impose financial penalties on a person (or parent).

(g) Debt collection. Local authorities must make reasonable efforts to collect debts before an account is referred

to a debt collection agency. Local authorities must document their efforts at debt collection.

(1) Local authorities must incorporate into a written agreement or contract for debt collection provisions that state that both parties shall:

(A) maintain the confidentiality of the information and not disclose the identity of the person or any other identifying information; and

(B) not harass, threaten, or intimidate persons and their families.

(2) Local authorities will enforce the provisions contained in paragraph (1) of this subsection.

§ 412.110. Monthly Ability-to-Pay Fee Schedule

The Monthly Ability-To-Pay Fee Schedule, referenced as Exhibit a in § 412.113 of this title (relating to Exhibit), is based on 150% of the Federal Poverty Guidelines. The department may revise the Monthly Ability-To-Pay Fee Schedule, based on any changes in the Federal Poverty Guidelines.

HISTORY: The provisions of this § 412.110 adopted to be effective September 1, 2002, 27 TexReg 2041; amended to be effective September 15, 2005, 30 TexReg 5806

§ 412.111. Training

In accordance with a prescribed training program developed by the department, all local mental health authority staff who are involved in implementing or explaining the content of this subchapter must demonstrate competency prior to performing tasks related to charging for community services and annually thereafter.

HISTORY: The provisions of this § 412.111 adopted to be effective September 1, 2002, 27 TexReg 2041; amended to be effective September 15, 2005, 30 TexReg 5806

§ 412.112. Brochure for Persons (and Parents)

(a) The department will develop a brochure that contains the policies for charging for community services that are contained in this subchapter, including:

(1) a general reference to the statutory trust exemption; and

(2) information related to claiming financial hardship.

(b) The LMHA must provide persons (and parents) a copy of the brochure prior to their entry into services, except in a crisis.

HISTORY: The provisions of this § 412.112 adopted to be effective September 1, 2002, 27 TexReg 2041; amended to be effective September 15, 2005, 30 TexReg 5806

§ 412.113. Exhibit

This subchapter references Exhibit A—The Monthly Ability-To-Pay Fee Schedule, copies of which are available by contacting Mental Health and Substance Abuse Program Services, Department of State Health Services, Mail Code 2018, P.O. Box 13247, Austin, TX 78711-2668.

HISTORY: The provisions of this § 412.113 adopted to be effective September 1, 2002, 27 TexReg 2041; amended to be effective September 15, 2005, 30 TexReg 5806

§ 412.114. References

This subchapter references the following rules and statutes:

(1) Texas Health and Safety Code, § 533.035 and § 534.067;

(2) Omnibus Budget Reconciliation Act (OBRA) of 1987, as amended by OBRA 90; and

(3) Section 401.464 of this title (relating to Notifications and Appeals Process).

HISTORY: The provisions of this § 412.114 adopted to be effective September 1, 2002, 27 TexReg 2041; amended to be effective September 15, 2005, 30 TexReg 5806

§ 412.115. Distribution

This subchapter is distributed to:

(1) all members of the department's Advisory Council;

(2) executive, management, and program staff of the department;

(3) executive directors of all local mental health authorities; and

(4) advocacy organizations.

HISTORY: The provisions of this § 412.115 adopted to be effective September 1, 2002, 27 TexReg 2041; amended to be effective September 15, 2005, 30 TexReg 5806

Subchapter D.

Mental Health Services—Admission, Continuity, and Discharge

Division 1. General Provisions

§ 412.151. Purpose

The purpose of this subchapter is to establish criteria and guidelines related to:

(1) state mental health facility (SMHF) admissions, transfers, absences, and discharges;

(2) local mental health authority (LMHA) admissions and discharges, and changing LMHAs; and

(3) continuity of services for persons receiving LMHA services and inpatient services at a SMHF.

HISTORY: The provisions of this § 412.151 adopted to be effective November 1, 2003, 28 TexReg 9251

§ 412.152. Application

(a) This subchapter applies to:

(1) a state mental health facility (SMHF);

(2) a local mental health authority (LMHA) whose local service area is not served by a Medicaid managed care organization (MMCO);

(3) an LMHA whose local service area is served by an MMCO, to the extent compliance with one or more provisions of this subchapter is required in the LMHA's contract with TDMHMR; and

(4) an MMCO, to the extent compliance with one or more provisions of this subchapter is required in the MMCO's contract with TDMHMR.

(b) The following provisions of this subchapter apply to a mental retardation authority (MRA):

(1) § 412.163(1)(F) of this title (relating to Most Appropriate and Available Treatment Alternative); and

(2) § 412.202(e) of this title (relating to Special Considerations).

HISTORY: The provisions of this § 412.152 adopted to be effective November 1, 2003, 28 TexReg 9251

§ 412.153. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Absence—When a patient, who has not been discharged, is physically away from the SMHF for

any purpose, such as for hospitalization, a home visit, a special activity, unauthorized departure, or trial placement.

(2) ATP or absence for trial placement—When a patient, who has not been discharged, is physically away from the SMHF for the purpose of evaluating the patient's adjustment to a particular placement in the community prior to discharge. An ATP is a type of furlough, as referenced in Texas Health and Safety Code, Chapter 574, Subchapter F.

(3) Admission—

(A) To a SMHF: The acceptance of person to a SMHF's custody and care for inpatient services, based on:

(i) a physician's order issued in accordance with § 412.175(g)(2)(C) of this title (relating to Voluntary Admission);

(ii) a physician's order issued in accordance with § 412.176(e)(3) of this title (relating to Emergency Detention);

(iii) an order of protective custody issued in accordance with Texas Health and Safety Code, § 574.022;

(iv) an order for temporary inpatient mental health services issued in accordance with Texas Health and Safety Code, § 574.034, or Texas Family Code, Chapter 55;

(v) an order for extended inpatient mental health services issued in accordance with Texas Health and Safety Code, § 574.035, or Texas Family Code, Chapter 55; or

(vi) an order for commitment issued in accordance with the Texas Code of Criminal Procedure, Article 46.02 or Chapter 46B.

(B) Into LMHA services: The acceptance of a person in the priority population into LMHA services.

(4) Alternate provider—An entity that provides mental health services in the community, but not pursuant to a contract or memorandum of understanding with an LMHA.

(5) Assessment professional—Promulgated as required by Texas Health and Safety Code, § 572.0025(c), a SMHF staff member whose responsibilities include conducting the assessment described in § 412.175(b) of this title, and who is:

(A) a physician (MD or DO) licensed to practice medicine in Texas;

(B) a physician assistant licensed in accordance with Texas Occupations Code, Chapter 204;

(C) a registered nurse licensed in accordance with Texas Occupations Code, Chapter 301;

(D) a licensed psychologist as defined in Texas Occupations Code, § 501.002;

(E) a psychological associate as defined in Texas Occupations Code, § 501.002;

(F) a licensed social worker as defined in Texas Occupations Code, § 505.002;

(G) a licensed professional counselor as defined in Texas Occupations Code, § 503.002; or

(H) a licensed marriage and family therapist licensed in accordance with Texas Occupations Code, Chapter 502.

(6) Assisted living facility—An establishment that:

(A) furnishes, in one or more facilities, food and shelter to four or more individuals who are unrelated to the proprietor of the establishment; and

(B) provides personal care services.

(7) CARE—TDMHMR's Client Assignment and Registration System, an on-line data entry system that provides demographic and other data about a person served by TDMHMR or an LMHA.

(8) Continuity of services—Activities that are designed to ensure uninterrupted services are provided to a person, especially during a transition between service types (e.g., inpatient services and LMHA services), and that provide assistance to the person and the person's LAR in identifying, accessing, and coordinating LMHA services and other appropriate services and supports in the community that are needed by the person, including:

(A) facilitating access to appropriate services and supports in the community (e.g., identifying available community resources, connecting the person with or referring the person to community resources, and coordinating the provision of services);

(B) participating in the person's treatment plan development and reviews;

(C) promoting implementation of the person's treatment plan or continuing care plan;

(D) facilitating coordination between the person and the person's family, as appropriate; and

(E) while the person is receiving inpatient services:

(i) participating in staffings and reviews to the extent possible to monitor the person's treatment progress;

(ii) identifying appropriate and available community resources; and

(iii) participating in discharge planning.

(9) COPSD or co-occurring psychiatric and substance use disorder—A diagnosis of both a mental illness and a substance use disorder.

(10) Crisis services—LMHA services provided to a person in crisis.

(11) Crisis stabilization unit—A crisis stabilization unit licensed under Texas Health and Safety Code, Chapter 577 and Chapter 134 of this title (concerning Private Psychiatric Hospitals and Crisis Stabilization Units Licensing Rules).

(12) Day—Calendar day, unless specified otherwise.

(13) Designated LMHA—The LMHA:

(A) that serves the person's county of residence, which is determined in accordance with § 412.162 of this title (relating to Determining County of Residence); or

(B) that does not serve the person's county of residence, but has taken responsibility for ensuring the person's provision of LMHA services.

(14) Designated MRA—As indicated in CARE, the MRA responsible for assisting an individual and LAR (or persons actively involved with the individual who does not have an LAR) to access mental retardation services and supports.

(15) Discharge—

(A) From inpatient services: The release of a patient from the custody and care of a provider of inpatient services.

(B) From LMHA services: The termination of LMHA services delivered to a person by an LMHA.

(16) Discharged unexpectedly—A discharge from a SMHF:

(A) due to a patient's unauthorized departure;

(B) at the request of a voluntary patient;

(C) due to a court releasing the patient;

(D) due to the death of the patient; or

(E) due to the execution of an arrest warrant for the patient.

(17) Emergency medical condition—A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances or symptoms of substance abuse) such that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the health of the person (or with respect to a pregnant woman, the health of the woman or her unborn child) or others in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part;

or

(D) in the case of a pregnant woman who is having contractions:

(i) that there is inadequate time to effect a safe transfer to another hospital before delivery; or

(ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

(18) Inpatient services—Residential psychiatric treatment provided to a patient in a SMHF or hospital licensed under the Texas Health and Safety Code, Chapter 241.

(19) Involuntary patient—A patient who is receiving inpatient services based on an admission made in accordance with:

(A) § 412.176 of this title; or

(B) § 412.177 of this title (relating to Admission under Order of Protective Custody or Court-ordered Inpatient Mental Health Services).

(20) LAR or legally authorized representative—A individual authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and may be a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(21) Liaison staff—The staff at the designated LMHA or designated MRA who is responsible for providing continuity of services. The liaison staff may be a continuity of care staff, case coordinator, or service coordinator.

(22) LMHA (local mental health authority)—An entity designated as the local mental health authority by the TDMHMR commissioner in accordance with the Texas Health and Safety Code, § 533.035(a).

(23) LMHA-network provider—An entity that provides mental health services in the community pursuant to a contract or memorandum of understanding with an LMHA, including that part of an LMHA directly providing mental health services.

(24) LMHA services—Mental health services identified in the LMHA's performance contract with TDMHMR that are provided by an LMHA-network provider to a person in the person's home community. In this subchapter, the term does not include inpatient services.

(25) Local service area—A geographic area composed of one or more Texas counties delimiting the population that may receive services from an LMHA.

(26) MMCO (Medicaid managed care organization)—An entity that has a current Texas Department of Insurance certificate of authority to operate as a Health Maintenance Organization (HMO) under Chapter 843 of the Texas Insurance Code or as an approved nonprofit health corporation under Chapter 844 of the Texas Insurance Code and that provides mental health services pursuant to a contract with TDMHMR.

(27) Mental illness—An illness, disease, or condition (other than a sole diagnosis of epilepsy, senility,

substance use disorder, mental retardation, autism, or pervasive developmental disorder) that:

(A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.

(28) Minor—An individual under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

(29) MRA (mental retardation authority)—An entity designated as the local mental retardation authority by the TDMHMR commissioner in accordance with the Texas Health and Safety Code, § 533.035(a).

(30) Nursing facility—A facility that provides organized and structured nursing care and service and is subject to licensure under Texas Health and Safety Code, Chapter 242.

(31) Patient—A person admitted to inpatient services who has not been discharged.

(32) Personal care services—

(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

(C) 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.

(33) Prescriber of medication—A physician or designee who is authorized by state law to prescribe medication.

(34) Priority population—As identified in TDMHMR's strategic plan and operationalized in its performance contracts with LMHAs, those groups of persons with mental illness or mental retardation most in need of mental health or mental retardation services.

(35) QMHP-CS—A qualified mental health professional—community services as defined in Subchapter G of this chapter (concerning Mental Health Community Services Standards).

(36) Special needs offender—An individual with mental illness for whom criminal charges are pending or who after conviction or adjudication is in custody or under any form of criminal justice supervision.

(37) SMHF (state mental health facility)—A state hospital or a state center with an inpatient psychiatric component that is operated by TDMHMR.

(38) SMRF (state mental retardation facility)—A state school or a state center with a mental retardation residential component that is operated by TDMHMR.

(39) Substance use disorder—The use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning and which currently meets the criteria for substance abuse or substance dependence as described in the current edition of the Diagnostic Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association.

(40) Transfer—To move from one institution to another institution. In this subchapter, "institution" does not include a nursing facility.

(41) Treating physician—A physician who coordinates and oversees a patient's treatment.

(42) Voluntary patient—A patient who is receiving inpatient services based on an admission made in accordance with:

- (A) § 412.175 of this title; or
- (B) § 412.179 of this title (relating to Voluntary Treatment Following Involuntary Admission).

HISTORY: The provisions of this § 412.153 adopted to be effective November 1, 2003, 28 TexReg 9251

§ 412.154. Utilization Management Agreement Between SMHF and LMHA

A SMHF, except Waco Center for Youth, and an LMHA served by the SMHF shall enter into a utilization management agreement that:

- (1) describes the SMHF's specific medical exclusionary criteria;
- (2) describes the utilization management process relating to level of care, discharge, and ATP, including the duties and responsibilities of the SMHF and the LMHA; and
- (3) requires the LMHA to fund a person's admission to, and inpatient services in, a SMHF if the LMHA is the person's designated LMHA and the person does not have third-party coverage, regardless of whether the LMHA referred the person to the SMHF.

HISTORY: The provisions of this § 412.154 adopted to be effective November 1, 2003, 28 TexReg 9251

Division 2.

Screening and Assessment in Crisis Services and Admission Into LMHA Services—LMHA Responsibilities

§ 412.161. Screening and Assessment

(a) Crisis services. An LMHA shall ensure immediate screenings and assessments of any person found in the LMHA's local service area who is in crisis in accordance with § 412.314 of this title (relating to Crisis Services).

(b) Admission into LMHA services.

(1) The LMHA shall screen each person presenting for services at an LMHA as follows:

- (A) an LMHA staff shall determine whether the person's county of residence is within the LMHA's local service area; and
- (B) an LMHA staff who is at least a QMHP-CS shall gather triage information and determine the need for a pre-admission assessment.

(2) If the person's county of residence is within the LMHA's local service area and a pre-admission assessment is needed, then the LMHA shall conduct a pre-admission assessment in accordance with § 412.315(a) of this title (relating to Assessment and Treatment Planning).

(A) For a person determined to be in the priority population, the LMHA shall identify which services the person may be eligible to receive and, if appropriate, determine whether the person should receive services immediately or be placed on a waiting list for services.

(B) For a person determined not to be in the priority population, the LMHA shall provide the person with written notification regarding:

- (i) the denial of services and the opportunity to appeal in accordance with § 401.464(d), (e), (g), and (h) of this title (relating to Notification and Appeals Process); and

(ii) the availability of information and assistance from the TDMHMR ombudsman by writing to Consumer Services and Rights Protection, Ombudsman, TDMHMR, P.O. Box 12668, Austin, Texas, 78711-2668, or by calling 1-800-252-8154.

HISTORY: The provisions of this § 412.161 adopted to be effective November 1, 2003, 28 TexReg 9251

§ 412.162. Determining County of Residence

(a) Adults. An adult's county of residence is the county in which the adult or the adult's LAR says is the adult's permanent residence, unless there is a preponderance of evidence to the contrary. In such a case, the adult's county of residence is the county for which the evidence indicates is the adult's permanent residence.

(1) If an adult is unable to communicate the location of his/her permanent residence and there is no evidence indicating the location of his/her permanent residence or if an adult is not a Texas resident, then the adult's county of residence is the county in which the adult is physically present when he/she requests or requires services.

(2) If an LMHA is paying for an adult's community mental health services that are delivered in the local services area of another LMHA, or if an LMHA is paying for an adult's residential placement that is located outside the LMHA's local service area, then the county in which the paying LMHA is located is the adult's county of residence.

(b) Minors.

(1) Except as provided by paragraph (2) of this subsection, a minor's county of residence is the county in which the minor's LAR's permanent residence is located.

(2) A minor's county of residence is the county in which the minor currently resides if:

- (A) it cannot be determined in which county the minor's LAR's permanent residence is located;
- (B) a state agency is the minor's LAR; or
- (C) the minor does not have an LAR.

(c) Changing county of residence status. Changing a person's county of residence requires agreement between the LMHAs affected by the change.

(d) Disputes regarding county of residence. Disputes regarding a person's county of residence that cannot be resolved by the executive directors of the affected LMHAs shall be resolved by the TDMHMR performance contract manager(s) of the affected LMHAs.

HISTORY: The provisions of this § 412.162 adopted to be effective November 1, 2003, 28 TexReg 9251

§ 412.163. Most Appropriate and Available Treatment Alternative

The designated LMHA is responsible for recommending the most appropriate and available treatment alternative for persons in need of mental health services in accordance with this section.

(1) Inpatient services.

(A) Before an LMHA refers a person for inpatient services, the LMHA shall screen and assess the person to determine if the person requires inpatient services.

(B) If the screening and assessment indicates the person requires inpatient services and inpatient services represents the least restrictive setting available, then the LMHA shall refer the person:

- (i) to a SMHF, if the LMHA determines that the person meets the criteria for admission to the SMHF;

(ii) to an LMHA-network provider of inpatient services; or

(iii) to an alternate provider of inpatient services, if appropriate.

(C) If the person is identified in CARE as having mental retardation, then the LMHA shall inform the designated MRA that the person has been referred for inpatient services.

(D) If the LMHA refers the person for inpatient services, then the LMHA is responsible for communicating necessary information to the SMHF or other provider of inpatient services prior to or at the time of admission, to include:

- (i) identifying data, including address;
- (ii) legal status (e.g., regarding guardianship, charges pending, custody, if person is a minor);
- (iii) pertinent medical and medication information, including known disabilities;
- (iv) behavioral data including information regarding COPSD;
- (v) other pertinent treatment information; and
- (vi) finances, third-party coverage, and other benefits, if known.

(E) If the LMHA that refers the person for inpatient services is not the person's designated LMHA, then the LMHA shall notify the designated LMHA of the referral by the end of the next business day.

(F) The designated LMHA shall assign an LMHA liaison staff to a person admitted to a SMHF. If the person has mental retardation, then the designated MRA shall assign an MRA liaison staff to the person as well. If the LMHA refers a person to a mental health facility, as described in subparagraph (B)(ii) or (iii) of this paragraph, and the person is admitted, the designated LMHA shall assign an LMHA liaison staff. The LMHA liaison staff, and MRA liaison staff if any, are responsible for the person's continuity of services.

(2) Crisis services. An LMHA is responsible for ensuring the provision of crisis services to any person found in its local service area who is in crisis.

(3) LMHA Services.

(A) If an LMHA admits a person to LMHA services, then the LMHA shall ensure the provision of services in the most integrated setting available.

(B) The LMHA shall ensure the provision of LMHA services to a person ordered by a court to participate in outpatient mental health services if the court identifies the LMHA as being responsible for those services in accordance with the Texas Health and Safety Code, § 574.037, or the Texas Code of Criminal Procedure, Article 46.03, § 4(d)(4) or (d)(6).

(C) The LMHA shall assign to a person receiving LMHA services a staff person who is responsible for the person's continuity of services.

(4) Referral to alternate provider.

(A) If a person requests to be referred to an alternate provider, then the LMHA shall make a referral to an alternate provider in accordance with the request.

(B) If a person has third-party coverage, but the coverage will not pay for needed services because the designated LMHA does not have a provider on its network that is approved by the third-party coverage, then the designated LMHA shall take action in accordance with § 412.106(c)(2) of this title (relating to Determination of Ability to Pay) of Subchapter C of this chapter (concerning Charges for Community Services).

HISTORY: The provisions of this § 412.163 adopted to be effective November 1, 2003, 28 TexReg 9251

Division 3. Admission to SMHFS—SMHF Responsibilities

§ 412.171. General Admission Criteria

(a) With the exception of Waco Center for Youth, a person may be admitted to a SMHF only if the person has a mental illness and, as a result of the mental illness, the person:

- (1) presents a substantial risk of serious harm to self or others; or
- (2) evidences a substantial risk of mental or physical deterioration.

(b) A person may not be admitted to any SMHF if the person:

- (1) requires specialized care that is not available at the SMHF; or
- (2) has a physical medical condition that is unstable and could reasonably be expected to require inpatient treatment for the condition.

(c) If a person presents for services at a SMHF and the person was not screened or referred by an LMHA as described in § 412.163(1)(A) - (B) of this title (relating to Most Appropriate and Available Treatment Alternative), then a SMHF physician shall determine if the person has an emergency medical condition. The SMHF shall notify the designated LMHA that the person has presented for services at the SMHF.

(1) If the SMHF determines that the person has an emergency medical condition, then a SMHF physician shall decide whether the SMHF has the capability to treat the emergency medical condition.

(A) If the SMHF has the capability to treat the emergency medical condition, then the SMHF shall admit the person as required by the Emergency Medical Treatment and Active Labor Act (EMTALA) (42 USC § 1395dd).

(B) If the SMHF does not have the capability to treat the emergency medical condition, then, in accordance with EMTALA, the SMHF shall provide evaluation and treatment within its capability to stabilize the person and shall arrange for the person to be transferred to a hospital that has the capability to treat the emergency medical condition.

(2) If the SMHF determines that the person does not have an emergency medical condition, then the SMHF shall contact the designated LMHA to coordinate alternate services as appropriate.

HISTORY: The provisions of this § 412.171 adopted to be effective November 1, 2003, 28 TexReg 9251

§ 412.172. Admission Criteria for Maximum Security Unit at North Texas State Hospital—Vernon Campus

A person may be admitted to the Maximum Security Unit at North Texas State Hospital-Vernon Campus only if the person:

- (1) is committed pursuant to Article 46.02 or Chapter 46B or Article 46.03 of the Texas Code of Criminal Procedure; or
- (2) is determined manifestly dangerous in accordance with Chapter 415, Subchapter G of this title (concerning Determination of Manifest Dangerousness).

HISTORY: The provisions of this § 412.172 adopted to be effective November 1, 2003, 28 TexReg 9251

§ 412.173. Admission Criteria For Adolescent Forensic Unit at North Texas State Hospital—Vernon Campus

(a) A person may be admitted to the Adolescent Forensic Unit at North Texas State Hospital-Vernon Campus only if the person is at least 13 but younger than 18 years of age (an “adolescent”) and meets the criteria described in paragraph (1), (2), or (3) of this subsection.

(1) Condition of probation or parole. The adolescent’s admission to the Adolescent Forensic Unit at North Texas State Hospital-Vernon Campus will fulfill a condition of probation or parole for a juvenile offense and the adolescent:

(A) on the basis of a clinical evaluation, is determined to be in need of specialized mental health treatment in a secure treatment setting to address violent behavior or delinquent conduct;

(B) has co-occurring psychiatric and substance use disorder; and

(C) has exhausted available community resources for treatment and has been recommended for admission by the local Community Resource Coordinating Group (CRCG).

(2) Commitment under Texas Family Code, Chapter 55. The adolescent has been committed to a residential care facility under the Texas Family Code, Chapter 55, Subchapter C or D.

(3) Determined manifestly dangerous. The adolescent has been determined manifestly dangerous in accordance with Chapter 415, Subchapter G of this title (concerning Determination of Manifest Dangerousness).

(b) A person may not be admitted to the Adolescent Forensic Unit at North Texas State Hospital-Vernon Campus if the person is determined to have mental retardation.

HISTORY: The provisions of this § 412.173 adopted to be effective November 1, 2003, 28 TexReg 9251

§ 412.174. Admission Criteria for Waco Center for Youth

(a) A person may be admitted to Waco Center for Youth only if the person:

(1) is at least 10 but younger than 18 years of age and whose age at admission allows adequate time for treatment programming prior to reaching age 18 years;

(2) is diagnosed as emotionally or behaviorally disturbed;

(3) has a history of behavior adjustment problems;

(4) needs a structured treatment program in a residential facility; and

(5) meets either of the following criteria:

(A) the person is in the managing conservatorship of the Texas Department of Protective and Regulatory Services (TDPRS) and has been referred for admission by TDPRS; or

(B) the person is currently receiving LMHA services or inpatient services at a SMHF and has been referred for admission by:

(i) the LMHA after endorsement by the local Community Resource Coordinating Group (CRCG); or

(ii) the SMHF.

(b) A person may not be admitted to Waco Center for Youth if the person:

(1) has been found to have engaged in delinquent conduct or conduct indicating a need for supervision under the Texas Family Code, Title 3;

(2) is acutely psychotic, suicidal, homicidal, or seriously violent; or

(3) is determined to have mental retardation.

HISTORY: The provisions of this § 412.174 adopted to be effective November 1, 2003, 28 TexReg 9251

§ 412.175. Voluntary Admission

(a) Request for voluntary admission.

(1) In accordance with Texas Health and Safety Code, § 572.001(a) and (c), a request for voluntary admission of a person with a mental illness may only be made by:

(A) the person, if:

(i) he or she is 16 years of age or older; or

(ii) he or she is younger than 16 years of age and is or has been married; or

(B) the parent, managing conservator, or guardian of the person, if the person is younger than 18 years of age and is not and has not been married, except that a guardian or managing conservator acting as an employee or agent of the state or a political subdivision of the state may request voluntary admission of the person only with the person’s consent.

(2) In accordance with Texas Health and Safety Code, § 572.001(b) and (e), a request for admission shall:

(A) be in writing and signed by the individual making the request;

(B) include a statement that the individual making the request:

(i) agrees that the person will remain in the SMHF until the person’s discharge; and

(ii) consents to diagnosis, observation, care, and treatment of the person until the earlier of:

(I) the discharge of the person; or

(II) the person is entitled to leave the SMHF, in accordance with Texas Health and Safety Code, § 572.004, after a request for discharge is made.

(3) The consent given under paragraph (2)(B)(ii) of this subsection does not waive a patient’s rights described in the following rules:

(A) Chapter 404, Subchapter E of this title (concerning Rights of Persons Receiving Mental Health Services);

(B) Chapter 405, Subchapter E of this title (concerning Electroconvulsive Therapy);

(C) Chapter 405, Subchapter FF of this title (concerning Consent to Treatment with Psychoactive Medication); and

(D) Chapter 405, Subchapter F of this title (concerning Voluntary and Involuntary Behavioral Interventions in Mental Health Programs).

(b) Assessment. If a SMHF’s internal policy permits an assessment professional to determine whether a physician should conduct a preliminary examination on a person requesting voluntary admission, then prior to voluntary admission of a person, an assessment professional shall conduct an assessment by gathering clinical information from the person and the person’s LAR, if appropriate, including a medical history, substance abuse history, and the problem for which the person is seeking treatment, to determine if a physician should conduct a preliminary examination.

(1) If, after conducting the assessment, the assessment professional determines that the person does not need a preliminary examination, then the SMHF shall refer the person to alternate services, if appropriate. Within one hour after the determination,

the SMHF shall notify the designated LMHA that the person does not need a preliminary examination and of the referral, if any.

(2) If, after conducting the assessment, the assessment professional determines that the person needs a preliminary examination, then a SMHF physician shall conduct a preliminary examination of the person in accordance with subsection (c)(2) - (3) of this section.

(c) Preliminary examination.

(1) If a SMHF's internal policy does not permit an assessment professional to determine whether a physician should conduct a preliminary examination on persons requesting voluntary admission, then a SMHF physician shall conduct a preliminary examination on each person requesting voluntary admission in accordance with this subsection.

(2) The preliminary examination of the person shall be conducted by a physician in the physical presence of the person or by using audiovisual telecommunications and include:

(A) an assessment for medical stability; and

(B) a psychiatric examination to include, if indicated, a substance abuse assessment.

(3) The physician may not delegate the preliminary examination to a non-physician.

(d) Does not meet admission criteria. If, after the preliminary examination, the physician determines that the person does not meet the SMHF's admission criteria, then the SMHF shall contact the designated LMHA to coordinate alternate services as clinically indicated.

(e) Capacity to consent. If a physician determines that a person whose consent is necessary for a voluntary admission does not have the capacity to consent to diagnosis, observation, care, and treatment, then the SMHF may not voluntarily admit the person. When appropriate, the SMHF may initiate an emergency detention proceeding in accordance with Texas Health and Safety Code, Chapter 573, or file an application for court-ordered inpatient mental health services in accordance with Texas Health and Safety Code, Chapter 574.

(f) Intake process. In accordance with Texas Health and Safety Code § 572.0025(b), a SMHF shall, prior to voluntary admission of a person, conduct an intake process, that includes:

(1) obtaining relevant information about the person, including information about finances, third-party coverage or insurance benefits, and advance directives; and

(2) explaining, orally and in writing, the person's rights described in Chapter 404, Subchapter E of this title;

(3) explaining, orally and in writing, the SMHF's services and treatment as they relate to the person; and

(4) explaining, orally and in writing, the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, which is Advocacy, Inc., pursuant to Texas Health and Safety Code, § 576.008.

(g) Requirements for voluntary admission. a SMHF may voluntarily admit a person only if:

(1) a request for admission is made in accordance with subsection (a) of this section;

(2) a physician has:

(A) in accordance with Texas Health and Safety Code, § 572.0025(f)(1), conducted, within 72 hours prior to admission, or has consulted with a physician

who has conducted, within 72 hours prior to admission, a preliminary examination in accordance with subsection (c) of this section;

(B) determined that the person meets the SMHF's admission criteria and that admission is clinically justified; and

(C) issued an order admitting the person; and

(3) in accordance with Texas Health and Safety Code, § 572.0025(f)(2), the SMHF administrator or designee has signed a written statement agreeing to admit the person.

(h) Documentation of admission order. In accordance with Texas Health and Safety Code § 572.0025(f)(1), the order described in subsection (g)(2)(C) of this section shall be:

(1) issued in writing and signed by the issuing physician; or

(2) issued orally or electronically if, within 24 hours after its issuance, the SMHF has a written order signed by the issuing physician.

(i) Periodic evaluation. to determine the need for continued inpatient treatment, a physician shall evaluate a voluntary patient receiving acute inpatient treatment as often as clinically indicated, but no less than three times a week.

HISTORY: The provisions of this § 412.175 adopted to be effective November 1, 2003, 28 TexReg 9251

§ 412.176. Emergency Detention

(a) Acceptance for preliminary examination. In accordance with Texas Health and Safety Code, § 573.022, a SMHF shall accept for a preliminary examination:

(1) a person who has been apprehended and transported to the SMHF by a peace officer in accordance with Texas Health and Safety Code, § 573.001 or § 573.012; or

(2) an adult who has been transported to the SMHF by the adult's guardian of the person in accordance with Texas Health and Safety Code, § 573.003.

(b) Preliminary examination.

(1) A physician shall conduct a preliminary examination of the person as soon as possible but not more than 24 hours after the person was apprehended by the peace officer or transported for emergency detention.

(2) The preliminary examination shall include:

(A) an assessment for medical stability; and

(B) a psychiatric examination to include, if indicated, a substance abuse assessment, to determine if the person meets the criteria described in subsection (c)(1) of this section.

(c) Requirements for emergency detention. a SMHF shall admit a person for emergency detention only if:

(1) in accordance with Texas Health and Safety Code, § 573.022(a)(2), a physician determines from the preliminary examination that:

(A) the person has a mental illness;

(B) the person evidences a substantial risk of serious harm to himself or others;

(C) the described risk of harm is imminent unless the person is immediately detained; and

(D) emergency detention is the least restrictive means by which the necessary detention may be accomplished;

(2) in accordance with Texas Health and Safety Code, § 573.022(a)(3), a physician makes a written statement documenting the determination described in paragraph (1) of this subsection and describing:

(A) the nature of the person's mental illness;

(B) the risk of harm the person evidences, demonstrated either by the person's behavior or by evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty; and

(C) the detailed information on which the physician based the determination described in paragraph (1) of this subsection;

(3) the physician issues and signs a written order admitting the person for emergency detention; and

(4) the person meets the SMHF's admission criteria.

(d) Release.

(1) A SMHF shall release a person accepted for a preliminary examination if:

(A) a preliminary examination of the person has not been conducted within 24 hours after the person was apprehended by the peace officer or transported for emergency detention; or

(B) in accordance with Texas Health and Safety Code, § 573.023(a), the person is not admitted for emergency detention on completion of the preliminary examination.

(2) If the person is not admitted on emergency detention, then the SMHF shall contact the designated LMHA to coordinate alternate services as clinically indicated.

(3) In accordance with Texas Health and Safety Code, § 576.007(a), if the person is not admitted on emergency detention, then the SMHF shall make a reasonable effort to notify the family of an adult person before he/she is released, if the person grants permission for the notification.

(e) Intake process. a SMHF shall conduct an intake process as soon as possible, but not later than 24 hours after a patient is admitted for emergency detention. The intake process shall include, but is not limited to:

(1) obtaining relevant information about the patient, including information about finances, third-party coverage or insurance benefits, and advance directives; and

(2) explaining, orally and in writing, the person's rights described in Chapter 404, Subchapter E of this title (concerning Rights of Persons Receiving Mental Health Services):

(3) explaining, orally and in writing, the SMHF's services and treatment as they relate to the person; and

(4) explaining, orally and in writing, the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, which is Advocacy, Inc., pursuant to Texas Health and Safety Code, § 576.008.

HISTORY: The provisions of this § 412.176 adopted to be effective November 1, 2003, 28 TexReg 9251

§ 412.177. Admission Under Order of Protective Custody or Court-ordered Inpatient Mental Health Services

(a) Requirements for order of protective custody and court-ordered inpatient mental health services. a SMHF shall admit a person:

(1) under a protective custody order only if a court has issued a protective custody order in accordance with Texas Health and Safety Code, § 574.022; or

(2) for court-ordered inpatient mental health services only if a court has issued:

(A) an order for temporary inpatient mental health services issued in accordance with Texas Health and

Safety Code, § 574.034, or Texas Family Code, Chapter 55;

(B) an order for extended inpatient mental health services issued in accordance with Texas Health and Safety Code, § 574.035, or Texas Family Code, Chapter 55; or

(C) an order for commitment issued in accordance with the Texas Code of Criminal Procedure, Article 46.02 or Chapter 46B.

(b) Order. If a SMHF admits a person in accordance with subsection (a) of this section, then a physician shall issue and sign a written order admitting the person.

(c) Intake process. a SMHF shall conduct an intake process as soon as possible, but not later than 24 hours after the patient is admitted under a protective custody order or court-ordered inpatient mental health services. The intake process shall include:

(1) obtaining relevant information about the patient, including information about finances, third-party coverage or insurance benefits, and advance directives; and

(2) explaining, orally and in writing, the patient's rights described in Chapter 404, Subchapter E of this title (concerning Rights of Persons Receiving Mental Health Services), including:

(A) the SMHF's services and treatment as they relate to the patient; and

(B) the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, which is Advocacy, Inc., as required by Texas Health and Safety Code, § 576.008.

HISTORY: The provisions of this § 412.177 adopted to be effective November 1, 2003, 28 TexReg 9251

§ 412.178. Admission Procedures

(a) When a SMHF admits a person, the SMHF shall promptly notify the designated LMHA of the admission and the admission status (i.e., voluntary, emergency detention, order of protective custody, court-ordered).

(1) If the LMHA that screened the person is not the person's designated LMHA, then the SMHF shall also notify the LMHA that screened the person.

(2) If the SMHF suspects that the person's county of residence status in CARE is incorrect, then the SMHF shall notify the affected LMHAs of the possible error.

(b) In addition to the requirement in subsection (a) of this section, Waco Center for Youth shall notify the entity that referred the person for admission to Waco Center for Youth (i.e., Texas Department of Protective and Regulatory Services (TDPRS), LMHA, or SMHF).

HISTORY: The provisions of this § 412.178 adopted to be effective November 1, 2003, 28 TexReg 9251

§ 412.179. Voluntary Treatment Following Involuntary Admission

A SMHF may continue to provide inpatient services to an involuntary patient after the involuntary patient is eligible for discharge as described in § 412.204 of this title (relating to Discharge of Involuntary Patients), if, after consultation with the designated LMHA:

(1) the SMHF obtains written consent for voluntary inpatient services that meets the requirements of a request for voluntary admission, as described in § 412.175(a) of this title (relating to Voluntary Admission); and

(2) the patient's treating physician:

(A) examines the patient; and

(B) based on that examination, issues an order for voluntary inpatient services that meets the requirements of §412.175(h) of this title (relating to Voluntary Admission).

HISTORY: The provisions of this § 412.179 adopted to be effective November 1, 2003, 28 TexReg 9251

Division 4. Transfers and Changing LMHAS

§412.191. Transfers Between SMHFs

(a) A request to transfer from one SMHF to another SMHF may be initiated by a patient, the patient's guardian, SMHF staff, the designated LMHA, or another interested person.

(b) A transfer between SMHFs may be made when deemed advisable by the administrator of the transferring SMHF with the agreement of the administrator of the receiving SMHF based on:

- (1) condition and desires of patient;
- (2) geographic residence of the patient;
- (3) program and bed availability;
- (4) geographical proximity to the patient's family;

and

- (5) input from the designated LMHA.

(c) A voluntary patient may not be transferred without the consent of the individual who made the request for voluntary admission in accordance with §412.175(a)(1) of this title (relating to Voluntary Admission).

(d) If a patient receiving court-ordered inpatient mental health services is transferred from one SMHF to another SMHF, then the transferring SMHF shall notify the committing court of the transfer.

(e) If a prosecuting attorney has notified the SMHF administrator that a patient has criminal charges pending, then the administrator shall notify the judge of the court before which charges are pending if the patient is transferred to another SMHF.

(f) Chapter 415, Subchapter G of this title (concerning Determination of Manifest Dangerousness) governs transfer of a patient between a SMHF and the maximum security unit or adolescent secure unit at North Texas State Hospital.

HISTORY: The provisions of this § 412.191 adopted to be effective November 1, 2003, 28 TexReg 9251

§412.192. Transfers Between a SMHF and a SMRF

(a) Subchapter F, Division 3 of this chapter (concerning Continuity of Services—State Mental Retardation Facilities) and Texas Health and Safety Code, § 575.013 and §575.017, govern transfer of a patient from a SMHF to a SMRF. The patient may not be transferred before the judge of the committing court enters an order approving the transfer.

(b) Subchapter F, Division 3 of this chapter (concerning Continuity of Services—State Mental Retardation Facilities) and Texas Health and Safety Code, § 594.034, govern transfer of a person from a SMRF to a SMHF. The receiving SMHF shall notify the designated LMHA and the designated MRA of the transfer.

HISTORY: The provisions of this § 412.192 adopted to be effective November 1, 2003, 28 TexReg 9251

§412.193. Transfers Between a SMHF and an Out-of-State Institution

Chapter 411, Subchapter H of this title (concerning Interstate Transfers) governs transfer of a patient between a SMHF and an out-of-state institution.

HISTORY: The provisions of this § 412.193 adopted to be effective November 1, 2003, 28 TexReg 9251

§412.194. Transfers Between a SMHF and Another Institution in Texas

(a) Texas Health and Safety Code, §§ 575.011, 575.014, and 575.017, govern transfer of a patient between a SMHF and a psychiatric hospital. A voluntary patient may not be transferred without the consent of the individual who made the request for voluntary admission in accordance with §412.175(a)(1) of this title (relating to Voluntary Admission).

(b) Texas Health and Safety Code, § 575.015 and §575.017, govern transfer of a patient from a SMHF to a federal institution. The transferring SMHF shall notify the designated LMHA of the transfer.

(c) Texas Health and Safety Code, § 575.016 and §575.017, govern transfer of a person from a facility of the institutional division of the Texas Department of Criminal Justice to a SMHF.

HISTORY: The provisions of this § 412.194 adopted to be effective November 1, 2003, 28 TexReg 9251

§412.195. Changing LMHAS

(a) While receiving LMHA services.

(1) If a person currently receiving LMHA services informs the LMHA that he/she intends to move his/her permanent residence to a county within the local service area of another LMHA (hereafter referenced in this paragraph as the "new LMHA") and to seek services from the new LMHA, then:

(A) the original LMHA shall:

- (i) notify the new LMHA of the person's intent to move his/her permanent residence;
- (ii) schedule an appointment for a pre-admission assessment for the person at the new LMHA;
- (iii) at least five days before the appointment, submit to the new LMHA a copy of information pertinent to the person's treatment;
- (iv) ensure the person has sufficient medication to last until the appointment date at the new LMHA; and

(v) maintain the person's case in open status in CARE for 90 days or until notified that the person has been admitted to services at the new LMHA, whichever occurs first; and

(B) the new LMHA shall conduct a pre-admission assessment in accordance with §412.315(a) of this title (relating to Assessment and Treatment Planning) and determine whether the person should receive services immediately or be placed on a waiting list for services.

(2) When a person currently receiving LMHA services moves his/her permanent residence to a county within the local service area of another LMHA (hereafter referenced in this paragraph as the "new LMHA") and seeks services from the new LMHA without prior knowledge of the original LMHA, then:

(A) the new LMHA shall:

- (i) promptly contact the original LMHA and request a copy of information pertinent to the person's treatment; and

(ii) the new LMHA shall conduct a pre-admission assessment in accordance with §412.315(a) of this

title and determine whether the person should receive services immediately or be placed on a waiting list for services; and

(B) the original LMHA shall:

(i) submit the requested information to the new LMHA within seven days of request; and

(ii) maintain the person's case in open status in CARE for 90 days or until notified that the person has been admitted to services at the new LMHA, whichever occurs first.

(b) While receiving inpatient services at a SMHF. If a patient at a SMHF informs the SMHF that he/she intends to move his/her permanent residence to a county within the local service area of another LMHA (hereafter referenced in this subsection as the "new LMHA") and to seek services from the new LMHA, then:

(1) the SMHF shall notify the following of the patient's intent to move his/her permanent residence upon discharge:

(A) the original LMHA if the patient was receiving LMHA services from the original LMHA prior to admission to the SMHF; and

(B) the new LMHA;

(2) the following shall participate in the patient's discharge planning in accordance with § 412.201 of this title (relating to Discharge Planning):

(A) the SMHF;

(B) the new LMHA; and

(C) the original LMHA if the patient was receiving LMHA services from the original LMHA prior to admission to the SMHF; and

(3) if the patient was receiving LMHA services from the original LMHA prior to admission to the SMHF, then the original LMHA shall maintain the patient's case in open status in CARE until the patient is discharged from the SMHF with a referral to the new LMHA.

HISTORY: The provisions of this § 412.195 adopted to be effective November 1, 2003, 28 TexReg 9251

Division 5. Discharge and ATP From SMHF

§ 412.201. Discharge Planning

(a) Discharge planning at a SMHF.

(1) Upon admission of a patient to a SMHF, the SMHF and the designated LMHA shall begin discharge planning for the patient.

(2) Discharge planning shall involve the SMHF treatment team, the designated LMHA liaison staff or other LMHA designated staff, the designated MRA liaison staff if appropriate, the patient, the patient's LAR, if any, and any other individual authorized by the patient. Except for the SMHF treatment team and the patient, involvement in discharge planning may be via teleconference or video-conference. The SMHF is responsible for notifying individuals involved in discharge planning of scheduled staffings and reviews.

(3) Discharge planning shall include, at a minimum, the following activities:

(A) identifying and recommending clinical services and supports needed by the patient after discharge or while on absence for trial placement (ATP);

(B) identifying and recommending non-clinical services and supports needed by the patient after discharge or while on ATP, including appropriate housing, food, and clothing;

(C) identifying potential providers and community resources for the services and supports recommended, including nursing facilities;

(D) counseling the patient and the patient's LAR, if any, to prepare them for care after discharge or while on ATP; and

(E) preparing a continuing care plan by the patient's treating physician, unless the physician believes the patient does not require continuing care, that includes:

(i) a description of the patient's recommended placement after discharge or while on ATP that reflects the patient's preferences, choices, and available community resources;

(ii) a description of recommended services and supports the patient may receive after discharge or while on ATP;

(iii) a description of problems identified at discharge or ATP, which may include any issues that disrupt the patient's stability in the community;

(iv) the patient's goals, interventions, and objectives as stated in the patient's treatment plan in the SMHF;

(v) comments or additional information;

(vi) a final diagnosis based on all five axes of the current edition of the Diagnostic Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association;

(vii) the provider(s) to whom the patient will be referred to for any services or supports after discharge or while on ATP; and

(viii) in accordance with Texas Health and Safety Code, § 574.081(c), a description of:

(I) the amount of medication the patient will need after discharge or while on ATP until the patient is evaluated by a physician; and

(II) the individual or entity that is responsible for providing and paying for the medication.

(4) The SMHF and the designated LMHA shall make reasonable efforts to provide discharge planning for persons who are discharged unexpectedly.

(5) As required by Texas Health and Safety Code, § 574.081(g), if a patient's treating physician believes that the patient does not require continuing care and does not prepare a continuing care plan, then the physician shall document in the patient's record the reasons for that belief.

(b) Discharge planning at a non-SMHF. A designated LMHA shall participate in discharge planning for a patient admitted to:

(1) an LMHA-network provider of inpatient services; or

(2) an alternate provider of inpatient services, if the patient was receiving LMHA services from the designated LMHA at the time of admission.

HISTORY: The provisions of this § 412.201 adopted to be effective November 1, 2003, 28 TexReg 9251

§ 412.202. Special Considerations

(a) Persons admitted to a SMHF three times in 180 days. Persons who are admitted to a SMHF three times in 180 days are considered to be at risk for future admission to inpatient services. Pursuant to the Texas Government Code, § 531.0244(b)(4), to prevent the unnecessary placement in an institution, the SMHF and designated LMHA shall:

(1) during discharge planning, review the patient's previous continuing care plans to determine the effectiveness of the clinical and non-clinical services

and supports identified, and recommend in the patient's current continuing care plan those services and supports that have been effective and as well as those designed to prevent unnecessary admission to the SMHF;

(2) determine the availability and appropriateness of clinical and non-clinical services and supports in the intensity needed by the patient (i.e., type, amount, scope, and duration) which will prevent unnecessary admission to the SMHF; and

(3) consider appropriateness of the patient's continued stay in the SMHF.

(b) Preadmission Screening and Evaluation (PASRR). As described in 42 Code of Federal Regulations Part 483, Subpart C, all patients who are being considered for nursing home placement shall be screened prior to nursing facility admission. The purpose of the PASRR Level I Screening and PASRR Level II Evaluation is:

(1) to ensure that placement of the patient in a nursing facility is necessary;

(2) to identify alternate placement options when applicable; and

(3) to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability.

(A) PASRR Level I Screening. The SMHF shall complete, and may collaborate with a nursing facility, a PASRR Level I Screening in accordance with the rules of the Department of Aging and Disability Services (DADS) set forth in the 40 TAC Chapter 17 (relating to Preadmission Screening and Resident Review (PASRR)).

(B) PASRR Level II Evaluation. If the PASRR Level I Screening indicates that the patient might have a mental illness, intellectual disability, or developmental disability, the SMHF shall arrange with LMHA who shall conduct a PASRR Level II Evaluation in accordance with 40 TAC Chapter 17.

(C) Resident Review. The LMHA shall conduct PASRR Level II Evaluations as part of the resident review process required by 40 TAC Chapter 17.

(4) ATP. If a patient is admitted to a nursing facility on ATP, then the designated LMHA shall conduct and document, including justification for its recommendations, the activities described in this paragraph.

(A) The designated LMHA shall make at least one face-to-face contact with the patient at the nursing facility. The contact shall include: (i) a review of the patient's medical record at the nursing facility; and (ii) discussions with the patient and LAR, if any, the nursing facility staff, and other staff who provide care to the patient regarding:

(I) the needs of the patient and the care he/she is receiving;

(II) the ability of the nursing facility to provide the appropriate care;

(III) the provision of mental health services, if needed by the patient; and

(IV) the patient's adjustment to the nursing facility.

(B) Before the end of the initial ATP period as described in §412.206(b)(2) of this title (relating to Absence from Trial Placement (ATP)), the designated LMHA shall recommend to the SMHF one of the following: (i) discharging the patient if the LMHA determines that:

(I) the nursing facility is capable of providing, and willing to provide, appropriate care to the patient after discharge;

(II) any mental health services needed by the patient are being provided to the patient while he/she is residing in the nursing facility; and

(III) the patient and LAR, if any, agrees to the nursing facility placement; (ii) extending the patient's ATP period in accordance with §412.206(b)(3) of this title; (iii) returning the patient to the SMHF in accordance with §412.205(b)(2) of this title (relating to Absences From a SMHF); or (iv) initiating involuntary admission to the SMHF in accordance with §412.205(a)(2) of this title.

(c) Assisted living.

(1) A SMHF or LMHA may not refer a person to an assisted living facility that is not licensed under the Texas Health and Safety Code, Chapter 247.

(2) As required by the Texas Health and Safety Code, § 247.063(b), if a SMHF or LMHA gains knowledge of an assisted living facility that is not operated or licensed by TDHS, an LMHA, or TDMHMR, and that has four or more residents who are unrelated to the proprietor of the facility, then the SMHF or LMHA shall report the name, address, and telephone number of the facility to TDHS.

(d) Minors.

(1) To the extent permitted by medical privacy laws, the SMHF and designated LMHA shall make a reasonable effort to involve a minor's LAR or the LAR's designee.

(2) A minor committed to or placed in a SMHF under the Texas Family Code, Chapter 55, Subchapter C or D, shall be discharged in accordance with the Texas Family Code, Chapter 55, Subchapter C or D, as appropriate.

(e) Patients suspected of having mental retardation. If the SMHF suspects a patient has mental retardation, then the SMHF shall notify the designated LMHA liaison staff and the designated MRA. The designated MRA shall assign an MRA liaison staff to the patient to ensure compliance with Chapter 415, Subchapter D of this title (concerning Diagnostic Eligibility for Services and Supports—Mental Retardation Priority Population and Related Conditions).

(f) Criminal Code.

(1) Texas Code of Criminal Procedure (TCCP), Article 46.02 or Chapter 46B: Incompetency to stand trial.

(A) Discharge of a patient committed under TCCP, Article 46.02, § 6 (Civil commitment—charges pending) or Article 46B.102 (Commitment Hearing: Mental Illness), shall be in accordance with the TCCP, Article 46.02, § 8 (General) or Article 46B.107 (Release of Defendant After Commitment).

(B) Discharge of a patient committed under TCCP, Article 46.02, § 5 (Criminal commitment) or Article 46B.073 (Commitment For Restoration to Competency), shall be in accordance with TCCP, Article 46.02, § 5 (Criminal commitment) or Article 46B.083 (Report By Facility Head).

(C) For a patient committed under TCCP, Article 46.02 or Chapter 46B, who is discharged and returned to the committing court, the SMHF shall, within 24 hours after discharge, notify the following of the discharge: (i) the patient's designated LMHA; and (ii) the Texas Correctional Office on Offenders with Medical or Mental Impairments.

(2) TCCP, Article 46.03: Insanity defense. a person acquitted by reason of insanity and committed to a SMHF under TCCP, Article 46.03, may be discharged

only upon order of the committing court in accordance with TCCP, Article 46.03, § 4(d)(5) (Disposition following acquittal by reason of insanity) (Judicial release).

(g) Special needs offenders.

(1) Pre-admission assessment after release from county or city jail. If a county or city jail refers a special needs offender (SNO) in the priority population to an LMHA and notifies the LMHA of the referral at least 24 hours prior to the SNO's release from a county or city jail, then the LMHA shall arrange for a face-to-face contact between the SNO and a QMHP-CS to occur within seven days after the SNO's release.

(A) If the SNO is currently receiving LMHA services from the LMHA that is notified of the referral, then at the face-to-face contact the QMHP-CS shall reassess the SNO and arrange for appropriate services.

(B) If the SNO is not currently receiving LMHA services from the LMHA that is notified of the referral, then at the face-to-face contact the QMHP-CS shall conduct a pre-admission assessment in accordance with § 412.315(a) of this title (relating to Assessment and Treatment Planning) and comply with § 412.161(b)(2)(A) or (B) of this title (relating to Screening and Assessment), as appropriate.

(C) If the LMHA does not have a face-to-face contact with a SNO, then the LMHA shall document the reasons for not doing so.

(2) Pre-admission assessment after release from state prison or state jail. If an LMHA is notified of the anticipated release from prison or a state jail of a SNO in the priority population who is currently taking psychoactive medication(s) for a mental illness and who will be released with a 10-day supply of the psychoactive medication(s), then the LMHA shall arrange for a face-to-face contact between the SNO and QMHP-CS to occur within seven days after the SNO's release.

(A) At the face-to-face contact, the QMHP-CS shall conduct a pre-admission assessment in accordance with § 412.315(a) of this title and comply with § 412.161(b)(2)(A) or (B) of this title (as appropriate). If the LMHA determines that the SNO should receive services immediately, then the LMHA must arrange for the SNO to meet with a prescriber of medication before the SNO's entire supply of psychoactive medication has been administered.

(B) If the LMHA does not have a face-to-face contact with the SNO, then the LMHA shall document the reasons for not doing so.

HISTORY: The provisions of this § 412.202 adopted to be effective November 1, 2003, 28 TexReg 9251; amended to be effective May 24, 2013, 38 TexReg 3029

§ 412.203. Discharge of Voluntary Patients

(a) No longer benefit from inpatient services. a SMHF shall discharge a voluntary patient if the SMHF administrator or designee determines, based on a physician's determination, that the patient can no longer benefit from inpatient services.

(b) Request for discharge. If a written request for discharge is made by a voluntary patient or the patient's LAR, then the patient may be discharged in accordance with Texas Health and Safety Code, § 572.004. The request shall be signed, timed, and dated by the patient or the patient's LAR.

(1) If a patient informs a SMHF staff member of the patient's desire to leave the SMHF, the staff member shall, as soon as possible, assist the patient in creating

the written request and present it to the patient for the patient's signature.

(2) Within four hours after a written request is made known to the SMHF, the SMHF shall notify the treating physician or if the treating physician is not available during that time period, notify another physician who is a SMHF staff member.

(3) In accordance with Texas Health and Safety Code, § 572.004(i), after a written request from a minor patient admitted under § 412.175(a)(1)(B) of this title (relating to Voluntary Admission) is made known to the SMHF, the SMHF shall notify the patient's parent, managing conservator, or guardian of the request.

(4) Once a written request is made known to the SMHF, the SMHF shall file the request in the patient's medical record.

(c) Discharge or examination. In accordance with Texas Health and Safety Code, § 572.004(c) and (d):

(1) the SMHF shall, based on a physician's determination, discharge the patient within the four-hour time period described in subsection (b)(2) of this section; or

(2) if the physician who is notified in accordance with subsection (b)(2) of this section has reasonable cause to believe that the patient may meet the criteria for court-ordered inpatient mental health services or emergency detention, then the physician shall examine the patient as soon as possible within 24 hours after the request for discharge is made known to the SMHF.

(d) Discharge if not examined within 24 hours or if criteria not met.

(1) If a patient, who a physician believes may meet the criteria for court-ordered inpatient mental health services or emergency services, is not examined within 24 hours after the request for discharge is made known to the SMHF, then the SMHF shall discharge the patient.

(2) In accordance with Texas Health and Safety Code, § 572.004(d), if the physician examining the patient as described in subsection (c)(2) of this section determines that the patient does not meet the criteria for court-ordered inpatient mental health services or emergency detention, then the SMHF shall discharge the patient upon completion of the examination.

(e) Discharge or filing application if criteria met. In accordance with Texas Health and Safety Code, § 572.004(d), if the physician examining the patient as described in subsection (c)(2) of this section, determines that the patient meets the criteria for court-ordered inpatient mental health services or emergency detention, then the SMHF shall, by 4:00 p.m. on the next business day:

(1) file an application for court-ordered inpatient mental health services or emergency detention and obtain a court order for further detention of the patient; or

(2) discharge the patient.

(f) Notification by physician. In accordance with Texas Health and Safety Code, § 572.004(d), if the SMHF intends to detain a patient to file an application and obtain a court order for further detention of the patient, a physician shall:

(1) notify the patient of such intention; and

(2) document in the patient's medical record the reasons for the decision to detain the patient.

(g) Withdrawal of request for discharge. In accordance with Texas Health and Safety Code, § 572.004(f), a SMHF is not required to complete the discharge process described in this section if the patient makes a written statement withdrawing the request for discharge.

HISTORY: The provisions of this § 412.203 adopted to be effective November 1, 2003, 28 TexReg 9251

§ 412.204. Discharge of Involuntary Patients

(a) Discharge from emergency detention.

(1) Except as provided by §412.179 of this title (relating to Voluntary Treatment Following Involuntary Admission) and in accordance with Texas Health and Safety Code, § 573.023(b) and §573.021(b), a SMHF shall immediately discharge a patient under emergency detention if either of the following occurs:

(A) the SMHF administrator or designee determines, based on a physician's determination, that the patient no longer meets the criteria described in §412.176(c)(1) of this title (relating to Emergency Detention); or

(B) except as provided in paragraph (2) of this subsection, 24 hours has elapsed from the time the patient was presented to the SMHF and the SMHF has not obtained a court order for further detention of the patient.

(2) In accordance with Texas Health and Safety Code, § 573.021(b), if the 24-hour period described in paragraph (1)(B) of this subsection ends on a Saturday, Sunday, or legal holiday, or before 4:00 p.m. on the next business day after the patient was presented to the SMHF, then the patient may be detained until 4:00 p.m. on such business day.

(b) Discharge under order of protective custody. Except as provided by §412.179 of this title (relating to Voluntary Treatment Following Involuntary Admission) and in accordance with Texas Health and Safety Code, § 574.028, a SMHF shall immediately discharge a patient under an order of protective custody if any of the following occurs:

(1) the SMHF administrator or designee determines that, based on a physician's determination, the patient no longer meets the criteria described in Texas Health and Safety Code, § 574.022(a);

(2) the SMHF administrator or designee does not receive notice that the patient's continued detention is authorized after a probable cause hearing held within the time period prescribed by Texas Health and Safety Code, § 574.025(b);

(3) a final order for court-ordered inpatient mental health services has not been entered within the time period prescribed by Texas Health and Safety Code, § 574.005; or

(4) an order to release the patient is issued in accordance with Texas Health and Safety Code, § 574.028(a).

(c) Discharge under court-ordered inpatient mental health services.

(1) Except as provided by §412.179 of this title (relating to Voluntary Treatment Following Involuntary Admission) and in accordance with Texas Health and Safety Code, § 574.085 and §574.086(a), a SMHF shall immediately discharge a patient under a temporary or extended order for inpatient mental health services if either of the following occurs:

(A) the order for inpatient mental health services expires; or

(B) the SMHF administrator or designee determines that, based on a physician's determination, the patient no longer meets the criteria for court-ordered inpatient mental health services.

(2) In accordance with Texas Health and Safety Code, § 574.086(b), before discharging a patient in accordance with paragraph (1) of this subsection, the SMHF

administrator designee shall consider whether the patient should receive court-ordered outpatient mental health services in accordance with a modified order described in Texas Health and Safety Code, § 574.061.

§ 412.205. Absences From a SMHF

(a) Voluntary patients.

(1) The SMHF administrator may, in coordination with the designated LMHA, authorize absences for a voluntary patient.

(2) A voluntary patient who is absent from the SMHF, authorized (e.g., absence for trial placement (ATP)) or unauthorized, may not be detained and returned to the SMHF unless the patient consents to the return. If the patient's condition has deteriorated to the extent that the patient's continued absence from the SMHF is inappropriate and there is a question of competency or willingness to consent to return, then the designated LMHA or SMHF shall initiate involuntary admission in accordance with Texas Health and Safety Code, Chapter 573 or 574.

(b) Involuntary patients admitted under order for inpatient mental health services.

(1) In accordance with Texas Health and Safety Code, § 574.082, the SMHF administrator may, in coordination with the designated LMHA, authorize absences for an involuntary patient admitted under order for inpatient mental health services.

(A) If a patient's authorized absence is to exceed 72 hours, then the SMHF shall notify the committing court of the absence.

(B) An authorized absence may not exceed the expiration date of the patient's order for inpatient mental health services.

(2) In accordance with Texas Health and Safety Code, § 574.083, a patient may be detained and returned to the SMHF if the SMHF administrator issues a certificate or affidavit establishing that the patient is receiving court-ordered inpatient mental health services and that:

(A) the patient is absent without authority from the SMHF (i.e., unauthorized departure);

(B) the patient has violated the conditions of the absence; or

(C) the patient's condition has deteriorated to the extent that the patient's continued absence from the SMHF is inappropriate.

(3) In accordance with Texas Health and Safety Code, § 574.084, a patient's authorized absence that exceeds 72 hours may be revoked only after an administrative hearing held in accordance with this paragraph.

(A) The SMHF shall designate a hearing officer to conduct the hearing. The hearing officer may be a mental health professional, but may not be directly involved in treating the patient.

(B) The hearing shall be held within 72 hours after the patient is returned to the SMHF. The hearing shall be informal. The patient and SMHF staff shall be given the opportunity to present information and arguments. A SMHF staff member or another individual designated by the patient may act as the patient's advocate if the patient requests such advocacy.

(C) Within 24 hours after the conclusion of the hearing, the hearing officer shall decide if revocation of the authorized absence is justified (i.e., the patient violated the conditions of the absence or the patient's condition deteriorated to the extent that the patient's continued absence from the SMHF is inappropriate).

The hearing officer's decision shall be in writing and include an explanation of the reasons for the decision and the information relied upon. A copy of the decision shall be placed in the patient's medical file.

(D) If the hearing officer's decision does not revoke the authorized absence, then the patient shall be permitted to leave the SMHF pursuant to the conditions of the absence.

HISTORY: The provisions of this § 412.205 adopted to be effective November 1, 2003, 28 TexReg 9251

§ 412.206. Absence for Trial Placement (ATP)

(a) A patient who is eligible for discharge as described in § 412.203 of this title (relating to Discharge of Voluntary Patients) or § 412.204(c) of this title (relating to Discharge of Involuntary Patients), may leave the SMHF on ATP if the SMHF and the designated LMHA agree that ATP will be beneficial in implementing the patient's continuing care plan. The designated LMHA is responsible for monitoring the patient while on ATP.

(b) Time frames for ATP.

(1) A patient admitted under court-ordered inpatient mental health services may not be on ATP beyond the expiration date of the patient's order for inpatient mental health services.

(2) The initial ATP period for any patient may not exceed 30 days.

(3) The SMHF may extend an initial ATP period up to 30 days if requested by the designated LMHA and if clinically justified.

(4) Approval by the following individuals is required for any ATP that exceeds 60 days:

(A) the SMHF administrator or designee; and

(B) the designated LMHA executive director or designee.

HISTORY: The provisions of this § 412.206 adopted to be effective November 1, 2003, 28 TexReg 9251

§ 412.207. Procedures Upon Discharge or ATP

(a) Arrangements and referrals. Prior to a patient's discharge or absence for trial placement (ATP), the SMHF and designated LMHA (and designated MRA, if appropriate) shall make arrangements and referrals for the services and supports recommended in the patient's continuing care plan.

(1) The SMHF shall document the arrangements and referrals in the referral instructions.

(2) The SMHF shall request that the patient or LAR, as appropriate, sign the referral instructions. If the patient or LAR refuses to sign, then the SMHF shall document in the patient's medical record the circumstances of the refusal.

(b) Notice of protection and advocacy system. Upon discharge, the SMHF shall provide the patient with written notification of the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, which is Advocacy, Inc., as required by Texas Health and Safety Code, § 576.008.

(c) Discharge notice to family or LAR.

(1) In accordance with Texas Health and Safety Code, § 576.007, before discharging a patient who is 18 years of age or older a SMHF shall make a reasonable effort to notify the patient's family of the discharge if the patient grants permission for the notification.

(2) Before discharging a patient who is 16 or 17 years of age, or younger than 16 years of age and is or has been married, a SMHF shall make a reasonable effort to

notify the patient's family of the discharge if the patient grants permission for the notification.

(3) Before discharging a patient who is younger than 16 years of age and who is not or has not been married, a SMHF shall notify the patient's LAR of the discharge.

(d) Release of minors. Upon discharge, the SMHF may release a minor younger than 16 years of age only to the minor's LAR or the LAR's designee.

(1) If the LAR or the LAR's designee is unwilling to retrieve the minor from the SMHF and the LAR is not a state agency, then the SMHF shall notify Child Protective Services (CPS) of its responsibility to retrieve the minor from the SMHF. If CPS is unwilling to retrieve the minor, then the SMHF or the designated LMHA may transport the minor to the administrative offices of CPS.

(2) If the LAR is unwilling to retrieve the minor from the SMHF and the LAR is a state agency, then the SMHF or designated LMHA may transport the minor to the administrative offices of the state agency.

(e) Transportation. The SMHF and designated LMHA shall ensure that the patient has transportation upon discharge or ATP.

(f) Notice to designated LMHA. At least 24 hours prior to a patient's discharge or ATP, but no later than 24 hours after discharge for a patient who is discharged unexpectedly, the SMHF shall notify the designated LMHA of the anticipated or unexpected discharge and convey the following information about the patient:

(1) identifying data, including address;

(2) legal status (e.g., regarding guardianship, charges pending, custody, if patient is a minor);

(3) the day and time the patient will be discharged or ATP;

(4) the patient's destination after discharge or ATP;

(5) pertinent medical information;

(6) current medications;

(7) behavioral data, including information regarding COPSD; and

(8) other pertinent treatment information, including the continuing care plan.

(g) Discharge packet.

(1) At a minimum, the discharge packet shall include:

(A) the continuing care plan;

(B) referral instructions, including:

(i) SMHF contact person;

(ii) name of the designated LMHA liaison staff;

(iii) names of providers and community resources the person is referred to, including contacts, appointment dates and times, addresses, and phone numbers;

(iv) a description of to whom or where the person is released upon discharge, including intended residence (address and phone number);

(v) instructions for the person, LAR, and primary care giver;

(vi) medication regimen; and

(vii) signature, with date, of the person or LAR and a member of the SMHF treatment team;

(C) copies of all available pertinent current summaries and assessments; and

(D) treating physician's orders.

(2) At discharge or ATP, the SMHF shall provide to the patient a copy of the documents described in paragraph (1)(A), (B), and (D) of this subsection.

(3) Within 24 hours after discharge or ATP, the SMHF shall send a copy of the discharge packet to:

(A) the designated LMHA; and

(B) the providers described in the referral instructions to which the person is referred, which may be:

- (i) an LMHA-network provider, if the LMHA is responsible for ensuring the person's services after discharge or while on ATP;
- (ii) an alternate provider, if the person requested referral to the alternate provider; or
- (iii) a county jail, if the person will be taken to the county jail upon discharge and the county jail has agreed to provide the needed services.

(h) Discharge summary. Within 10 days after discharge, the SMHF shall complete a discharge summary and send a copy to:

- (1) the designated LMHA; and
- (2) the providers described in the referral instructions to which the person is referred.

HISTORY: The provisions of this § 412.207 adopted to be effective November 1, 2003, 28 TexReg 9251

§ 412.208. Post Discharge/ATP: Contact and Implementation of Continuing Care Plan

The designated LMHA is responsible for contacting a person following discharge or absence for trial placement (ATP) and for implementing a person's continuing care plan in accordance with this section.

(1) LMHA contact after discharge or ATP.

(A) The designated LMHA shall make face-to-face contact within seven days after discharge or ATP of a person who was:

- (i) discharged or on ATP from a SMHF and referred to the LMHA for services or supports as indicated in the continuing care plan;
- (ii) discharged from an LMHA-network provider of inpatient services and referred to the LMHA for services or supports as indicated in the continuing care plan;
- (iii) discharged from an alternate provider of inpatient services and receiving LMHA services from the designated LMHA at the time of admission and who, upon discharge, is referred to the LMHA for services or supports as indicated in the continuing care plan; and
- (iv) discharged from the LMHA's crisis stabilization unit and referred to the LMHA for services or supports as indicated in the discharge plan.

(B) At the face-to-face contact, the designated LMHA shall:

- (i) re-assess the person and ensure the provision of the clinical services and supports specified in the person's continuing care plan by:
 - (I) making the services and supports available and accessible; or
 - (II) placing the person on a waiting list for the services and supports; and
- (ii) assist the person in accessing the non-clinical services and supports specified in the person's continuing care plan.

(C) The designated LMHA shall develop or review a person's treatment plan in accordance with § 412.315 of this title (relating to Assessment and Treatment Planning) of Subchapter G of this chapter (concerning Mental Health Community Services Standards), within three weeks after the face-to-face contact described in subparagraph (B) of this paragraph. The treatment plan shall include all clinical and non-

clinical services and supports recommended in the continuing care plan or justification for their exclusion.

(D) The designated LMHA shall make a good faith effort to locate and contact a person who fails to show up for the face-to-face contact. If the designated LMHA does not have a face-to-face contact with a person, then the LMHA shall document the reasons for not doing so.

(2) For a person identified in paragraph (1)(A)(i) of this section whose continuing care plan identifies the designated LMHA as responsible for providing or paying for the person's psychoactive medications, the designated LMHA is responsible for ensuring:

(A) the person has an appointment with a prescriber of medication scheduled to occur before the earlier of the following events:

- (i) the day the person's entire supply of medication from the SMHF has been administered as prescribed; or
- (ii) the 15th day after the person is discharged from the SMHF or on ATP; and

(B) the provision of psychoactive medications for the person if such medications are prescribed.

(3) The designated LMHA shall document in the person's record the LMHA's activities described in this section, and the person's responses to those activities.

HISTORY: The provisions of this § 412.208 adopted to be effective November 1, 2003, 28 TexReg 9251

Division 6.

Discharge From LMHA Services

§ 412.221. Discharge From LMHA Services

(a) When an LMHA determines that a person no longer needs LMHA services, then the LMHA shall discuss such determination with the person and the person's LAR, if any, and discharge the person from LMHA services (i.e., enter "closed" in CARE). If the LMHA discharges the person from LMHA services, then the LMHA shall provide the person with written notification of the termination of services and of the opportunity to appeal in accordance with § 401.464(d), (e), (g), and (h) of this title (relating to Notification and Appeals Process).

(b) The LMHA is responsible for ensuring the completion of the person's summary of care in accordance with § 412.315(e) of this title (relating to Assessment and Treatment Planning) of Subchapter G of this chapter (concerning Mental Health Community Services Standards).

HISTORY: The provisions of this § 412.221 adopted to be effective November 1, 2003, 28 TexReg 9251

Division 7.

Training, References, and Distribution

§ 412.231. Assessment and Intake Training Requirements at a SMHF

(a) As required by Texas Health and Safety Code, § 572.0025(e), if a SMHF's internal policy permits an assessment professional to determine whether a physician should conduct a preliminary examination on persons requesting voluntary admission, then the assessment professional shall receive at least eight hours of training in conducting an assessment.

(1) The assessment training shall provide instruction regarding assessing, interviewing, and diagnosing

persons with a mental illness and persons diagnosed with COPSD.

(2) An assessment professional shall receive the training:

(A) prior to conducting an assessment; and

(B) annually throughout the professional's employment or association with the SMHF.

(b) As required by Texas Health and Safety Code, § 572.0025(e), a SMHF staff member whose responsibilities include conducting the intake process described in Division 3 of this subchapter (relating to Admission to SMHFs—SMHF Responsibilities) shall receive at least eight hours of training in the SMHF's intake process.

(1) The intake training shall provide instruction regarding:

(A) obtaining relevant information about patients, including information about finances, third-party coverage or insurance benefits, and advance directives;

(B) explaining, orally and in writing, the person's rights described in Chapter 404, Subchapter E of this title (concerning Rights of Persons Receiving Mental Health Services);

(C) explaining, orally and in writing, the SMHF's services and treatment as they relate to patient; and

(D) explaining, orally and in writing, the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, which is Advocacy, Inc., pursuant to Texas Health and Safety Code, § 576.008; and

(E) determining whether a patient comprehends the information provided in accordance with subparagraphs (B) - (D) of this paragraph.

(2) Up to six hours of the training described in the following references may be used toward the training required by this subsection:

(A) §417.515 of this title (relating to Staff Training in Identifying, Reporting, and Preventing Abuse, Neglect, and Exploitation) of Chapter 417, Subchapter K of this title (concerning Abuse, Neglect, and Exploitation in TDMHMR Facilities);

(B) § 404.165 of this title (relating to Staff Training in Rights of Persons Receiving Mental Health Services) of Chapter 404, Subchapter E of this title (concerning Rights of Persons Receiving Mental Health Services); and

(C) §8(b) (Designation of Privacy Official and Workforce Training) of the "Interpretive Guidance on Laws Pertaining to Privacy of Mental Health and Mental Retardation Records for the TDMHMR Service Delivery System," referenced as Exhibit a in Chapter 414, Subchapter a of this title (concerning Protected Health Information).

(3) A SMHF staff member whose responsibilities include conducting the intake process shall receive the training:

(A) prior to conducting the intake process; and

(B) annually throughout the staff member's employment or association with the SMHF.

(c) Documentation of training. A SMHF shall document that each assessment professional and each staff member whose responsibilities include conducting the intake process has successfully completed the training described in subsections (a) and (b) of this section, including:

(1) the date of the training;

(2) the length of the training session; and

(3) the name of the instructor.

(d) Performance in accordance with training. Each assessment professional and each staff member whose re-

sponsibilities include conducting the intake process shall perform his/her responsibilities in accordance with the training required by this section.

HISTORY: The provisions of this § 412.231 adopted to be effective November 1, 2003, 28 TexReg 9251

§ 412.232. References

The following statutes and TDMHMR rules are referenced in this subchapter:

(1) Texas Health and Safety Code:

(A) Chapters 241, 242, 247, 572, 573, 574, 575, and 577; and

(B) §§ 533.035(a), 576.007, 576.008, and 594.034;

(2) Texas Family Code, Chapter 55;

(3) Texas Government Code, § 531.0244;

(4) Texas Insurance Code, Article 20A and Article 21.52F;

(5) Texas Occupations Code, Chapters 155, 204, 301, 501, 502, and 505;

(6) Texas Code of Criminal Procedure, Article 46.02 or Chapter 46B and Article 46.03;

(7) 42 USC § 1395dd, the Emergency Medical Treatment and Active Labor Act (EMTALA);

(8) § 19.2500 of Title 40 (relating to Preadmission Screening and Resident Review (PASARR));

(9) § 401.464 of this title (relating to Notification and Appeals Process);

(10) Chapter 404, Subchapter E of this title (concerning Rights of Persons Receiving Mental Health Services);

(11) Chapter 405, Subchapter E of this title (concerning Electroconvulsive Therapy);

(12) Chapter 405, Subchapter FF of this title (concerning Consent to Treatment with Psychoactive Medication);

(13) Chapter 411, Subchapter H of this title (concerning Interstate Transfers);

(14) Subchapter C of this chapter (concerning Charges for Community Services);

(15) Subchapter F of this chapter (concerning Continuity of Services—State Mental Retardation Facilities);

(16) Subchapter G of this chapter (concerning Mental Health Community Services Standards);

(17) Chapter 414, Subchapter a of this title (concerning Protected Health Information);

(18) Chapter 415, Subchapter D, of this title (concerning Diagnostic Eligibility for Services and Supports—Mental Retardation Priority Population and Related Conditions);

(19) Chapter 405, Subchapter F of this title (concerning Voluntary and Involuntary Behavioral Interventions in Mental Health Programs);

(20) Chapter 415, Subchapter G of this title (concerning Determination of Manifest Dangerousness); and

(21) Chapter 417, Subchapter K of this title (concerning Abuse, Neglect, and Exploitation in TDMHMR Facilities).

HISTORY: The provisions of this § 412.232 adopted to be effective November 1, 2003, 28 TexReg 9251

§ 412.233. Distribution

(a) This subchapter shall be distributed to:

(1) members of the Texas Mental Health and Mental Retardation Board;

- (2) executive, management, and program staff of TDMHMR Central Office;
 - (3) administrators of all SMHF's and LMHAs; and
 - (4) advocacy organizations.
- (b) The administrator of each SMHF shall disseminate the information contained in this subchapter to all appropriate staff.
- (c) The administrator of each LMHA shall disseminate the information contained in this subchapter to all appropriate staff and LMHA-network providers.

HISTORY: The provisions of this § 412.233 adopted to be effective November 1, 2003, 28 TexReg 9251

Subchapter F.

Continuity of Services—State Mental Retardation Facilities

§ 412.272. Transfer of an Individual from a State MR Facility to a State MH Facility

- (a) An individual committed to a state MR facility for residential services may be transferred to a state MH facility for mental health care if a licensed physician of the state MR facility determines after an examination that care, treatment, control and rehabilitation in a state MH facility is in the best interest of the individual.
- (b) The individual will be returned to the state MR facility within 30 calendar days unless a court order transferring the individual is obtained by the state MH facility as described in subsection (c) of this section.
- (c) If the state MH facility determines that hospitalization of the individual is necessary for longer than 30 calendar days, the state MH facility will request from the committing court an order transferring the individual to the state MH facility. In support of the request, the state MH facility will submit two certificates of medical examination for mental illness to the court, as described in THSC, § 574.011, stating that the individual:
- (1) is a person with mental illness; and
 - (2) requires observation or treatment in the state MH facility.
- (d) If the state MH facility determines that an individual who has been transferred to a state MH facility under a court order no longer requires hospitalization, the state MH facility will request that the committing court approve the return of the individual to the state MR facility, in accordance with THSC, § 594.045.
- (e) An individual admitted to a state MR facility under a regular voluntary admission for residential services may be transferred to a state MH facility only if the individual consents to the transfer.

HISTORY: The provisions of this § 412.272 adopted to be effective January 1, 2001, 25 TexReg 12746

Subchapter G.

Mental Health Community Services Standards

**Division 1.
General Provisions**

§ 412.301. Purpose and Application

(a) The purpose of this subchapter is to establish performance requirements and standards for the provision of

mental health community services, as authorized by the Texas Health and Safety Code, § 534.052.

(b) This subchapter applies to persons and entities with which the department contracts, including local mental health authorities (LMHA), managed care organizations (MCO), providers of mental health rehabilitative services, as defined in § 419.453 of this title (relating to Definitions), and providers of mental health case management services, as defined in § 412.403 of this title (relating to Definitions), and requires that they ensure the performance requirements and standards in this subchapter are met in the provision of mental health community services.

HISTORY: The provisions of this § 412.301 adopted to be effective April 29, 2009, 34 TexReg 2603

§ 412.303. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

- (1) Access—The ability to obtain mental health community services based upon components such as availability and acceptability of services to the individual, or the individual's Legally Authorized Representative (LAR) on the individual's behalf, transportation, distance, hours of operation, language, and the cultural competency of staff members. Barriers to access may be structural, financial, or specific to the individual.
- (2) Adolescent—An individual who is at least 13 years of age, but younger than 18 years of age.
- (3) Adult—An individual who is 18 years of age or older.
- (4) Advanced practice nurse—A staff member who is a registered nurse approved by the Texas Board of Nursing as a clinical nurse specialist in psychiatric/mental health or nurse practitioner in psychiatric/mental health, in accordance with Texas Occupations Code, Chapter 301.
- (5) Advocacy—Support for an individual or family member in expressing and resolving issues or concerns regarding access to or quality and appropriateness of services.
- (6) Appeal—A mechanism for an independent review of an adverse determination.
- (7) Assessment—A systematic process for measuring an individual's service needs.
- (8) Child—An individual who is at least three years of age, but younger than 13 years of age.
- (9) Competency—Demonstrated knowledge and skilled performance of a particular activity.
- (10) Continuity of services—Services that ensure uninterrupted services are provided to an individual during a transition between service types (e.g., inpatient services, outpatient services) or providers, in accordance with applicable rules (e.g., Chapter 412, Subchapter D of this title (relating to Mental Health Services - Admission, Continuity, and Discharge)). These activities include:
 - (A) assisting with admissions and discharges;
 - (B) facilitating access to appropriate services and supports in the community, including identifying and connecting the individual with community resources;
 - (C) participating in the individual's treatment plan development and reviews;
 - (D) promoting implementation of the individual's treatment plan or continuing care plan; and
 - (E) facilitating coordination and follow-up between the individual and the individual's family, as well as with available community resources.

(11) COPSD or co-occurring psychiatric and substance use disorders—The co-occurring diagnoses of psychiatric disorders and substance use disorders.

(12) Credentialing—A process to review and approve a staff member's educational status, experience, and licensure status (as applicable) to ensure that the staff member meets the departmental requirements for service provision. The process includes primary source verification of credentials, establishing and applying specific criteria and prerequisites to determine the staff member's initial and ongoing competency and assessing and validating the staff member's qualification to deliver care. Re-credentialing is the periodic process of reevaluating the staff's competency and qualifications.

(13) Crisis—A situation in which:

(A) the individual presents an immediate danger to self or others; or

(B) the individual's mental or physical health is at risk of serious deterioration; or

(C) an individual believes that he or she presents an immediate danger to self or others or that his or her mental or physical health is at risk of serious deterioration.

(14) Crisis services—Mental health community services or other necessary interventions provided to an individual in crisis.

(15) CSSP or community services specialist—A staff member who, as of August 31, 2004:

(A) received: (i) a high school diploma; or (ii) a high school equivalency certificate issued in accordance with the law of the issuing state;

(B) had three continuous years of documented full-time experience in the provision of mental health rehabilitative services or case management services; and

(C) demonstrated competency in the provision and documentation of mental health rehabilitative or case management services in accordance with Chapter 419, Subchapter L of this title (relating to Mental Health Rehabilitative Services) and Chapter 412, Subchapter I of this title (relating to Mental Health Case Management Services).

(16) Cultural competency—Demonstrated knowledge and skill by a staff member to effectively respond to an individual's needs through knowledge of communication, actions, customs, beliefs, and values, within the individual's racial, ethnic, religious beliefs, disability, and social groups.

(17) Department—Department of State Health Services (DSHS).

(18) Department-approved algorithm—An evidence-based process for providing psychiatric care to adults with severe and persistent mental illnesses and children and adolescents with serious emotional disturbance, consisting of consensus-derived guidelines for medication treatment, training and support for physicians, standardized documentation, and patient and family education.

(19) DSM—The current edition of the Diagnostic Statistical Manual of Mental Disorders published by the American Psychiatric Association.

(20) Emergency care services—Mental health community services or other necessary interventions directed to address the immediate needs of an individual in crisis in order to assure the safety of the individual and others who may be placed at risk by the individual's behaviors, including, but not limited to,

psychiatric evaluations, administration of medications, hospitalization, stabilization or resolution of the crisis.

(21) Face-to-face—A contact with an individual that occurs in person. Face-to-face does not include contacts made through the use of video conferencing or telecommunication technologies, including telemedicine.

(22) Family member—Any person who an individual identifies as being a member of their family.

(23) Family partner—An experienced, trained primary caregiver (i.e., parent of an individual with a mental illness or serious emotional disturbance) who provides peer mentoring, education, and support to the caregivers of a child who is receiving mental health community services.

(24) HIPAA—The Health Insurance Portability and Accountability Act, 42 U.S.C. § 1320d et seq.

(25) Identifying information—The name, address, date of birth, social security number, or any information by which the identity of an individual can be determined either directly or by reference to other publicly available information. The term includes medical records, graphs, and charts that contain an individual's information; statements made by the individual either orally or in writing while receiving mental health community services; videotapes, audiotapes, photographs, and other recorded media; and any acknowledgment that an individual is receiving or has received services from a state facility, LMHA, MCO, or provider.

(26) Indicator—A defined, measurable variable used to monitor the quality or appropriateness of an important aspect of an individual's care or service or an organization's performance of related functions, processes, or outcomes. Indicators can measure activities, events, occurrences, or outcomes for which data can be collected to allow comparison with a threshold, a benchmark, or prior performance.

(27) Individual—A person who is seeking or receiving mental health community services from or through a provider.

(28) LAR or legally authorized representative—A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, including, but not limited to, a parent, guardian, or managing conservator.

(29) LCDC or licensed chemical dependency counselor—A counselor licensed by the department pursuant to the Texas Occupations Code, Chapter 504.

(30) LCSW or licensed clinical social worker—A staff member who is licensed as a clinical social worker by the Texas State Board of Social Worker Examiners in accordance with the Texas Occupations Code, Chapter 505.

(31) LMFT or licensed marriage and family therapist—A staff member who is licensed as a licensed marriage and family therapist by the Texas State Board of Examiners of Marriage and Family Therapists in accordance with Texas Occupations Code, Chapter 502.

(32) LMHA or local mental health authority—An entity designated as the local mental authority by the department in accordance with the Texas Health and Safety Code, § 533.035(a).

(33) LOC or level of care—A designation given to the department's standardized packages of mental health community services, based on the uniform assessment and the utilization management guidelines, which recommend the type, amount, and duration of mental health community services to be provided to an individual.

(34) LPC or licensed professional counselor—A staff member who is licensed as a licensed professional counselor by the Texas State Board of Examiners of Professional Counselors in accordance with Texas Occupations Code, Chapter 503.

(35) LPHA or licensed practitioner of the healing arts—A staff member who is:

- (A) a physician;
- (B) a licensed professional counselor (LPC);
- (C) a licensed clinical social worker (LCSW);
- (D) a psychologist;
- (E) an advanced practice registered nurse (APRN);
- (F) a physician assistant (PA); or
- (G) a licensed marriage and family therapist (LMFT).

(36) LVN or licensed vocational nurse—A staff member who is licensed as a licensed vocational nurse by the Texas Board of Nursing in accordance with Texas Occupations Code, Chapter 301.

(37) Management information system—An information system designed to supply an LMHA or MCO with information needed to plan, organize, staff, direct, and control their operations and clinical decision-making.

(38) MCO or managed care organization—An entity that has a current Texas Department of Insurance certificate of authority to operate as a Health Maintenance Organization (HMO) in the Texas Insurance Code, Chapter 843, or as an approved nonprofit health corporation in the Texas Insurance Code, Chapter 844, and that provides mental health community services pursuant to a contract with the department.

(39) Medical necessity—The need for a service that:

(A) is reasonable and necessary for the diagnosis or treatment of a mental health disorder or a co-occurring psychiatric and substance use disorder (COPSD) in order to improve or maintain an individual's level of functioning;

(B) is provided in accordance with professionally accepted clinical guidelines and standards of practice in behavioral health care;

(C) is furnished in the most clinically appropriate, available setting in which the service can be safely provided;

(D) is provided at a level that is safe and appropriate for the individual's needs and facilitates the individual's recovery; and

(E) could not be omitted without adversely affecting the individual's mental or physical health or the quality of care rendered.

(40) Medical record—The systematic, organized account, compiled by health care providers, of information relevant to the services provided to an individual. This includes an individual's history, present illness, findings on examination, treatment and discharge plans, details of direct and indirect care and services, and notes on progress.

(41) Mental health community services—All services medically necessary to treat, care for, supervise, and rehabilitate individuals who have a mental illness or emotional disorder or a COPSD. These services include services for the prevention of and recovery from such disorders, but do not include inpatient services provided in a state facility.

(42) Mental illness—An illness, disease, or condition (other than a sole diagnosis of epilepsy, dementia,

substance use disorder, mental retardation, or pervasive developmental disorder) that:

(A) substantially impairs an individual's thought, perception of reality, emotional process, development, or judgment; or

(B) grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.

(43) Peer provider—A staff member who:

(A) has received: (i) a high school diploma; or (ii) a high school equivalency certificate issued in accordance with the law of the issuing state;

(B) has at least one cumulative year of receiving mental health community services; and

(C) is under the direct clinical supervision of an LPHA.

(44) Physician—A staff member who is:

(A) licensed as a physician by the Texas Medical Board in accordance with Texas Occupations Code, Chapter 155; or

(B) authorized to perform medical acts under an institutional permit at a Texas postgraduate training program approved by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or the Texas Medical Board.

(45) Physician assistant—A staff member who has specialized psychiatric/mental health training and who is licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners in accordance with Texas Occupations Code, Chapter 204.

(46) Provider—Any person or legal entity that contracts with the department, an LMHA, or an MCO to provide mental health community services to individuals, including that part of an LMHA or MCO directly providing mental health community services to individuals. The term includes providers of mental health case management services and providers of mental health rehabilitative services.

(47) Psychologist—A staff member who is licensed as a psychologist by the Texas State Board of Examiners of Psychologists in accordance with Texas Occupations Code, Chapter 501.

(48) QMHP-CS or qualified mental health professional-community services—A staff member who is credentialed as a QMHP-CS who has demonstrated and documented competency in the work to be performed and:

(A) has a bachelor's degree from an accredited college or university with a minimum number of hours that is equivalent to a major (as determined by the LMHA or MCO in accordance with § 412.316(d) of this title (relating to Competency and Credentialing)) in psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human growth and development, physician assistant, gerontology, special education, educational psychology, early childhood education, or early childhood intervention;

(B) is a registered nurse (RN); or

(C) completes an alternative credentialing process as determined by the LMHA or MCO in accordance with § 412.316(c) and (d) of this title relating to (Competency and Credentialing).

(49) Recovery—The process by which a person becomes able or regains the ability to live, work, learn, and participate fully in his or her community.

(50) Referral—The process of identifying appropriate services and providing the information and assistance needed to access them.

(51) RN or registered nurse—A staff member who is licensed as a registered nurse by the Texas Board of Nursing in accordance with Texas Occupations Code, Chapter 301.

(52) Restraint—The same meaning as defined in Chapter 415, Subchapter F of this title (relating to Interventions in Mental Health Programs).

(53) Routine care services—Mental health community services provided to an individual who is not in crisis.

(54) Safety monitoring—Ongoing observation of an individual to ensure the individual's safety. An appropriate staff person must be continuously present in the individual's immediate vicinity, provide ongoing monitoring of the individual's mental and physical status, and ensure rapid response to indications of a need for assistance or intervention. Safety monitoring includes maintaining continuous visual contact with frequent face-to-face contacts as needed.

(55) Screening Activities performed by a Qualified Mental Health Professional—Community Services (QMHP-CS) to gather triage information to determine the need for in-depth assessment. The QMHP-CS collects this information through face-to-face or telephone interviews with the individual or collateral. This service includes screenings to determine if the individual's need is emergent, urgent, or routine (which is conducted prior to the face-to-face assessment to determine the need for emergency services).

(56) Seclusion—The same meaning as defined in Chapter 415, Subchapter F of this title.

(57) Staff member—Anyone who works or provides services for an LMHA, MCO, or provider as an employee, contractor, intern, or volunteer.

(58) Support services—Mental health community services delivered to an individual, LAR, or family member(s) to assist the individual in functioning in the individual's chosen living, learning, working, and socializing environments.

(59) Telemedicine—The use of health care information exchanged from one site to another via electronic communications for the health and education of the individual or provider, and for the purpose of improving patient care, treatment, and services. This definition applies only for purposes of this subchapter and does not affect, modify, or relate in any way to other rules defining the term or regulating the service, or to any statutory definitions or requirements.

(60) Uniform assessment—An assessment tool developed by the department that includes, but is not limited to, the Adult Texas Recommended Assessment Guidelines (TRAG), the Children and Adolescent Texas Recommended Assessment Guidelines, and the department-approved algorithms.

(61) Urgent care services—Mental health community services or other necessary interventions provided to persons in crisis who do not need emergency care services, but who are potentially at risk of serious deterioration.

(62) Utilization management exception—The authorization of additional amounts of services based on medical necessity when the individual has reached the maximum service units of their currently authorized level of care (LOC).

(63) Utilization management guidelines—Guidelines developed by the department that establish the type, amount, and duration of mental health community services for each LOC.

(64) Volunteer—A person who receives no remuneration for the provision of time, individual attention, or assistance to individuals receiving mental health community services from entities or providers governed by this subchapter. Volunteers may include:

(A) community members;

(B) family members of individuals served when not acting in their capacity as a family member;

(C) employees when not acting in their capacity as employees; and

(D) individuals served when acting on behalf of another individual.

HISTORY: The provisions of this § 412.303 adopted to be effective April 29, 2009, 34 TexReg 2603; amended to be effective February 19, 2017, 42 TexReg 561

§ 412.304. Responsibility for Compliance

(a) Compliance with Divisions 2 - 3 of this subchapter requires:

(1) the LMHA and MCO to comply with the applicable sections and subsections contained in Divisions 2 - 3 of this subchapter;

(2) the LMHA and MCO to obligate by contract the providers in their networks to comply with the applicable sections and subsections contained in Divisions 2 - 3 of this subchapter;

(3) the LMHA and MCO to monitor their providers for compliance with the applicable sections and subsections contained in Divisions 2 - 3 of this subchapter; and

(4) providers of mental health case management or mental health rehabilitative services to comply with § 412.311(e) of this title (relating to Leadership), § 412.312 of this title (relating to Environment of Care and Safety), § 412.313 of this title (relating to Rights and Protection), § 412.314(e) of this title (relating to Access to Mental Health Community Services), § 412.315 of this title (relating to Medical Records System), and § 412.316 of this title (relating to Competency and Credentialing), contained in Division 2 of this subchapter, and with all the sections in Division 3 of this subchapter.

(b) Providers must comply with the department's Utilization Management Guidelines, which are incorporated by reference, if contractually obligated to provide any mental health community services, including mental health rehabilitative, mental health case management, supported housing, supported employment, or Assertive Community Treatment (ACT). The department is responsible for monitoring compliance by providers that contract with the department and the LMHA and MCO are responsible for requiring and monitoring compliance of providers in their networks.

HISTORY: The provisions of this § 412.304 adopted to be effective April 29, 2009, 34 TexReg 2603

Division 2. Organizational Standards

§ 412.311. Leadership

(a) Organizational planning and communication. The LMHA and MCO must define and implement organizational plans and systems as described in this subchapter (e.g., quality management plan, utilization management plan) and ensure that there are mechanisms in place that facilitate effective communication throughout the organization to promote the provision of quality mental health community services.

(b) Management of key processes and functions. The LMHA and MCO must define organizational and clinical processes and functions, including performance activities, as well as:

- (1) allocate adequate, appropriate resources; and
- (2) provide oversight for such processes and functions.

(c) Management information system. The LMHA, MCO, and provider must ensure their management information systems provide timely, accurate, and accessible information that supports clinical, administrative, and fiscal decision-making.

(d) Consumer advocacy. The LMHA and MCO must encourage and support advocacy for individuals accessing mental health community services.

(e) Conflict of interest and dual relationships. The LMHA and MCO must develop and implement policies and procedures to ensure that all staff members refrain from activities and relationships whereby personal, financial, professional, or other relationships could compromise or interfere with independent judgment creating a conflict of interest or otherwise having the potential to harm or exploit individuals and families.

(f) Collaboration with other health care agencies and community resources. The LMHA and MCO must demonstrate efforts to collaborate with other health care agencies and community resources to address the physical and behavioral health care needs of individuals, as well as to ensure that these needs are met.

HISTORY: The provisions of this § 412.311 adopted to be effective April 29, 2009, 34 TexReg 2603

§ 412.312. Environment of Care and Safety

(a) Safe environment. The LMHA, MCO, and provider must:

(1) ensure service delivery sites (including, but not limited to, facilities and vehicles) are safe, sanitary, and free from hazards, including but not limited to:

(A) hand washing facilities and supplies in restrooms and in areas where staff have routine physical contact with individuals (e.g., exam rooms, medication areas, laboratories);

(B) a utility area with necessary equipment for the safe and required cleaning or disposal of instruments, equipment, and sharps;

(C) locked areas for storing drugs, needles, syringes, hazardous materials, other potentially dangerous equipment, and toxic chemical products; and

(D) adequate prevention of exposure to tobacco smoke and other environmental pollutants.

(2) ensure delivery sites are prepared to manage onsite life threatening emergencies, and that each site will have:

(A) a written plan for the management of onsite medical emergencies requiring ambulance services, hospitalization, or hospital treatment;

(B) emergency resuscitative drugs, supplies, and equipment appropriate to the needs of individuals and staff qualifications;

(C) written protocols and instructions for disasters and other emergencies; and

(D) documented disaster drills appropriate for local conditions.

(3) comply with the most current edition of the National Fire Protection Association's Life Safety Code, and related codes, standards, and other applicable requirements;

(4) implement an infection control plan and procedures for group residential services, clinics, and other areas where a high volume of people congregate, that address the prevention, education, management, and monitoring of significant infections. Components addressed in the plan must include:

(A) prevention and management of infection in the service delivery site(s);

(B) reporting of reportable diseases as required by Chapter 97, Subchapter a of this title (relating to Control of Communicable Diseases);

(C) compliance with the Human Immunodeficiency Virus Services Act (Texas Health and Safety Code, § 85.001 et seq.), the Communicable Disease Prevention and Control Act (Texas Health and Safety Code, § 81.001 et seq.), and other applicable laws (e.g., the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.; and the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq.);

(D) identification of illnesses and conditions for which an individual's participation in mental health community services is safely allowed;

(E) identification of illnesses and conditions for which an individual's participation in mental health community services is restricted and the procedures for minimizing exposure and facilitating an individual's transfer to a more appropriate setting;

(5) implement safeguards regarding hazardous equipment and weather; and

(6) implement procedures for the disposal of biohazardous wastes that minimize the risks of contamination, injury, and disease transmission.

(b) Sufficient staff. The provider must have sufficient number of qualified and competent staff members on duty to ensure the safety of individuals and adequacy of mental health community services, including responding to crises during the provision of mental health community services.

(c) Compliance with state and federal law. The provider must comply with all applicable state and federal law and regulations, including those relating to:

(1) blood borne pathogens;

(2) food borne pathogen exposure controls; and

(3) tuberculosis exposure controls.

(d) Limited use of restraint or seclusion.

(1) Restraint. In outpatient settings, a provider may only use restraint if the intervention is:

(A) necessary to address a behavioral health emergency, as defined in Chapter 415, Subchapter F of this title (relating to Interventions in Mental Health Programs); and

(B) performed according to the department's rules described in Chapter 415, Subchapter F of this title.

(2) Seclusion. Seclusion is prohibited in outpatient settings with the exception of partial hospitalization programs for children or adolescents. a provider may only use seclusion in those programs if the conditions in paragraph (1)(A) - (B) of this subsection are met.

HISTORY: The provisions of this § 412.312 adopted to be effective April 29, 2009, 34 TexReg 2603

§ 412.313. Rights and Protection

(a) Non-coercive policy. The LMHA, MCO, and provider must ensure that an individual's refusal of a particular mental health community service (e.g., psychoactive medication) does not preclude the individual from accessing other medically necessary mental health community services.

(b) Non-discrimination. The LMHA, MCO, and provider may not unlawfully discriminate against any individual based on race, color, national origin, religion, sex, age, or disability. The LMHA and MCO and provider may not deny medically necessary mental health community services based on an individual's sexual orientation or political affiliation.

(c) Initial and ongoing eligibility. In determining an individual's initial and ongoing eligibility for any service, an LMHA, MCO, and provider may not exclude an individual based on the following factors:

(1) the individual's past or present mental illness or substance use diagnosis or services;

(2) the individual's past or present involvement in the criminal or juvenile justice system;

(3) medications prescribed to the individual in the past or present;

(4) the presumption of the individual's inability to benefit from treatment;

(5) the individual's use or continued use of alcohol, tobacco, or other drugs; or

(6) the individual's level of success in prior treatment episodes.

(d) Protection against abuse, neglect, and exploitation. The LMHA, MCO, and provider must comply with the requirements described in Chapter 414, Subchapter L of this title (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers).

(e) Dignity and rights. The LMHA, MCO, and provider must implement procedures that address the rights of individuals in compliance with applicable state and federal laws, regulations, and department rules described in Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services), and must provide individuals the right to choose from the list of providers within the LMHA's or MCO's network if there is more than one provider available.

(f) Charges for mental health community services. The LMHA and MCO and provider must comply with all applicable federal and state laws and department rules described in Chapter 412, Subchapter C of this title (relating to Charges for Community Services) regarding the establishment of charges and the collection of fees for the provision of mental health community services.

(g) Confidentiality. The LMHA and MCO and provider must comply with all applicable federal and state laws, rules, and regulations governing confidentiality of identifying information of individuals with mental illness and/or substance use disorders, including those described in Chapter 414, Subchapter a of this title (relating to Protected Health Information) and 42 Code of Federal Regulations (CFR) Part 2 (Confidentiality of Alcohol and Drug Abuse Patient Records).

(h) Research. If the LMHA or MCO or provider conducts research, then the research must be conducted in accordance with applicable state and federal laws, rules, and regulations, including 45 CFR Part 46 (Protection of Human Subjects).

HISTORY: The provisions of this § 412.313 adopted to be effective April 29, 2009, 34 TexReg 2603

§ 412.314. Access to Mental Health Community Services

(a) Adequate provider network. The LMHA and MCO must maintain a provider network that is adequate and qualified to provide all mental health community services

that the LMHA and MCO are required to provide under a contract with the department.

(b) Crisis screening and response system. The LMHA and MCO must have a crisis screening and response system in operation 24 hours a day, every day of the year, that is available to individuals throughout its contracted service delivery area. The telephone system to access the crisis screening and response system must include a toll-free crisis hotline number and be easily accessible and well publicized. Calls to the crisis hotline must be answered by a hotline staff member who is trained in compliance with this subchapter. The hotline must have teletypewriter (TTY) capabilities or other assistive technology that is available and effective.

(c) Telephone access. In addition to the crisis screening and response system described in subsection (b) of this section, the LMHA and MCO must ensure the availability of a telephone system and call center that allows individuals to contact the LMHA or MCO through a toll-free number that must:

(1) operate without using telephone answering equipment at least on business days during normal business hours, except on national holidays, due to uncontrollable interruption of service, or with prior approval of the department;

(2) have sufficient staff to operate efficiently;

(3) collect, document, and store detailed information, including special needs information, on all telephone inquiries and calls;

(4) during times other than those described in paragraph (1) of this subsection provide electronic call answering methods that include an outgoing message providing the crisis hotline telephone number, in languages relevant to the service area, for callers to leave a message; and

(5) return routine calls before the end of the next business day for all messages left after hours.

(d) Timely services based on need. The LMHA and MCO must arrange mental health services for an individual within the following time frames.

(1) Crisis services.

(A) Hotline calls. For all calls to the toll-free crisis hotline: (i) the call must be answered by a staff member within 30 seconds, on average, at least 95 percent of the time; and (ii) if the call is identified as a potential crisis, a QMHP-CS must begin a telephone screening immediately but no later than one minute after the call is so identified.

(B) Emergency care services. If during a screening it is determined that an individual is experiencing a crisis that may require emergency care services, the QMHP-CS must: (i) take immediate action to address the emergency situation to ensure the safety of all parties involved; (ii) activate the immediate screening and assessment processes as described in § 412.321 of this title (relating to Crisis Services); and (iii) provide or obtain mental health community services or other necessary interventions to stabilize the crisis.

(C) Urgent care services. If the screening indicates that an individual needs urgent care services, a QMHP-CS must within eight hours of the initial incoming hotline call or notification of a potential crisis situation: (i) perform a face-to-face assessment; and (ii) provide or obtain mental health community services or other necessary interventions to stabilize the crisis.

(2) Routine care services. If the screening indicates that an individual needs routine care services, a QMHP-

CS must perform a uniform assessment within 14 days after the screening. If the assessment indicates a LOC for routine care services, the individual must begin receiving services immediately. When the provision of the service package is not possible because services are at capacity, the individual must be referred to an available practitioner appropriate to meet the individual's needs or be placed on a waiting list for services, subject to the following exceptions:

(A) individuals eligible for Medicaid who are determined to be in need of Mental Health Case Management, under Chapter 412, Subchapter I of this title, or Mental Health Rehabilitative Services, under Chapter 419, Subchapter L of this title, cannot be placed on a waiting list and must be served.

(B) individuals eligible for Medicaid who are determined to need services other than Mental Health Case Management, under Chapter 412, Subchapter I of this title, and Mental Health Rehabilitative Services, under Chapter 419, Subchapter L of this title, must be referred to appropriate, available practitioners of that service. Only if an appropriate Medicaid practitioner is not available may the individual be placed on a waiting list. All efforts undertaken to refer Medicaid individuals must be documented.

(e) Communication with individuals. The LMHA, MCO, and provider must ensure effective communication with the individual and LAR (if applicable) in an understandable format as appropriate to meet the needs of individuals, which may require using:

- (1) interpretative services;
- (2) translated materials; or

(3) a staff member who can effectively respond to the cultural (e.g., customs, beliefs, actions, and values) and language needs of the individual and LAR (if applicable).

(f) Service information. The LMHA and MCO must proactively disseminate to individuals and their LAR (if applicable) information about mental illness and the LMHA's or MCO's mental health community services in a format and language that is easily understood and based on the demographics for any group comprising more than 10 percent of the population in the local service area. Information about mental illness and the LMHA's or MCO's community services must be in a format and language that is easily understood by individuals with a disability (e.g., deafness, hard of hearing, and blindness).

(g) Access to emergency medical and crisis services. The LMHA and MCO must develop procedures for its providers' use in accessing emergency medical and crisis services for individuals.

(h) Continuity of services. The LMHA and MCO must ensure that individuals:

(1) are provided continuity of services as defined by the department; and

(2) are informed of whom to contact regarding continuity and coordination of their services, in accordance with Chapter 412, Subchapter D of this title (relating to Mental Health Services—Admission, Continuity, and Discharge).

(i) Referral for physical health services. If a nursing or medical assessment indicates physical health needs outside the scope of the provider's competency, credentialing, or capacity to treat, the LMHA and MCO must make and document appropriate referrals to other healthcare providers and provide adequate follow up at subsequent visits to confirm access to the referrals.

HISTORY: The provisions of this § 412.314 adopted to be effective April 29, 2009, 34 TexReg 2603

§ 412.315. Medical Records System

(a) Maintenance of medical records. The LMHA, MCO, and the provider must ensure:

(1) protection against unauthorized access, disclosure, modification or destruction of medical records, whether accidental or deliberate;

(2) the availability, integrity, utility, authenticity, and confidentiality of information within the medical record;

(3) a current, organized, legible, and comprehensive records system that:

(A) conforms to good professional practice;

(B) permits effective clinical review and audit; and

(C) facilitates prompt and systematic retrieval of information;

(4) a medical records system with sufficient redundancy to ensure access to individual records; and

(5) compliance with applicable federal and state laws, rules, and regulations, including HIPAA, 42 CFR Part 2, and the requirements described in Chapter 414, Subchapter a of this title (relating to Protected Health Information).

(b) Disaster recovery plan. The LMHA, MCO, and the provider must maintain a written disaster recovery plan for information resources that will ensure service continuity.

HISTORY: The provisions of this § 412.315 adopted to be effective April 29, 2009, 34 TexReg 2603

§ 412.316. Competency and Credentialing

(a) Competency of staff members, including volunteers. The LMHA, MCO, and provider must implement a process to ensure the competency of staff members prior to providing services that, at a minimum:

(1) ensures services are provided by staff members who are operating within the scope of their license, job description, or contract specification;

(2) ensures that the mental health community services provided by peer providers are limited to mental health rehabilitative, supported employment, supported housing, parent support group, and family partner services; and

(3) defines competency-based expectations for each position as follows:

(A) required competencies must be included for all staff members, including adequate, accurate knowledge of: (i) the nature of severe and persistent mental illness and serious emotional disturbances; (ii) the recovery and resiliency model of mental illness and serious emotional disturbance; (iii) the dignity and rights of an individual, as described in Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services); (iv) identifying, preventing, and reporting abuse, neglect, and exploitation, in accordance with Chapter 414, Subchapter L of this title (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers); (v) individual confidentiality, as described in Chapter 414, Subchapter a of this title (relating to Protected Health Information) and other relevant state and federal laws affecting confidentiality of medical records, including Title 42 CFR Part 2; (vi) interacting with an individual who has a physical disability such as a hearing or visual impairment; (vii) responding to an individual's language and cultural needs through knowledge of customs, beliefs, and values of various, racial, ethnic, religious, and social

groups; (viii) exposure control of blood borne pathogens; (ix) identification of an individual as being in a crisis and accessing emergency or urgent care services; (x) proper documentation of services provided; and (xi) planning and training for responding to severe weather, disasters, and bioterrorism;

(B) critical competencies must be included for positions in which a staff member's primary job duties are related to individual service contacts and interactions and include, but are not limited to, adequate and accurate knowledge of: (i) cardio pulmonary resuscitation (CPR); (ii) first aid; (iii) safe management of verbally and physically aggressive behavior; (iv) utilization of assistive technology such as communication devices with individuals who are deaf or hard of hearing; and (v) seizure response and assessment;

(C) specialty competencies must be included for positions in which a staff member performs specialized services and tasks and include adequate and accurate knowledge of specialized services and tasks, such as: (i) the requirements of this subchapter; (ii) age appropriate clinical assessment including the uniform assessment; (iii) age appropriate engagement techniques (e.g., motivational interviewing); (iv) use of telemedicine equipment; (v) the utilization management guidelines; (vi) developing and implementing an individualized treatment plan; (vii) appropriate actions to take in a crisis (e.g., screening, intervention, management and if applicable, suicide/homicide precautions); (viii) services for co-occurring psychiatric and substance use disorders described in Chapter 411, Subchapter N of this title (relating to Standards for Services to Individuals with Co-Occurring Psychiatric and Substance Use Disorders (COPSD)); (ix) accessing resources within the local community; (x) strategies for effective advocacy and referral for an individual; (xi) infection control; (xii) recognition, reporting, and recording of side effects, contraindications, and drug interactions of psychoactive medication; (xiii) age appropriate rehabilitative approaches; (xiv) proficiency in specimen collection; (xv) the peer-provider or consumer-operated service model; (xvi) assessment and intervention with children, adolescents, and families; and (xvii) clinical specialties directly related to the services to be performed.

(D) crisis hotline competencies must be included for positions in which a staff member routinely answers the crisis hotline and include adequate and accurate knowledge of: (i) the nature of severe and persistent mental illness and serious emotional disturbances and COPSD; (ii) behavioral health crisis situations; (iii) operating a telephone system to access behavioral health crisis screening and response; (iv) age appropriate crisis intervention and response; (v) utilization of assistive technology such as communication devices with individuals who are deaf or hard of hearing; (vi) advocacy for treatment in the most clinically appropriate, available environment; and (vii) applicable privacy laws, rules, and regulations including those described in Chapter 414, Subchapter A of this title (relating to Protected Health Information) and in Title 42 CFR Part 2.

(E) telemedicine competencies must be included for positions in which a staff member's job duties are related to assisting with telemedicine services and include adequate and accurate knowledge of:

(i) operation of the telemedicine equipment; and (ii) how to use the equipment to adequately present the individual.

(4) requires staff members to demonstrate competencies in the following manner:

(A) all staff members must demonstrate required competencies before contact with individuals, confidential information, or protected health information and periodically throughout the staff member's tenure of employment or association with the LMHA, MCO, or provider;

(B) all staff members in positions that require critical competencies must demonstrate the critical competencies before contact with individuals and periodically throughout the staff member's or volunteer's tenure of employment or association with the LMHA, MCO, or provider;

(C) all staff members in positions that require specialty competencies must demonstrate the specialty competencies before providing the specialized service(s) or performing the specialized task(s) and periodically throughout the staff member's or volunteer's tenure of employment or association with the LMHA, MCO, or provider; and

(D) all staff members in positions that require crisis hotline competencies must demonstrate those competencies before providing crisis hotline services and at least annually throughout the staff member's or volunteer's tenure of employment or association with the LMHA, MCO, or provider.

(b) Competency of crisis services providers. The LMHA and MCO must develop and implement policies and procedures governing the provision of crisis services to ensure that providers with which they contract or employ for the provision of crisis services are trained in:

(1) crisis access and age appropriate assessment and intervention services;

(2) advocacy for the most clinically appropriate, available environment; and

(3) community referral resources.

(c) Credentialing and appeals. Before providing services, the LMHA and MCO must:

(1) implement a timely credentialing and re-credentialing process for all its licensed staff members, peer providers, family partners, and every QMHP-CS and CSSP;

(2) ensure that documentation verifying a staff member's credentialing and re-credentialing is maintained in the staff member's personnel records;

(3) have a process for staff members to appeal credentialing and re-credentialing decisions; and

(4) require providers to:

(A) use the LMHA's or MCO's credentialing and re-credentialing and appeals processes for all of the provider's licensed staff, QMHP-CSs, CSSPs, peer providers, family partners, and utilization management job functions; or

(B) implement a credentialing and re-credentialing process for all of the provider's licensed staff, QMHP-CSs, CSSPs, peer providers, family partners, and utilization management job functions that meets the LMHA's or MCO's credentialing and re-credentialing criteria and have a process for those staff members to appeal credentialing and re-credentialing decisions.

(d) Additional requirements for credentialing a QMHP-CS. For credentialing as a QMHP-CS who is not a registered nurse, the credentialing and re-credentialing process described in subsection (c) of this section must include:

(1) determining the minimum number of coursework hours that is equivalent to a major and whether a combination of coursework hours in the specified areas is acceptable;

(2) reviewing the individual's coursework; and

(3) justifying and documenting the credentialing decisions; or

(4) completing an alternative credentialing process identified by the department.

(e) Additional requirements for credentialing as a CSSP. For credentialing as a CSSP, the credentialing and re-credentialing process described in subsection (c) of this section must include:

(1) verifying a high school diploma or high school equivalent certificate issued in accordance with the law of the issuing state;

(2) verifying three continuous years of documented full-time experience in the provision of mental health case management or rehabilitative services prior to August 31, 2004;

(3) reviewing the staff member's provision and documentation of mental health case management or rehabilitative services; and

(4) certifying, justifying, and documenting the credentialing decisions.

(f) Additional requirements for credentialing as a peer provider. For credentialing as a peer provider, the credentialing and re-credentialing process described in subsection (c) of this section or the alternative credentialing by an organization recognized by the department must, at minimum, include:

(1) verifying a high school diploma or high school equivalent certificate issued in accordance with the law of the issuing state;

(2) verifying at least one cumulative year of receiving mental health community services for a disorder that is treated in the target population for Texas;

(3) demonstration of competency in the provision and documentation of mental health rehabilitative services, supported employment, or supported housing; and

(4) justifying and documenting the credentialing decisions.

(g) Additional requirements for utilization management job functions. For credentialing as a staff member who performs utilization management job functions, the credentialing and re-credentialing process described in subsection (c) of this section must include:

(1) the staff member's job description indicating the performance of utilization management functions;

(2) if the staff member is not the utilization management physician, the staff member's job description indicating they neither provide services nor supervise service providers;

(3) documenting licenses;

(4) documenting training and supervision received; and

(5) justifying and documenting credentialing decisions.

(h) Maintaining documented personnel information. The LMHA, MCO, and provider must maintain personnel files for each staff member that include:

(1) a current, signed job description for each staff member;

(2) documented, periodic performance reviews;

(3) copies of current credentials and training; and

(4) criminal background checks.

HISTORY: The provisions of this § 412.316 adopted to be effective April 29, 2009, 34 TexReg 2603

§ 412.317. Quality Management

(a) Quality management plan. The LMHA and MCO must develop a written quality management plan that includes:

(1) the quality management program description and work plan;

(2) measurable objective indicators to detect the need for improvement;

(3) procedures and timelines for taking appropriate action when problems are identified; and

(4) approval by the LMHA or MCO governing body.

(b) Quality management program. The LMHA and MCO must implement a quality management program that includes:

(1) a structure that ensures the program is implemented system-wide;

(2) allocation of adequate resources for implementation;

(3) oversight by professionals with adequate and appropriate experience in quality management;

(4) activities and processes that address identified clinical and organizational problems including fidelity and data integrity;

(5) periodic reporting of quality management program activities to its governing body, providers and other appropriate staff members and community stakeholders such as peer and family organizations;

(6) processes to systematically monitor, analyze, and improve performance of provider services and outcomes for individuals;

(7) review of the provider's treatment to determine:

(A) whether it is consistent with the department's approved evidenced-based practices and the fidelity manual; and

(B) the accuracy of assessments and treatment planning;

(8) ongoing monitoring of the quality of crisis services, access to services, service delivery, and continuity of services;

(9) provision of technical assistance to providers related to quality oversight necessary to improve the quality and accountability of provider services;

(10) use of reports and data from the department to inform performance improvement activities and assessment of unmet needs of individuals, service delivery problems, and effectiveness of authority functions for the local service area;

(11) mechanisms to measure, assess, and reduce incidents of abuse, neglect, and exploitation;

(12) mechanisms to improve individuals' rights protection processes;

(13) risk management processes such as competency determinations, and the management and reporting of incidents and deaths; and

(14) coordination of activities and information management with the utilization management (UM) program, including participation in UM oversight activities.

(c) The LMHA and MCO must establish an integrated system to sufficiently monitor the quality management program for effectiveness on a regular basis and update the quality management plan as needed.

HISTORY: The provisions of this § 412.317 adopted to be effective April 29, 2009, 34 TexReg 2603

§ 412.318. Utilization Management

(a) Utilization management plan. The LMHA and MCO must develop a written utilization management plan that includes:

- (1) the utilization management program plan description and work plan;
- (2) requirements relating to the utilization management committee credentials, job functions, meetings, and training;
- (3) how the utilization management program's effectiveness in meeting goals will be evaluated;
- (4) how improvements will be made on a regular basis;
- (5) the oversight and control mechanisms to ensure that UM activities meet required standards when they are delegated to an administrative services organization or a DSHS-approved entity; and
- (6) approval by the LMHA or MCO governing body.

(b) Utilization management program. The LMHA and MCO must implement a utilization management program under the direction of a psychiatrist licensed in Texas as required by its contract with the department, and in accordance with the utilization management guidelines, as updated and amended.

(c) Authorization of services. The LMHA and MCO must ensure that it has a timely authorization system in place to ensure medically necessary services are delivered without delay and with prior authorization, except that the delivery of crisis services does not require prior authorization but rather must be authorized subsequent to delivery. The LMHA and MCO will review requests for authorization of services, determine if services should be authorized and if so which services to authorize. Services must be authorized using the department's utilization management guidelines and based on the uniform assessment, diagnosis, additional clinical information submitted by the requestor, and clinical judgment. The determination and documentation of services to be authorized will occur according to the following timeframes:

- (1) crisis intervention services—within two business days of the date of service;
- (2) inpatient services—within sufficient time to ensure medically necessary services are delivered without delay;
- (3) all other mental health community services, including outpatient and add-on services upon receipt but no later than three business days and prior to service delivery; and
- (4) reauthorization for continuing services according to established timeframes in the utilization management guidelines, as updated and amended.

(d) Appeal and Medicaid fair hearing procedures. The LMHA and MCO must implement procedures to give notice of the right to a timely and objective appeal process for all individuals receiving community mental health services, in accordance with §401.464 of this title (relating to Notification and Appeals Process). For individuals eligible for Medicaid, the LMHA and MCO must implement procedures that provide notice of the right to request a fair hearing, as described in Title 1, Chapter 357, Subchapter a (relating to Uniform Fair Hearing Rules for the Medicaid, TANF, and Food Stamp Programs), to an individual whose service or benefits are denied, reduced, suspended, or terminated. The procedures regarding notice of the right to a Medicaid fair hearing must comply with department policy, which may be included in contract provisions.

(e) Waiting list maintenance requirements. The LMHA must comply with the department's policy on waiting list maintenance requirements, which may be included in contract provisions and is subject to the requirements set forth in §412.314(d)(2) of this title (relating to Access to Mental Health Community Services).

§ 412.321. Crisis Services

(a) Coordinating provision of crisis services. The LMHA and MCO must develop and implement policies and procedures governing the provision of crisis services that:

- (1) identify providers' roles and responsibilities in responding to a crisis;
 - (2) describe the coordination of crisis services to be required among providers of crisis services, law enforcement, the judicial system, and other community entities; and
 - (3) comply with Chapter 419, Subchapter L of this title (relating to Mental Health Rehabilitative Services).
- (b) Immediate screening and assessment.

(1) Screening and assessment. All providers of crisis services must be available 24 hours a day, every day of the year, to perform immediate screenings and assessments of individuals in crisis, including assessments to determine risk of deterioration and immediate danger to self or others. Crisis assessments cannot be delegated to law enforcement officials.

(2) QMHP-CS assessment. Individuals experiencing a crisis, as determined by a QMHP-CS screening, must be assessed face-to-face or via telemedicine by someone who is at least credentialed as a QMHP-CS within one hour after the individual presents to the provider in a crisis, either via the crisis hotline or a face-to-face encounter (e.g., walk-in). The QMHP-CS must provide ongoing crisis services until the crisis is resolved or the individual is placed in a clinically appropriate environment.

(c) LPHA consultation. An LPHA must always be available for consultation with the QMHP-CS.

(d) Physician assessment. If the individual requires emergency care services, as determined by the QMHP-CS's assessment of risk of deterioration and danger as described in subsection (b) of this section, then the provider of crisis services must have a physician, preferably a psychiatrist, perform a face-to-face or telemedicine assessment of the individual as soon as possible, but not later than 12 hours after the QMHP-CS's assessment to determine the need for emergency services.

(e) Documenting crisis services. The provider of crisis services must maintain documentation of the crisis services, including:

- (1) the date the service was provided;
- (2) the beginning and end time of the crisis contact;
- (3) the name and any other identifying information of the individual to whom the service was provided (if given);
- (4) the location where the service was provided;
- (5) the behavioral description of the presenting problem;
- (6) lethality (e.g., suicide, violence);
- (7) substance use or abuse;
- (8) trauma, abuse, or neglect;
- (9) the outcome of the crisis (e.g., individual in hospital, individual with friend and scheduled to see doctor at 9:00 a.m. the following day);
- (10) the names and titles of staff members involved;

(11) all actions (including rehabilitative interventions and referrals to other agencies) used by the provider to address the problems presented;

(12) the response of the individual, and if appropriate, the response of the LAR and family members;

(13) the signature of the staff member providing the service and a notation as to whether the staff member is an LPHA or a QMHP-CS;

(14) any pertinent event or behavior relating to the individual's treatment which occurs during the provision of the service; and

(15) follow up activities, which may include referral to another provider.

(f) Communication of crisis contacts. If an individual who is currently receiving mental health services has experienced a crisis and has been assessed in accordance with subsection (b) of this section, the provider of crisis services must communicate in writing (e.g., e-mail or fax) the details of the crisis contact to the provider of ongoing mental health services to ensure that the individual receives continuity of care and treatment and include such communication in the medical record. This crisis contact communication:

(1) may not disclose any substance abuse-related information unless disclosed in compliance with federal law as described in 42 CFR Part 2;

(2) must take place no later than the next business day after conclusion of the crisis contact; and

(3) may disclose mental health information for the purpose of continuity of care and treatment without the individual's consent if disclosure is made in accordance with:

(A) Texas Health and Safety Code, § 533.009 (relating to Exchange of Patient and Client Records), when the provider of ongoing services is part of the department's service delivery system; or

(B) in accordance with Texas Health and Safety Code, § 611.004(a)(7) (relating to the Authorized Disclosure of Confidential Information other than in Judicial or Administrative Proceeding), when the provider of ongoing services is not part of the department's service delivery system.

HISTORY: The provisions of this § 412.321 adopted to be effective April 29, 2009, 34 TexReg 2603

Division 3. Standards of Care

§ 412.322. Provider Responsibilities for Treatment Planning and Service Authorization

(a) Assessment and documentation. At the first routine face-to-face or telemedicine contact with an individual seeking routine care services, as described in § 412.314(d)(2) of this title (relating to Access to Mental Health Community Services,) a QMHP-CS with appropriate supervision and training must perform an assessment of the individual. The assessment must be documented and must include:

(1) the individual's identifying information;

(2) completion of the appropriate uniform assessment(s) and assessment guideline calculations;

(3) present status and relevant history, including education, employment, housing, legal, military, developmental, and current available social and support systems;

(4) co-occurring mental illness, emotional disturbance, substance abuse, chemical dependency, or developmental disorder;

(5) relevant past and current medical and psychiatric information, which may include trauma history;

(6) information from the individual and LAR (if applicable) regarding the individual's strengths, needs, natural supports, describe community participation, responsiveness to previous treatment, as well as preferences for and objections to specific treatments;

(7) if the individual is an adult without an LAR, the needs and desire of the individual for family member involvement in treatment and mental health community services;

(8) the identification of the LAR's or family members' need for education and support services related to the individual's mental illness or emotional disturbance and the plan to facilitate the LAR's or family members' receipt of the needed education and support services;

(9) recommendations and conclusions regarding treatment needs; and

(10) date, signature, and credentials of staff member completing the assessment.

(b) Diagnostics. The diagnosis of a mental illness must be:

(1) rendered by an LPHA, acting within the scope of his/her license, who has interviewed the individual, either face-to-face or via telemedicine;

(2) based on the DSM;

(3) documented in writing, including the date, signature, and credentials of the person making the diagnosis; and

(4) supported by and included in the assessment.

(c) Provision of services. The LMHA, MCO, and provider must require each provider to implement procedures to ensure that individuals are provided mental health community services based on:

(1) the department's uniform assessment and utilization management guidelines;

(2) medical necessity as determined by an LPHA; and

(3) health management needs as determined by a physician, physician assistant, or registered nurse.

(d) Prerequisites to provision of services.

(1) Routine care services. For routine care services, before providing mental health community services to an individual, the provider must:

(A) obtain authorization from the department or its designee for the type(s), amount, and duration of mental health community services to be provided to the individual in accordance with the appropriate uniform assessment and utilization management guidelines;

(B) obtain a determination of medical necessity from an LPHA; and

(C) in collaboration with the individual and their LAR (if applicable), develop a treatment plan for the individual that includes a list of the type(s) of mental health community services authorized in accordance with subparagraph (A) of this paragraph.

(2) Crisis services. For crisis services, as described in § 412.321 of this title (relating to Crisis Services), a provider must deliver services in accordance with the utilization management guidelines and authorization of services and timeframes described in § 412.318(c) of this title (relating to Utilization Management). a diagnosis is not required when services are delivered in crisis situations.

(e) Content and timeframe of treatment plan. Each provider must develop a written treatment plan, in consultation with the individual and their LAR (if applicable), with-

in 10 business days after the date of receipt of notification from the department or its designee that the individual is eligible and has been authorized for routine care services.

(1) At minimum, a staff member credentialed as a QMHP-CS is responsible for completing and signing the treatment plan. The treatment plan must reflect input from each of the disciplines of treatment to be provided to the individual based upon the assessment. The treatment plan must include:

- (A) a description of the presenting problem;
- (B) a description of the individual's strengths;
- (C) a description of the individual's needs arising from the mental illness or serious emotional disturbance;
- (D) a description of the individual's co-occurring substance use or physical health disorder, if any;
- (E) a description of the recovery goals and objectives based upon the assessment, and expected outcomes of the treatment in accordance with paragraph (2) of this subsection;
- (F) the expected date by which the recovery goals will be achieved;
- (G) a list of resources for recovery supports, (e.g., community volunteer opportunities, family or peer organizations, 12-step programs, churches, colleges, or community education); and
- (H) a list of the type(s) of services within each discipline of treatment that will be provided to the individual (e.g., psychosocial rehabilitation, medication services, substance abuse treatment, supported employment), and for each type of service listed, provide: (i) a description of the strategies to be implemented by staff members in providing the service and achieving goals; (ii) the frequency (e.g., weekly, twice a month, monthly), number of units (e.g., 10 counseling sessions, two skills training sessions), and duration of each service to be provided (e.g., .5 hour, 1.5 hours); and (iii) the credentials of the staff member responsible for providing the service.

(2) The goals and objectives with expected outcomes required by paragraph (1)(E) of this subsection must:

- (A) specifically address the individual's unique needs, preferences, experiences, and cultural background;
- (B) specifically address the individual's co-occurring substance use or physical health disorder, if any;
- (C) be expressed in terms of overt, observable actions of the individual;
- (D) be objective and measurable using quantifiable criteria; and
- (E) reflect the individual's self-direction, autonomy, and desired outcomes.

(3) The individual and LAR (if applicable) must be provided a copy of the treatment plan and each subsequent treatment plan reviewed and revised.

(f) Review of treatment plan.

(1) Each provider must:

- (A) review the individual's treatment plan prior to requesting an authorization for the continuation of services;
- (B) review the treatment plan in its entirety, as permitted under confidentiality laws by considering input from the individual, the individual's LAR (if applicable), and each of the disciplines of treatment;
- (C) determine if the plan is adequately addressing the needs of the individual; and

(D) document progress on all goals and objectives and any recommendation for continuing services, any change from current services, and any discharge from services.

(2) In addition to the required review under paragraph (1) of this subsection, a provider may review the treatment plan in the following instances:

(A) if clinically indicated; and

(B) at the request of the individual or the LAR (if applicable), or the primary caregiver of a child or adolescent.

(3) Any time the treatment plan is reviewed, the provider must:

(A) meet with the individual either face to face or via telemedicine to solicit and consider input from the individual regarding a self-assessment of progress toward the recovery goals, as described in subsection (e)(1)(E) of this section;

(B) solicit and consider the input from each of the disciplines of treatment in assessing the individual's progress toward the recovery goals and objectives with expected outcomes, described in subsection (e)(1)(E) of this section;

(C) solicit and consider input from the LAR (if applicable) or primary caregiver, if the individual is a child or adolescent regarding the level of satisfaction with the services provided; and

(D) document all the input described in subparagraphs (A) - (C) of this paragraph.

(g) Revisions to the treatment plan. If, after any review of the treatment plan, the provider determines it does not adequately address the needs of the individual, the provider must appropriately revise the content of the plan.

(h) Discharge Summary. Not later than 21 calendar days after an individual's discharge, whether planned or unplanned, the provider must document in the individual's medical record:

(1) a summary, based upon input from all the disciplines of treatment involved in the individual's treatment plan, of all the services provided, the individual's response to treatment, and any other relevant information;

(2) recommendations made to the individual or their LAR (if applicable) for follow up services, if any; and

(3) the individual's last diagnosis, based on the DSM.

HISTORY: The provisions of this § 412.322 adopted to be effective April 29, 2009, 34 TexReg 2603; amended to be effective February 19, 2017, 42 TexReg 561

§ 412.323. Medication Services

(a) Prescribing of psychoactive medication. The LMHA and MCO must ensure that psychoactive medication is prescribed in accordance with Chapter 415, Subchapter a of this title (relating to Prescribing of Psychoactive Medication).

(b) Medication service delivery. The LMHA, MCO, and provider must implement written procedures to ensure safe medication-related service delivery that include, but are not limited to, the following.

(1) A procedure for physician delegation of medical acts to non-physicians. The procedure must address delegation protocols to advanced practice nurses and/or physician assistants, delegation of medical acts to nursing and/or unlicensed staff, and the frequency of physician supervision over the staff member to whom a delegation is made. The procedure must provide a method to ensure the staff members are acting within

the scope of their license and is qualified and trained to perform the medical act.

(2) A procedure for RNs to make assignments to LVNs or delegate to unlicensed staff members nursing acts for the care of stable individuals with common, well-defined health problems with predictable outcomes. The procedure must address the types of nursing acts that may be delegated, the method to ensure the staff member is trained and qualified to perform a delegated nursing act, and the frequency of nursing supervision of the unlicensed staff member in accordance with Texas Occupations Code, Chapter 301 (relating to the Nursing Practice Act).

(3) A procedure for medication administration by licensed medical or nursing staff that addresses who may access and administer medications, timely administration, documentation of administration, and monitoring of administration, and that complies with applicable professional licensing standards and rules.

(4) A procedure for medication handling that addresses:

- (A) dispensing;
- (B) labeling and record keeping of sample medications;
- (C) limiting access to physician stock medications;
- (D) patient assistance/indigent medication program;
- (E) mechanisms to ensure safe temperature-controlled storage and transport of medication;
- (F) controlled drugs;
- (G) disposal/destruction of medication; and
- (H) locked areas and maintaining security.

(5) A procedure by which a physician, a physician's assistant, or an RN assesses and determines whether an individual can self-administer medication and whether it can be done without supervision.

(6) A procedure for training and assessing the competency of staff members to perform supervision of self-administration of medication, including:

- (A) medication actions;
- (B) target symptoms;
- (C) understanding prescription labels;
- (D) potential toxicity;
- (E) side effects;
- (F) adverse reactions;
- (G) proper storage of medications; and
- (H) reporting and documentation requirements.

(7) A procedure for providing appropriate supervision of staff members who are supervising self-administration of medication.

(8) A procedure for medication errors that defines the most common types of medication errors and provides for:

- (A) the accurate documentation of medication errors;
- (B) the reporting of medication errors to the physician within one hour of their occurrence;
- (C) a mechanism for determining medication error trends;
- (D) a mechanism for analyzing both individual medication errors and trends for quality improvement; and
- (E) the reporting of medication errors, as appropriate.

HISTORY: The provisions of this § 412.323 adopted to be effective April 29, 2009, 34 TexReg 2603

§ 412.324. Additional Standards of Care Specific to Mental Health Community Services for Children and Adolescents

(a) Administration of the uniform assessment. The uniform assessment must be administered face-to-face or via telemedicine with the individual and the LAR (if applicable) or primary caregiver as clinically appropriate according to the child's or adolescent's age, functioning, and current living situation.

(b) Age and developmentally appropriate mental health community services. All mental health community services delivered to children and adolescents by a provider must be, for each child and adolescent, age-appropriate, developmentally appropriate, and consistent with academic development.

(c) Separation of individuals by age. A provider that delivers mental health community services to children and adolescents in group settings (e.g., residential, day programs, group therapy, partial hospitalization, and inpatient) must separate children and adolescents from adults. The provider must further separate children from adolescents according to age and developmental needs, unless there is a clinical or developmental justification in the medical record.

(d) Transition to mental health community services for adults. The provider must develop a transition plan for each adolescent who will need mental health community services for adults. The transition plan must be developed in consultation with the adolescent (and LAR if applicable) and future providers with adequate time to allow both current and future providers to transition the adolescent into adult services without a disruption in services. The transition plan must include:

- (1) a summary of the mental health community services and treatment the adolescent received as a child and adolescent;
- (2) the adolescent's current status (e.g., diagnosis, medications, uniform assessment guideline calculation, and unmet needs);
- (3) information from the adolescent and the LAR regarding the adolescent's strengths, preferences for mental health community services, and responsiveness to past interventions;
- (4) a description of the mental health community services the adolescent will receive as an adult;
- (5) a list of resources for other recovery supports such as volunteer opportunities, family or peer organizations, 12-step programs, churches, colleges, or community education;
- (6) documentation that the adolescent's services continued throughout the transition without disruptions; and
- (7) documentation of the follow up to ensure successful transition to adult services.

HISTORY: The provisions of this § 412.324 adopted to be effective April 29, 2009, 34 TexReg 2603

§ 412.325. Telemedicine Services

The LMHA, MCO, and provider must ensure that if a provider uses telemedicine, it is implemented in accordance with written procedures and using a protocol approved by the LMHA's or MCO's medical director. Procedures regarding the provision of telemedicine service must include the following requirements:

- (1) clinical oversight by the LMHA's or MCO's medical director or designated physician responsible for medical leadership;
- (2) contraindications for telemedicine use;

(3) qualified people to ensure the safety of the individual being served by telemedicine at the remote site; and

(4) use by credentialed or licensed providers who provide clinical care within the scope of their credential or license.

HISTORY: The provisions of this § 412.325 adopted to be effective April 29, 2009, 34 TexReg 2603

§ 412.326. Documentation of Service Provision

(a) Progress note content. Except for crisis services as described in §412.321 of this title (relating to Crisis Services) and day programs for acute needs as described in Chapter 419, Subchapter L of this title (relating to Mental Health Rehabilitative Services), and case management services as described in Chapter 412, Subchapter I of this title (relating to Mental Health Case Management Services), a provider must document the provision of all other mental health community services, each service encounter and include at least the following:

- (1) the name of the individual to whom the service was provided, including the LAR or primary caregiver, if applicable;
- (2) the type of service provided;
- (3) the date the service was provided;
- (4) the begin and end time of the service;
- (5) the location where the service was provided;
- (6) a summary of the activities that occurred;
- (7) the modality of the service provision (e.g., individual, group);
- (8) the method of service provision (e.g., face-to-face, phone, telemedicine);
- (9) the training methods used, if applicable (e.g., instructions, modeling, role play, feedback, repetition);
- (10) the title of the curriculum being used, if applicable;
- (11) the treatment plan objective(s) that was the focus of the service;
- (12) the progress or lack of progress in achieving treatment plan goals;
- (13) the signature of the staff member providing the service and a notation as to whether the staff member is an LPHA, a QMHP-CS, a pharmacist, a CSSP, an LVN, a peer provider or otherwise credentialed, as required for that service; and
- (14) any pertinent event or behavior relating to the individual's treatment which occurs during the provision of the service.

(b) Frequency of documentation. The documentation required in subsection (a) of this section must be made within two business days after each contact that occurs to provide mental health community services.

(c) Retention. Documentation must be retained in compliance with applicable federal and state laws, rules, and regulations.

HISTORY: The provisions of this § 412.326 adopted to be effective April 29, 2009, 34 TexReg 2603

§ 412.327. Supervision

(a) Clinical supervision. Clinical supervision must be accomplished by an LPHA or a QMHP-CS as follows:

- (1) by conducting a documented meeting with the staff member being supervised at least monthly; and
- (2) for peer providers, by conducting an additional monthly documented observation of the peer provider providing mental health community services.

(b) Policies and procedures. The LMHA or MCO will develop and implement written policies and procedures for supervision of all applicable levels of staff members providing services to individuals.

(c) Licensed staff member supervision. All licensed staff members must be supervised in accordance with their practice act and applicable rules.

(d) QMHP-CS supervision. a QMHP-CS's designated clinical duties must be clinically supervised by:

- (1) a QMHP-CS; or
- (2) an LPHA if the QMHP-CS is clinically supervising the provision of mental health community services.

(e) CSSP supervision. a CSSP's designated clinical duties must be clinically supervised by a QMHP-CS. The CSSP must have access to clinical consultation with an LPHA when necessary.

(f) Family partner supervision. a family partner is supervised by the mental health children's director, clinic director, case management supervisor, or wraparound supervisor.

(g) Peer provider supervision. a peer provider's designated clinical duties must be clinically supervised by an LPHA.

(h) Peer review. The LMHA, MCO, and provider must implement a peer review process for licensed staff members that:

- (1) promotes sound clinical practice;
- (2) promotes professional growth; and
- (3) complies with applicable state laws (e.g., Medical Practice Act, Nursing Practice Act, Vocational Nurse Act) and rules.

(i) Documentation. All clinical supervision must be documented.

HISTORY: The provisions of this § 412.327 adopted to be effective April 29, 2009, 34 TexReg 2603

Subchapter I.

MH Case Management

§ 412.401. Purpose

The subchapter describes requirements for providing mental health case management services (MH case management services) funded by or through the department.

HISTORY: The provisions of this § 412.401 adopted to be effective February 14, 2013, 38 TexReg 647

§ 412.402. Application

The subchapter applies to providers of MH case management services.

HISTORY: The provisions of this § 412.402 adopted to be effective February 14, 2013, 38 TexReg 647

§ 412.403. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

- (1) Adolescent—An individual who is at least 13 years of age, but younger than 18 years of age.
- (2) Adult—An individual who is 18 years of age or older.
- (3) Assessment or reassessment—A systematic process for determining an individual's need for any clinically necessary medical, educational, social, or other services (e.g., taking client history, gathering

information from other sources, identifying the needs of the individual, and completing related documentation).

(4) Business day—Any day except a Saturday, Sunday, or legal holiday listed in the Texas Government Code, § 662.021.

(5) Case manager—An employee who provides MH case management services.

(6) Child—An individual who is at least three years of age, but younger than 13 years of age.

(7) CFR—Code of Federal Regulations.

(8) Community based—A description of the location where routine or intensive case management services are provided (i.e., in an individual's community).

(9) Community mental health center or CMHC—An entity established in accordance with the Texas Health and Safety Code, § 534.001, as a community mental health center or a community mental health and mental retardation center.

(10) Community resources—People or entities providing services that address the identified needs of individuals receiving MH case management services (e.g., providers of medical care, food, clothing, child care, employment, or housing).

(11) Community services specialist or CSSP—A staff member who, as of August 31, 2004:

(A) has received: (i) a high school diploma; or (ii) a high school equivalency certificate issued in accordance with the law of the issuing state; and

(B) has had three continuous years of documented full-time experience in the provision of MH case management services; and

(C) has demonstrated competency in the provision and documentation of MH case management services in accordance with this subchapter and the MH Case Management Billing Guidelines.

(12) Crisis—A situation in which:

(A) the individual presents an immediate danger to self or others;

(B) the individual's mental or physical health is at risk of serious deterioration; or

(C) an individual believes that he or she presents an immediate danger to self or others or that his or her mental or physical health is at risk of serious deterioration.

(13) Day—A calendar day, unless otherwise specified.

(14) Department—Department of State Health Services (DSHS).

(15) Designee—A person or entity named by the department to act on its behalf.

(16) Dual relationship—A situation that occurs if a case manager interacts with an individual in more than one capacity, whether it be before, during, or after the professional, social, or business relationship. Dual relationships can occur simultaneously or consecutively.

(17) Employee—A person who receives a W2 Wage and Tax Statement from a provider.

(18) Individual—A person seeking or receiving MH case management services.

(19) Institution for mental diseases or IMD—Based on 42 CFR § 435.1009, a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness, including medical attention, nursing care, and related services.

(20) Intensive case management—A focused effort to coordinate community resources that assist a child or adolescent in gaining access to necessary care and services appropriate to the child's or adolescent's needs.

The standards for providing intensive case management services are set forth in § 412.407 of this title (relating to MH Case Management Services Standards).

(21) Intensive case management plan or plan—A written document that is part of the medical record and is developed by a case manager, in collaboration with the individual and the individual's LAR or primary caregiver, that identifies services needed by the individual and sets forth a plan for how the individual may gain access to the identified services.

(22) Legally authorized representative or LAR—A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, including, but not limited to, a parent, guardian, or managing conservator.

(23) Level of care or LOC—A designation given to the department's standardized packages of mental health services, based on the uniform assessment and the utilization management guidelines, which specify the type, amount, and duration of MH case management services to be provided to an individual.

(24) Life domains—Areas of life in which a child or adolescent has unmet needs, including, but not limited to safety, health, emotional, psychological, social, educational, cultural, and legal needs.

(25) Local Behavioral Health Authority (LBHA)—An entity designated as the local behavioral health authority in accordance with Texas Health and Safety Code, § 533.0356.

(26) Medically necessary—A clinical determination made by an LPHA that services:

(A) are reasonable and necessary for the treatment of a mental health disorder or to improve, maintain, or prevent deterioration of functioning resulting from such a disorder;

(B) are provided in accordance with accepted standards of practice in behavioral health care;

(C) are furnished in the most appropriate and least restrictive setting in which services can be safely provided;

(D) are at the most appropriate level or amount of service that can be safely provided; and

(E) could not have been omitted without adversely affecting the individual's mental and/or physical health or the quality of care rendered.

(27) Mental health (MH) case management services—Activities that assist an individual in gaining and coordinating access to necessary care and services appropriate to the individual's needs. Case management activities include assessment, recovery planning, referral and linkage, and monitoring and follow up. Activities may be provided as routine case management or intensive case management.

(28) Monitoring and follow-up—Activities and contacts that are necessary to ensure that referrals and linkages are effectively implemented and adequately addressing the needs of the individual. The activities and contacts may be with the individual, LAR, primary caregiver, family members, providers, or other people and entities to determine whether services are being furnished, the adequacy of those services, and changes in the needs or status of the individual.

(29) Primary caregiver—A person 18 years of age or older who:

(A) has actual care, control, and possession of a child or adolescent; or

(B) has assumed responsibility for providing shelter and care for an adult.

(30) Provider—An entity that is:

(A) a community mental health center that has a contract with the department to provide general revenue-funded MH case management services, Medicaid-funded MH case management services, or both;

(B) a Local Behavioral Health Authority (LBHA) that has a contract with the department to provide general revenue-funded MH case management services, or a subcontractor of a LBHA.

(31) Qualified mental health professional-community services or QMHP-CS—A staff member who meets the definition of a QMHP-CS set forth in Subchapter G of this chapter (relating to Mental Health Community Services Standards).

(32) Recovery—A process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

(33) Recovery plan or treatment plan—A written plan developed with the individual and, as required, the LAR and a QMHP-CS that specifies the individual's recovery goals, objectives, and strategies/interventions in conjunction with the uniform assessment that guides the recovery process and fosters resiliency as further described in § 412.322(e) of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization) concerning content and timeframe of treatment plan.

(34) Recovery planning—A systematic process for ensuring the individual's active participation and allowing the LAR, and the primary caregiver and others to develop goals and identify a course of action to respond to the clinically assessed needs. The assessed needs may address medical, social, educational, and other services needed by the individual.

(35) Referral and linkage—Activities that help link an individual with medical, social, and educational providers, and with other programs and services that are capable of providing needed services (e.g., referrals to providers for needed services and scheduling appointments).

(36) Routine case management—Services that assist an individual in gaining and coordinating access to necessary care and services appropriate to the individual's needs. The standards for providing routine case management services are set forth in § 412.407 of this title.

(37) Site based—The location where routine case management services are usually provided (i.e., the case manager's place of business).

(38) Staff member—Provider personnel, including a full-time and part-time employee, contractor, or intern, but excluding a volunteer.

(39) Strengths based—The concept used in service delivery that identifies, builds on, and enhances the capabilities, knowledge, skills, and assets of the child, adolescent, LAR, or primary caregiver, and family, their community, and other team members. The focus is on increasing functional strengths and assets rather than on the elimination of deficits.

(40) TAC—Texas Administrative Code.

(41) Uniform assessment—An assessment adopted by the department that is used for recommending an appropriate level of care (LOC).

(42) Utilization management guidelines—Guidelines developed by the department that establish the type, amount, and duration of MH case management services for each LOC.

(43) Wraparound process planning or other department-approved model—A strengths-based course of action involving a child or an adolescent and family, including any additional people identified by the child or adolescent, LAR, primary caregiver, and family, that results in a unique set of community services and natural supports that are individualized for the child or adolescent to achieve a positive set of identified outcomes.

HISTORY: The provisions of this § 412.403 adopted to be effective February 14, 2013, 38 TexReg 647; amended to be effective March 27, 2017, 42 TexReg 1458

§ 412.404. Provider Requirements

(a) The provider must comply with Subchapter G of this chapter (relating to Mental Health Community Services Standards).

(b) The provider must assign a case manager to an individual within two business days after receiving notification from the department or its designee that the individual has been authorized to receive MH case management services.

(c) The provider must ensure that an alternate case manager acts as the individual's assigned case manager if an individual's assigned case manager is not available.

(d) The provider must maintain case manager-to-individual ratios sufficient to perform the responsibilities of a case manager in accordance with this subchapter.

(e) The provider is responsible for a case manager's compliance with this subchapter.

HISTORY: The provisions of this § 412.404 adopted to be effective February 14, 2013, 38 TexReg 647

§ 412.405. Eligibility for MH Case Management Services

For an individual to be eligible for MH case management services, the individual must:

(1) be a resident of the State of Texas;

(2) be an adult with a severe and persistent mental illness, or a child or adolescent with a serious emotional disturbance who may have a diagnosis described in paragraph (3) of this section;

(3) not have a single diagnosis of an intellectual or developmental disability or a substance use disorder; and

(4) qualify for an LOC that includes MH case management services.

HISTORY: The provisions of this § 412.405 adopted to be effective February 14, 2013, 38 TexReg 647

§ 412.406. Authorization for MH Case Management Services

(a) A provider must:

(1) ensure that a QMHP-CS administers the uniform assessment to the individual at intervals specified by the department and obtain a recommended LOC for the individual;

(2) evaluate the clinical needs of the individual to determine if the amount of MH case management services associated with the recommended LOC described in the utilization management guidelines is sufficient to meet those needs; and

(3) ensure that an LPHA reviews the recommended LOC and verifies whether the services are medically necessary.

(b) If the provider determines that the type of MH case management services associated with the recommended

LOC is sufficient to meet the individual's needs, the provider must submit to the department or its designee a request for service authorization according to the recommended LOC.

(c) If the provider determines that the type of MH case management services associated with the recommended LOC is not sufficient to meet the individual's needs, the provider must submit to the department or its designee:

(1) a request for an authorization of an LOC that is sufficient to meet the individual's need or a request for authorization of additional units of service; and

(2) the clinical justification for the request.

(d) The department or its designee makes the initial determination of an individual's LOC using the uniform assessment which is referenced in §412.416 of this title (relating to Guidelines) and the utilization management guidelines, which are referenced in §412.416 of this title. If the LOC includes MH case management services, the department or its designee will authorize the individual to receive either routine or intensive case management services.

(e) Upon receipt of a request submitted according to subsection (c) or (d) of this section, the department or its designee will:

(1) review the documentation submitted by the provider;

(2) based on the review of documentation and an evaluation of available resources, authorize or deny an LOC for the individual, and if authorized, it authorizes the individual to receive either routine or intensive MH case management services; and

(3) communicate to the individual or LAR, no longer than seven business days after the determination has been made, whether the service has been authorized or denied.

§ 412.407. MH Case Management Services Standards

(a) Assessment. An individual is assessed according to §412.406 of this title (relating to Authorization for MH Case Management Services) to determine the LOC necessary to address the individual's needs. If the individual needs either routine or intensive case management the provider must assign a case manager according to §412.404(b) of this title (relating to Provider Requirements). MH case management services, as well as attempts to provide case management, must be documented according to §412.413 of this title (relating to Documenting MH Case Management Services).

(1) MH case management services must:

(A) be delivered according to the department's utilization management guidelines, which are described in §412.415 of this title (relating to Fair Hearings and Appeal Processes); and

(B) include regular, but at least annual, monitoring of service effectiveness and proactive crisis planning and management.

(2) Case managers must recognize that:

(A) an LAR as authorized by law may act on behalf of an individual in matters such as accepting or declining services; and

(B) a primary caregiver who is not the individual's LAR is included in recovery planning and discussions that relate to the individual if written permission is obtained from the individual or LAR.

(b) Routine case management. Routine case management is provided to eligible adults, children, or adolescents and is primarily a site-based service. a case manager assigned to an individual who is authorized to receive routine case management services must:

(1) meet face-to-face with the individual and the individual's LAR or primary caregiver within 14 days after the case manager is assigned to the individual or document why the meeting did not occur;

(2) assist the individual in identifying the individual's immediate needs and in determining access to community resources that may address those needs;

(3) identify the strengths, service needs, and assistance required to address the identified needs;

(4) identify the goals and actions required to meet the individual's identified needs;

(5) specify the goals and actions to be accomplished;

(6) develop a timeline for obtaining the needed services;

(7) take the steps that are necessary to accomplish the goals required to meet the individual's identified needs by using referral, linking, advocacy, and monitoring;

(8) meet face-to-face with the individual upon the individual's, the LAR's, or the primary caregiver's request, or document why the meeting did not occur;

(9) reassess the individual's needs at least annually or as changes occur;

(10) meet face-to-face with the LAR, with or without the child or adolescent being present, to provide a service that assists the child or adolescent in gaining and coordinating access to necessary care and services;

(11) meet face-to-face with the individual and the LAR or primary caregiver upon notification of a clinically significant change in the individual's functioning, life status, or service needs, or document why the meeting did not occur;

(12) if notified that the individual is in crisis, coordinate with the appropriate providers of emergency services to respond to the crisis, as described in Chapter 412, Subchapter G, specifically §412.321 of this title (relating to Crisis Services); and

(13) develop a timeline for reevaluating the individual's needs.

(c) Intensive case management. Intensive case management is provided to eligible children and adolescents and is primarily community-based. a case manager assigned to a child or adolescent who is authorized to receive intensive case management services must:

(1) develop an intensive case management plan (plan) based on the child's or adolescent's needs that may include information across life domains from relevant sources, including:

(A) the child or adolescent;

(B) the LAR or primary caregiver;

(C) other agencies and organizations providing services to the child or adolescent;

(D) the individual's medical record; and

(E) other sources identified by the individual, LAR, or primary caregiver;

(2) meet face-to-face with the child or adolescent and the LAR or primary caregiver:

(A) within seven days after the case manager is assigned to the child or adolescent;

(B) within seven days after discharge from an inpatient psychiatric setting, whichever is later; or

(C) document the reasons the meeting did not occur;

(3) meet face-to-face with the child or adolescent and the LAR or primary caregiver according to the child's or adolescent's plan or document why the meeting did not occur;

(4) identify the child or adolescent's strengths, service needs, and assistance that will be required to address the identified needs in the plan;

(5) comply with subsection (b)(4) - (13) of this section;

(6) incorporate wraparound process planning or other department-approved model in developing a plan that addresses the child's or adolescent's unmet needs across life domains, in accordance with the department's utilization management guidelines and subsection (d) of this section;

(7) take steps that are necessary to assist the child or adolescent in gaining access to the needed services and service providers, including:

(A) making referrals to potential service providers;

(B) initiating contact with potential service providers;

(C) arranging, and if necessary to facilitate linkage, accompanying the child or adolescent to initial meetings and non-routine appointments;

(D) arranging transportation to ensure the child's or adolescent's attendance;

(E) advocating with service providers; and

(F) providing relevant information to service providers;

(8) monitor the child's or adolescent's progress toward the outcomes set forth in the plan, including:

(A) gathering information from the child or adolescent, current service providers, LAR, primary caregiver, and other resources;

(B) reviewing pertinent documentation, including the child's or adolescent's clinical records, and assessments;

(C) ensuring that the plan was implemented as agreed upon;

(D) ensuring that needed services were provided;

(E) determining whether progress toward the desired outcomes was made;

(F) identifying barriers to accessing services or to obtaining maximum benefit from services;

(G) advocating for the modification of services to address changes in the needs or status of the child or adolescent;

(H) identifying emerging unmet service needs;

(I) determining whether the plan needs to be modified to address the child's or adolescent's unmet service needs more adequately;

(J) revising the plan as necessary to address the child's or adolescent's unmet service needs;

(K) a description of the intensive case management services to be provided by the case manager; and

(L) a statement of the maximum period of time between face-to-face contacts with the child or adolescent, and the LAR or primary caregiver, determined in accordance with the utilization management guidelines.

(d) Wraparound process planning. Wraparound process planning or other department-approved model may include, but is not limited to:

(1) a list of identified natural strengths and supports;

(2) a crisis plan developed in collaboration with the LAR, caregiver, and family that identifies circumstances to determine a crisis that would jeopardize the child's or adolescent's tenure in the community and the actions necessary to avert such loss of tenure;

(3) a prioritized list of the child's or adolescent's unmet needs that includes a discussion of the priorities and needs expressed by the child or adolescent and the LAR or primary caregiver;

(4) a description of the objective and measurable outcomes for each of the unmet needs as well as a projected time frame for each outcome;

(5) a description of the actions the child or adolescent, the case manager, and other designated people take to achieve those outcomes; and

(6) a list of the necessary services and service providers and the availability of the services.

HISTORY: The provisions of this § 412.407 adopted to be effective February 14, 2013, 38 TexReg 647

§ 412.408. Making a Complaint

A provider must, in accordance with Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services), notify the individual or LAR and, if the individual is a child or adolescent, the primary caregiver in writing of the process for making a complaint to the provider's client rights officer.

HISTORY: The provisions of this § 412.408 adopted to be effective February 14, 2013, 38 TexReg 647

§ 412.409. Service Limitations

(a) A case manager must not provide MH case management services to an individual if a dual relationship exists.

(b) Activities that do not constitute MH case management services are identified in the department's MH Case Management Billing Guidelines as referenced in § 412.416 of this title (relating to Guidelines).

(c) The provider must ensure that a conflict of interest does not exist if the same case manager is providing other, non-case management services.

(d) The provider must ensure that providers of case management services cannot authorize services.

(e) The receipt of MH case management services cannot be conditioned upon receipt of other services.

HISTORY: The provisions of this § 412.409 adopted to be effective February 14, 2013, 38 TexReg 647

§ 412.410. Notification and Terminations

(a) Notification. The provider must notify the department or its designee if the provider has reason to believe that:

(1) the individual no longer meets the eligibility criteria for MH case management services as set forth in § 412.405 of this title (relating to Eligibility for MH Case Management Services);

(2) the LAR of an individual has refused MH case management services on behalf of the individual;

(3) the adult or LAR has refused MH case management services;

(4) the provider cannot locate the individual and the provider has documented multiple attempts to locate the individual over a period of two consecutive months;

(5) the individual has died;

(6) the individual has established or intends to establish residency outside of the provider's service area; or

(7) if MH case management services are terminated for any reason described in paragraphs (1) - (6) of this subsection, the provider shall document the reason for terminating MH case management services.

(b) Termination. The department or designee shall terminate MH case management services provided to an individual if:

(1) the department or designee is notified of any of the circumstances described in subsection (a) of this section;

(2) it is determined that the individual no longer meets the eligibility criteria for MH case management services as set forth in §412.405 of this title; or

(3) the individual is not eligible for Medicaid and the department or its designee determines that there are insufficient resources to continue to provide MH case management services to the individual.

HISTORY: The provisions of this § 412.410 adopted to be effective February 14, 2013, 38 TexReg 647

§ 412.411. MH Case Management Employee Qualifications

(a) A case manager must be:

- (1) a QMHP-CS or a CSSP;
- (2) an employee of the provider; and
- (3) competent according to §412.412 of this title (relating to MH Case Management Employee Competencies).

(b) The provider may require additional education and experience for a case manager.

(c) An employee who supervises a case manager must be an employee of the provider and either:

- (1) be a QMHP-CS;
- (2) be competent according to §412.412 of this title and have experience in providing MH case management services; or
- (3) hold a master’s degree in a related field;
- (4) demonstrate competency according to §412.412 of this title;
- (5) demonstrate competency in knowledge of community resources; and
- (6) demonstrate competency in MH case management evidenced-based practices.

HISTORY: The provisions of this § 412.411 adopted to be effective February 14, 2013, 38 TexReg 647

§ 412.412. MH Case Management Employee Competencies

(a) The provider must implement a process to ensure the competency of a case manager and a case manager supervisor that, at a minimum, ensures:

- (1) an accurate knowledge of the requirements of this subchapter and the following subchapters of this title:
 - (A) Chapter 412, Subchapter G of this title (relating to Mental Health Community Services Standards);
 - (B) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);
 - (C) Chapter 414, Subchapter L of this title (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers); and
 - (D) Chapter 411, Subchapter N of this title (relating to Standards for Services to Individuals with Co-Occurring Psychiatric and Substance Use Disorders (COPSD));
- (2) an accurate understanding of the nature of mental illness and serious emotional disturbance;
- (3) an awareness and sensitivity in communicating and coordinating services with an individual who has a special physical need such as a hearing or visual impairment;
- (4) the ability to respond to an individual’s language and cultural needs through knowledge of customs,

beliefs, and values of various, racial, ethnic, religious, and social groups;

(5) the ability to complete the uniform assessment;

(6) the ability to understand and apply the utilization management guidelines;

(7) the ability to develop and implement a plan if the case manager is providing intensive case management services to a child or adolescent;

(8) the ability to identify an individual in crisis;

(9) knowledge of appropriate actions to take in managing a crisis;

(10) an understanding of the developmental needs of an adult, a child, or an adolescent;

(11) an understanding of the wraparound planning process or other department-approved model, if the case manager is providing intensive case management services to a child or adolescent;

(12) knowledge of health and human services available to a child or adolescent as described in Texas Government Code, § 531.0244, if the case manager is providing intensive case management services to a child or adolescent;

(13) knowledge of available resources within the local community;

(14) knowledge of strategies for advocating effectively on behalf of individuals; and

(15) the ability to document the MH case management services described in §412.413 of this title (relating to Documenting MH Case Management Services).

(b) The provider shall require each case manager and case manager supervisor, prior to providing MH case management services, to:

(1) demonstrate the competencies described in subsection (a) of this section; and

(2) ensure that documentation verifying competencies is maintained in the personnel record of each case manager and case manager supervisor.

§ 412.413. Documenting MH Case Management Services

(a) Location of documentation. MH case management services, as well as attempts to provide MH case management services, as described in this section, must be documented in the individual’s medical record.

(1) For routine case management, the case manager must document the information required by §412.407(b)(3) - (6) of this title (relating to MH Case Management Services Standards), as well as the steps taken to meet the individual’s goals and needs as required by §412.407(b)(7) of this title, in the individual’s medical record.

(2) For intensive case management:

(A) the assigned case manager must include the intensive case management plan required by §412.407(c)(1) of this title in the individual’s medical record; and

(B) the assigned case manager must document steps taken to meet the individual’s goals and needs as required by §412.407(c)(7) of this title in the individual’s progress notes.

(b) Assessment and reassessment. As a result of the face-to-face meetings, assessments, and reassessments required in §412.407 of this title, the case manager must document the individual’s:

(1) identified strengths, service needs, and assistance given to address the identified need; and

(2) specific goals and actions to be accomplished.

(c) Service documentation. The case manager must document the following for all services provided:

- (1) the event or behavior that occurs while providing the MH case management service or the reason for this specific encounter;
- (2) the person, persons, or entity, including other case managers, with whom the encounter or contact occurred;
- (3) the recovery plan goal(s) that was the focus of the MH case management service, including the progress or lack of progress in achieving recovery plan goal(s);
- (4) the timeline for obtaining the needed services;
- (5) the specific intervention that is being provided;
- (6) the plan to proceed based upon the facts presented in this encounter or the resolution, if any;
- (7) the date the MH case management service was provided;
- (8) the begin and end time of the MH case management service;
- (9) the location where the MH case management service was provided and whether it was a face-to-face or telephone contact;
- (10) the signature of the employee providing the MH case management service and their credentials; and
- (11) the timeline for reevaluating the needed services.

(d) Crisis service documentation. In addition to the requirements described in subsection (a) of this section, a provider must document the following for crisis intervention services:

- (1) the documentation required by Chapter 412, Subchapter G, specifically §412.321(e) of this title (relating to Crisis Services); and
- (2) the outcome of the individual's crisis.

(e) Refusing MH case management services. If the individual refuses MH case management services, the case manager must:

- (1) document the reason for the refusal in the progress notes of the individual's medical record; and
- (2) request that the individual sign a waiver of MH case management services that is filed in the individual's medical record.

(f) Documentation retention. The provider must retain documentation in compliance with applicable records retention requirements in federal and state laws, rules, and regulations.

HISTORY: The provisions of this § 412.413 adopted to be effective February 14, 2013, 38 TexReg 647

§412.414. Medicaid Reimbursement

(a) In accordance with §412.407 of this title (relating to MH Case Management Services Standards), a billable event is a face-to-face contact during which the case manager provides an MH case management service to an:

- (1) individual who is Medicaid eligible; or
- (2) LAR on behalf of a child or adolescent who is Medicaid eligible.

(b) A unit of service for MH case management services is 15 continuous minutes.

(c) The department shall not reimburse a provider for Medicaid MH case management services if:

- (1) the individual who was provided the service did not meet the eligibility requirements set forth in §412.405 of this title (relating to Eligibility for MH Case Management Services) at the time the service was provided;
- (2) the service provided was an integral and inseparable part of another service;

(3) the service was provided by a person who was not qualified in accordance with §412.411(a) of this title (relating to MH Case Management Employee Qualifications);

(4) the service provided was not the type, amount, and duration authorized by the department or its designee;

(5) the service was not provided or documented in accordance with this subchapter;

(6) the service provided is in excess of eight hours per individual per day; or

(7) the services provided do not conform to the requirements set forth in the department's MH Case Management Billing Guidelines.

(d) The department shall not reimburse a provider for Medicaid MH case management services for coordination activities that are included in the provision of:

(1) rehabilitative crisis intervention services, as described in Chapter 419, Subchapter L, specifically §419.457 of this title (relating to Crisis Intervention Services); or

(2) psychosocial rehabilitative services, as described in Chapter 419, Subchapter L, specifically §419.459 of this title (relating to Psychosocial Rehabilitative Services).

(e) If Medicaid-funded MH case management services are continued prior to a fair hearing, as required by 1 TAC § 357.11 (relating to Notice and Continued Benefits), the provider may file a claim for such services.

(f) An individual is eligible for Medicaid-funded MH case management services if, in addition to the criteria set forth in §412.405 of this title, the individual is:

- (1) eligible for Medicaid;
- (2) not an inmate of a public institution, as defined in 42 CFR § 435.1009;
- (3) not a resident of an intermediate care facility for persons with mental retardation as described in 42 CFR § 440.150;
- (4) not a resident of an IMD;
- (5) not a resident of a Medicaid-certified nursing facility, unless the individual has been determined through a pre-admission screening and resident review assessment to be eligible for the specialized service of MH case management services or the individual is expected to be discharged to a non-institutional setting within 180 days;

(6) not a recipient of MH case management services under another Medicaid program (e.g., the Home and Community Services waiver program or Texas Health Steps); and

(7) not a patient of a general medical hospital.

HISTORY: The provisions of this § 412.414 adopted to be effective February 14, 2013, 38 TexReg 647

§412.415. Fair Hearings and Appeal Processes

(a) Right of Medicaid-eligible individual to request a fair hearing. Any Medicaid eligible individual whose request for eligibility for MH case management services is denied or is not acted upon with reasonable promptness, or whose MH case management services have been terminated, suspended, or reduced by the department, is entitled to a fair hearing in accordance with 1 TAC Chapter 357, Subchapter a (relating to Uniform Fair Hearing Rules).

(b) Right of non-Medicaid eligible individual to request an appeal. Any individual who has not applied for or is not eligible for Medicaid whose request for eligibility for MH case management services is denied or is not acted upon with reasonable promptness, or whose MH case manage-

ment services have been terminated, suspended, or reduced by a local mental health authority or its contractor, is entitled to notification and right of appeal in accordance with the department's rules concerning such matters for non-Medicaid-eligible individuals.

HISTORY: The provisions of this § 412.415 adopted to be effective February 14, 2013, 38 TexReg 647

§ 412.416. Guidelines

The following guidelines, as revised, are referenced in this subchapter. For information about obtaining copies of the guidelines contact the Department of State Health Services, Mental Health Program Services, P.O. Box 149347, Mail Code 2018, Austin, TX 78714-9347, (512) 467-5427 or access them electronically.

(1) Uniform assessment guidelines are available online at: <http://www.dshs.state.tx.us/mhprograms/RDMAssess.shtm>.

(2) Utilization management guidelines for adults and children are available online at: <http://www.dshs.state.tx.us/mhprograms/RDMClinGuide.shtm>.

(3) MH Case Management Billing Guidelines are available at: <http://www.dshs.state.tx.us/Layouts/ContentPage.aspx?PageID=35712&id=8589961742&terms=billing+guidelines>.

HISTORY: The provisions of this § 412.416 adopted to be effective February 14, 2013, 38 TexReg 647

Subchapter P.

Provider Network Development

§ 412.751. Purpose

The purpose of this subchapter is to establish the process for a local mental health authority (LMHA) to assemble and maintain a network of service providers as required by the Health and Safety Code, § 533.035(b) - (f).

HISTORY: The provisions of this § 412.751 adopted to be effective January 1, 2015, 39 TexReg 10478

§ 412.752. Application

This subchapter applies to local mental health authorities (LMHAs) and their use of funds disbursed by the Department of State Health Services (department) pursuant to the Health and Safety Code, § 533.035(b), which authorizes the department to distribute funds to LMHAs for mental health services.

HISTORY: The provisions of this § 412.752 adopted to be effective January 1, 2015, 39 TexReg 10478

§ 412.753. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Critical infrastructure—The resources necessary to ensure services are available without significant disruption to the individuals served by the LMHA and to allow the LMHA to fulfill its obligations under the performance contract.

(2) Department—The Texas Department of State Health Services.

(3) Discrete services—Individual services provided as part of a defined level of care.

(4) External provider—An organization that provides mental health services that is not an LMHA, or

an individual who provides mental health services who is not an employee of an LMHA.

(5) Individual—An individual seeking or receiving mental health services through an LMHA, or the individual's legally authorized representative.

(6) Legally authorized representative (LAR)—A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, including, but not limited to, a parent, guardian, or managing conservator.

(7) Licensed psychiatric hospital—A hospital that is:

(A) A private psychiatric hospital licensed under Texas Health and Safety Code, Chapter 577, and Chapter 134 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units) rules; or

(B) an identifiable inpatient mental health services unit in a hospital licensed under Health and Safety Code, Chapter 241, and Chapter 133 of this title (relating to Hospital) rules.

(8) LOC or level of care—A designation given to the department's standardized packages of mental health services which specify the amount, and duration of mental health services to be provided to an individual, based on the uniform assessment and utilization management guidelines referenced in § 416.17 of this title (relating to Guidelines).

(9) Local Authority Network Advisory Committee (LANAC)—The committee established under Health and Safety Code, § 533.0351 to advise the department on technical and administrative issues that directly affect LMHA responsibilities. The committee has equal numbers of representatives from eight stakeholder groups.

(10) Local mental health authority (LMHA)—An entity designated as a local mental health authority according to the Health and Safety Code, § 533.035(a).

(11) Local service area—A geographic area composed of one or more Texas counties defining the population that may receive mental health services through an LMHA.

(12) Network development—The addition of new provider organizations, services, or capacity to an LMHA's external provider network.

(13) Performance contract—The contract between the department and an LMHA that is in effect at the time of an action required under this subchapter.

(14) Planning and Network Advisory Committee (PNAC)—The advisory committee of local stakeholders established by an LMHA as required by the performance contract.

(15) Provider or service provider—An organization or person who delivers mental health services.

(16) Qualified provider—A provider that is:

(A) a practitioner with the minimum qualifications required by the performance contract; or

(B) an organization that demonstrates the ability to provide services described in the performance contract, as specified in the department's approved procurement template.

(17) Routine outpatient services—Services available in a level of care, excluding inpatient, residential and most crisis services. Routine outpatient services include office-based crisis intervention provided as part of rehabilitation services during normal business hours but exclude all other crisis services.

(18) Service capacity—The estimated number of individuals that can be served in each level of care with available resources.

(19) Specialized services—Services that are not generally provided by the individual's treatment team, including stand-alone crisis and residential services.

HISTORY: The provisions of this § 412.753 adopted to be effective January 1, 2015, 39 TexReg 10478

§ 412.754. Local Network Development

(a) Use of resources. An LMHA must maximize funds available to provide services by minimizing overhead and administrative costs and achieving purchasing efficiencies. Strategies that an LMHA must consider in achieving this objective include joint efforts with other local authorities related to authority functions, administrative activities, and service delivery.

(b) Establishing a network. Each LMHA must demonstrate a reasonable effort to establish and maintain a network of qualified providers. In developing the network, the LMHA must consider public input, ultimate cost-benefit, and client care issues to ensure individual choice and best use of public funds.

(c) Developing a plan. Each LMHA must develop a biennial (2-year) local network development plan (plan) to guide the development of the LMHA's provider network. The plan must reflect local needs and priorities and must be designed to maximize individual choice and individual access to services provided by qualified providers. The plan is a framework for network development based on a biennial assessment of provider availability and is not intended to limit procurement and contracting. LMHAs are expected to consider opportunities for network development that develop between planning periods. Such opportunities include new funding and/or services and inquiries from interested providers.

(d) Involving the PNAC. The local PNAC must be actively involved in developing the plan. The local PNAC must receive information and training related to Provider Network Development, including the provisions of this subchapter and Health and Safety Code § 533.035, § 533.03521, and § 533.0358.

§ 412.755. Conditions Permitting LMHA Service Delivery

An LMHA may only provide services if one or more of the following conditions is present.

(1) The LMHA determines that interested, qualified providers are not available to provide services in the LMHA's service area or that no providers meet procurement specifications.

(2) The network of external providers does not provide the minimum level of individual choice. a minimal level of individual choice is present if individuals and their legally authorized representatives can choose from two or more qualified providers.

(3) The network of external providers does not provide individuals with access to services that is equal to or better than the level of access in the local network, including services provided by the LMHA, as of a date determined by the department. An LMHA relying on this condition must submit the information necessary for the department to verify the level of access.

(4) The combined volume of services delivered by external providers is not sufficient to meet 100 percent of the LMHA's service capacity for each level of care identified in the LMHA's plan.

(5) Existing agreements restrict the LMHA's ability to contract with external providers for specific services during the two-year period covered by the LMHA's plan.

If the LMHA relies on this condition, the department shall require the LMHA to submit copies of relevant agreements.

(6) The LMHA documents that it is necessary for the LMHA to provide specified services during the two-year period covered by the LMHA's plan to preserve critical infrastructure needed to ensure continuous provision of services. An LMHA relying on this condition must:

(A) document that it has evaluated a range of other measures to ensure continuous delivery of services, including but not limited to those identified by the LANAC and the department at the beginning of each planning cycle;

(B) document implementation of appropriate other measures;

(C) identify a timeframe for transitioning to an external provider network, during which the LMHA shall procure an increasing proportion of the service capacity from external provider in successive procurement cycles; and

(D) give up its role as a service provider at the end of the transition period if the network has multiple external providers and the LMHA determines that external providers are willing and able to provide sufficient added service volume within a reasonable period of time to compensate for service volume lost should any one of the external provider contracts be terminated.

§ 412.756. Department Website

(a) Website maintenance. The department shall maintain a website with information about network development.

(b) Planning schedule and templates. Using input from the Local Authority Network Advisory Committee, the department will develop a biennial schedule and templates for the local network development plan and provider profile. In addition, the department will work with the LANAC to develop a list of measures that may be helpful in stabilizing the provider network and ensuring continuous delivery of services.

(c) LMHA information. The department shall post minimum service requirements and service capacity information for each local service area on its website. Service capacity information includes:

(1) the performance contract targets for the number of adults and children to be served by the LMHA;

(2) the current state funding allocation for the LMHA;

(3) the number of individuals served in each level of care in the previous fiscal year; and

(4) the demographic breakout of individuals services in the previous fiscal year.

(d) List of interested provider organizations. The department shall create and maintain a list showing the provider organizations interested in contracting with each LMHA.

(1) The department's website must allow provider organizations to submit a description of their qualifications and indicate their interest in providing services in each local service area.

(2) The website also must provide a mechanism for providers to send their information directly to LMHAs.

(3) The department shall post information submitted by interested provider organizations on the department's website. The purpose of the list of interested provider organizations is to inform procurement decisions made by LMHAs, but the list may not be interpreted

as conclusive evidence of the existence of interested, qualified provider organizations for purposes of determining that procurement is required.

(e) Public access to plans. The department's website must provide public access to approved plans.

§ 412.757. Network Development Evaluation

An LMHA shall evaluate the potential for network development.

(1) The LMHA must seek and use available information to identify and contact potential provider organizations, including the list of interested provider organizations posted on the department's website.

(2) The LMHA must also consider current contractors, providers who have contacted the LMHA within the past two years, and other service providers in the local service area.

(3) If a provider has submitted printed or electronic documentation of interest, the LMHA may not eliminate the provider from consideration during the planning process without evidence that the provider:

(A) is no longer interested; or

(B) is clearly not qualified or capable of providing services in accordance with applicable state and local laws and regulations.

(4) The potential for network development exists if an LMHA has one or more provider organizations interested in providing routine outpatient or specialized services.

(5) If an LMHA identifies the potential for network development, it must develop a procurement plan. The plan shall include all opportunities for network development, except as limited by the conditions listed in § 412.755 of this title (relating to Conditions Permitting LMHA Service Delivery). This includes opportunities to add new services, new provider organizations, and/or additional capacity. An LMHA may choose to procure discrete services if it can ensure the integrity of levels of care and effective service coordination.

§ 412.758. Content of the Plan

(a) Plan preparation. An LMHA must use the results of its network development evaluation described in § 412.757 of this title (relating to Network Development Evaluation) to create its draft plan.

(b) Plan content applicable to all LMHAs. All plans must include the following components.

(1) The LMHA's projected service capacity for each level of care based on service data from the previous fiscal year for services provided under the performance contract and any information about changes that will impact the service capacity.

(2) Baseline data specified by the department showing the type and quantity of services provided by the LMHA and by external providers.

(3) A description of the process the LMHA used to evaluate the potential for network development and the results of that evaluation, including any information relating to specific services or populations.

(4) A list of the LMHA's external providers, including all current contractors and any other providers with whom the LMHA had a contract or agreement in effect during any part of the current or previous fiscal year. The list shall include the number of contracts and agreements with individual peer support providers, but not the names of individual peer support providers without their written consent.

(c) Plan content for LMHAs with potential for network development. If an LMHA identifies the potential for network development, the plan must also include the following elements.

(1) A description of the LMHA's plans for procurement, including:

(A) the adult and children's services to be procured;

(B) the capacity to be procured for each service;

(C) the geographic area(s) in which services would be procured;

(D) the procurement method(s) to be used; and

(E) the timeline(s) for conducting the procurement.

(2) The rationale for any provision that would limit individual choice or prevent procurement of all available capacity offered by external provider organizations.

(A) The rationale must address any proposed restrictions on: (i) the type of service to be procured; (ii) the volume of services to be procured; (iii) the geographic area in which services would be procured; or (iv) the number of providers to be accepted.

(B) The rationale for limiting procurement must be based on one or more of the conditions identified in § 412.755 of this title (relating to Conditions Permitting LMHA Service Delivery).

(C) The rationale must provide a basis for the proposed level of restriction, including the volume of services to be provided by the LMHA. An LMHA may be required to submit additional data to support its rationale.

(3) A description of the strategies the LMHA would use to maximize funds available to provide services, as required in § 412.754(c) of this title (relating to Local Network Development).

(4) A summary of procurement activities from past network and development planning cycles and the results of those efforts.

(5) If an LMHA is not procuring all available capacity offered by external provider organizations, the timeframe and steps for achieving full procurement of the external provider capacity identified in its network development evaluation, not to exceed the LMHA's capacity.

§ 412.759. Public Comment

(a) Distributing the draft plan. An LMHA shall post the draft plan on its website and invite public comment for at least 30 days. The LMHA shall send notice of the opportunity for comment to key stakeholders, including local consumer and advocacy groups, all licensed psychiatric hospitals in the LMHA's service area, and all providers identified in its network development evaluation.

(b) Responding to public comment. The LMHA shall acknowledge and consider all comments received and make any revisions it deems appropriate.

(c) Plan submission. The LMHA shall submit its proposed plan to the department with:

(1) a summary of the public comments received; and

(2) the LMHA's response to the comments.

HISTORY: The provisions of this § 412.759 adopted to be effective January 1, 2015, 39 TexReg 10478

§ 412.760. Plan Approval and Implementation

(a) Department review. The department shall review each plan to ensure compliance with the requirements of this subchapter and to determine whether the LMHA is making reasonable attempts to develop its provider network.

(1) The department shall establish a mechanism for stakeholder involvement in the review process.

(2) In reviewing an LMHA's plan, the department shall evaluate the level of effort made by the LMHA to achieve compliance and the rationale and any supporting documentation for its decisions and plans. This evaluation must include:

(A) the LMHA's response to public comment;

(B) the LMHA's past efforts and progress made in developing a network of external providers;

(C) the specific context of the local service area, including population density and distribution, existing service organizations, and local priorities;

(D) the potential impact on individual choice and access; and

(E) input from the LMHA's PNAC.

(3) The department may require an LMHA to submit additional information or documentation.

(b) Department approval. The department shall notify an LMHA of its decision within the timeframe established at the beginning of the planning cycle.

(1) The department shall approve the plan if it determines that the LMHA:

(A) is in compliance with the requirements of this subchapter; and

(B) is making reasonable attempts to develop an available and appropriate external provider base that is sufficient to meet the needs of individuals in its local service area.

(2) The department may require the LMHA to make revisions before approving the plan. If revisions are required, the department will determine a timeframe for resubmission.

(c) Posting the approved plan. After the department approves the plan, the LMHA shall post the approved version on its website. The posting must include the summary of public comments and the LMHA's response.

(d) Implementation. An LMHA shall conduct procurement as described in its approved plan.

(e) Amendment. If an LMHA determines it is unable to conduct the procurement as originally approved by the department, it shall submit a request for plan amendment to the department within 30 days of making the determination. An amendment is not required to expand the scope of a planned procurement or to conduct additional procurements outside of what is approved by the department. The department will evaluate the amendment request using the same process used for the original plan. Any proposed amendment must be approved in writing by the department and posted on the LMHA's website before it is implemented.

(f) List of external providers. The LMHA must maintain a current list of external providers on its website, including the name of each organization or private practitioner and the services provided. The list shall include the number of contracts and agreements with individual peer support providers, but not the names of individual peer support providers.

HISTORY: The provisions of this § 412.760 adopted to be effective January 1, 2015, 39 TexReg 10478

§ 412.761. Procurement

(a) Procurement procedures. An LMHA shall develop and implement procurement procedures that comply with applicable state laws and rules. The LMHA may procure mental health services by any procurement method allowed by applicable statutes and rules that provides the best value to the LMHA.

(b) Content of the procurement document. A procurement document shall include:

(1) the actual or maximum rate of payment for providing the services, as applicable;

(2) the criteria for determining whether an applicant is a qualified provider; and

(3) a detailed description of information to be included in a proposal, including:

(A) how the provider would meet the cultural and linguistic needs of the individuals in the LMHA's local service area; and

(B) how the provider would involve individuals, legally authorized representatives, and families at the policy and practice levels within the respondent's organization.

(c) Publication. An LMHA shall publicize the procurement document by:

(1) posting on the Electronic State Business Daily;

(2) posting on the LMHA's website;

(3) posting a link on the department website;

(4) sending to providers known to be interested in providing services in the LMHA's local service area; and

(5) sending to local consumer and advocacy organizations and local private psychiatric hospitals.

(d) Provider follow-up. If a provider submits printed or electronic documentation of interest but does not submit an application, the LMHA shall attempt to contact the provider to determine why the provider withdrew from the process.

(e) Provider standards. An LMHA shall not apply more rigorous standards and requirements to external providers than it applies to its own programs and staff. This does not preclude the LMHA from requiring documentation and reporting necessary to verify compliance with the terms of the contract.

(f) Provider compensation. An LMHA shall pay external providers a fair and reasonable rate in relation to the local prevailing market.

(g) Monitoring and enforcement. An LMHA shall implement effective procedures for contract monitoring and enforce the requirements set out in applicable rules and contract provisions. Examples include standards for service delivery, cultural and linguistic competency, and consumer protections.

HISTORY: The provisions of this § 412.761 adopted to be effective January 1, 2015, 39 TexReg 10478

§ 412.762. Post Procurement Report

Report content. An LMHA shall submit a post procurement report to the department within 30 days of completing a procurement described in the LMHA's approved plan. If procurement is conducted through open enrollment, the LMHA shall submit a procurement report at intervals specified in the timeline established by the department at the beginning of the planning cycle. The report must include:

(1) a list of the applications received in response to the procurement;

(2) the results of the procurement;

(3) an updated list of the LMHA's external providers; and

(4) the responses from providers who did not complete the procurement process regarding their reasons for withdrawing from consideration, if applicable.

§ 412.763. Appeals

(a) Local appeal process. An LMHA shall establish an appeal process for providers that:

(1) is available to any provider who submitted a written statement of interest or participated in any phase of the procurement process; and

(2) includes an opportunity for informal review and resolution as well as a formal appeal procedure.

(b) Department review. If an issue cannot be resolved at the local level and involves an alleged violation by the LMHA of a state rule or contract provision, either the LMHA or the provider may submit the issue to the department in writing for review. Potential actions that may be taken by the department shall be defined in the performance contract. The decision of the Commissioner or his designee will be final.

HISTORY: The provisions of this § 412.763 adopted to be effective January 1, 2015, 39 TexReg 10478

§ 412.764. Individual Selection of Providers

(a) Individual choice. An LMHA shall give consumers the opportunity to choose from any available provider in the LMHA's provider network offering services for which the individual is authorized at the time of admission and at least annually thereafter.

(b) Changing providers. Individuals may request and change providers at any time.

(c) Provider information. An LMHA shall maintain a current list of providers and a provider profile for each provider in the network, including the LMHA, on its website. The LMHA's website must also provide instructions for requesting a change in providers as described in § 401.464 of this title (relating to Notification and Appeals Processes).

(1) The provider list must include the following information about each provider:

(A) name;

(B) service locations and the services provided at each location; and

(C) contact information, including the provider's website address.

(2) The provider profile is a standardized form completed by the provider, may include information such as staffing patterns, special features of service delivery, and cultural and linguistic specialization. An LMHA shall use the provider profile template established by the department at the beginning of the planning cycle. The LMHA may add additional items to the provider profile based on input from the local PNAC.

(d) Provider selection process. The LMHA shall inform individuals, verbally and in writing, that they may choose to receive services from any available provider in the LMHA's network that offers the authorized services. The LMHA shall also provide individuals with a neutral presentation of available providers consistent with the plan to support consumer transition to the external network described in subsection (f) of this section. When an individual is given the opportunity to choose a provider, the LMHA shall:

(1) state that the individual may change providers at any time;

(2) give the individual the provider list, provider profiles, and a written copy of the procedures for requesting a change in providers;

(3) allow a reasonable period of time and make an area available for the individual to review the materials and make a decision; and

(4) maintain documentation of the individual's choice of provider.

(e) An LMHA shall not offer or schedule services before the individual selects a provider. If an individual is unable to select a provider or does not select a provider before leaving the first appointment, the LMHA shall provide the con-

sumer with an appointment for ongoing services at an assigned provider. Except as provided in subsection (f) of this section, assignments shall rotate equally among all available external providers. In this situation, the LMHA shall also provide the individual with information about how to have the appointment rescheduled with a different provider.

(f) External network transition plan. The LMHA shall develop and implement a plan to promote consumer transition to the external network when a new provider joins the network.

(1) The plan shall be developed with input from the LMHA's PNAC, any local consumer-operated organization, and its external providers.

(2) LMHAs may emphasize benefits of receiving services from an external provider, but shall not favor one provider over another except to identify service sites that may be more convenient for a client.

(3) The plan may include reassigning consumers to external providers based on geographic proximity, but must give them the option of choosing a different provider instead.

(4) The plan may include directing new individuals to choose an external provider, but must give them the option of choosing an LMHA service site instead.

HISTORY: The provisions of this § 412.764 adopted to be effective January 1, 2015, 39 TexReg 10478

CHAPTER 414.

Rights and Protection of Persons Receiving Mental Health Services

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Subchapter I.

Consent to Treatment With Psychoactive Medication—Mental Health Services

§ 414.401. Purpose

The purpose of this subchapter is to provide procedures for obtaining consent for treatment with psychoactive medications from patients receiving voluntary or involuntary mental health services.

HISTORY: The provisions of this § 414.401 adopted to be effective August 31, 2004, 29 TexReg 8317

§ 414.402. Application

This subchapter applies to the following facilities providing inpatient mental health services:

- (1) a state hospital or state center operated by the Texas Department of Mental Health and Mental Retardation (TDMHMR);
- (2) a psychiatric hospital licensed under Texas Health and Safety Code (THSC), Chapter 577, and Chapter 134 of this title;
- (3) an identifiable mental health service unit of a hospital licensed under THSC, Chapter 241, and Chapter 133, Subchapter a of this title;
- (4) a crisis stabilization unit (CSU) licensed under THSC, Chapter 577, and Chapter 134 of this title; and

- (5) facilities operated by local mental health authorities or under contract to local mental health authorities

HISTORY: The provisions of this § 414.402 adopted to be effective August 31, 2004, 29 TexReg 8317

§ 414.403. Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Capacity—A patient's ability to:
 - (A) understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment; and
 - (B) make a decision whether to undergo the proposed treatment.
- (2) Imminent—Ready to take place within seconds.
- (3) Informed consent—Consent given by a person or the person's legally authorized representative when each of the following conditions have been met:
 - (A) Comprehension of information. The person giving the consent has been provided the information outlined in § 414.404 of this title (relating to Information Required to Be Given) and has the capacity to give consent; and
 - (B) Voluntariness. The consent has been given voluntarily.
- (4) Legally authorized representative (LAR)—A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, who may be a parent, guardian, or managing conservator of a minor, the guardian of an adult, or the legal representative of a deceased individual.
- (5) Medication class—A group of medications with similar actions and indications for use, as outlined in the department's most recent "Classes of Psychoactive Medications Determined by the Texas Department of Mental Health and Mental Retardation." a copy of which may be obtained by contacting TDMHMR, Office of Office of the Medical Director, P.O. Box 12668, Austin, TX 78711-2668, or the TDMHMR website, www.mhmr.state.tx.us.
- (6) Mental health facility—A facility that can provide 24-hour residential and psychiatric services and that is:
 - (A) a TDMHMR mental health facility that is a state hospital or state center operated by the Texas Department of Mental Health or Mental Retardation (TDMHMR);
 - (B) a psychiatric hospital licensed under Texas Health and Safety Code, Chapter 577, and Chapter 134 of this title;
 - (C) an identifiable mental health service unit of a hospital licensed under Texas Health and Safety Code, Chapter 241, and Chapter 133, Subchapter a of this title;
 - (D) a crisis stabilization unit (CSU) licensed under THSC, Chapter 577, and Chapter 134; or
 - (E) a facility operated by a local mental health authority or under contract to a local mental health authority.
- (7) Minor—A person under 18 years of age who is not and has not been married or who has not had his or her disabilities of minority removed for general purposes.
- (8) Order for temporary or extended mental health services—A court-ordered commitment to mental health services Texas Health and Safety Code, § 574.034 or § 574.035.

(9) Psychiatric emergency—A situation in which, in the opinion of the physician, it is immediately necessary to administer medication to ameliorate the signs and symptoms of a patient's mental illness and to prevent:

(A) imminent probable death or substantial bodily harm to the patient because the patient:

(i) is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the patient is unable to satisfy the patient's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to others because of threats, attempts, or other acts the patient makes or commits.

(10) Psychoactive medication—Medication whose primary intended therapeutic effect is to treat or ameliorate the signs or symptoms of mental disorder, or to modify mood, affect, perception, or behavior, consistent with THSC, Chapter 574, Subchapter G, § 574.101.

(11) Refusal to consent to administration of psychoactive medication (refusal)—Actions which include the following behaviors:

(A) The patient or legally authorized representative communicates orally, through sign language, or in writing that he or she refuses psychoactive medication.

(B) The patient communicates through behavior that he or she refuses psychoactive medication, e.g., refusing to swallow oral medication or refusing to submit to hypodermic injection of psychoactive medication.

(C) The patient pretends to swallow oral psychoactive medications, and the attending physician determines that the pretending behavior is due to an unwillingness to take the medication.

(D) The patient gives either no response or a noncommittal response after he or she has received the standard risk-benefit explanation.

(12) Service setting—An entity to which this subchapter applies, as described in § 414.402 of this title, relating to Application, or a service site contracted to one of these entities.

(13) TDMHMR mental health facility—A state hospital or state center operated by the Texas Department of Mental Health and Mental Retardation.

(14) Ward—A person for whom a guardian has been appointed.

HISTORY: The provisions of this § 414.403 adopted to be effective August 31, 2004, 29 TexReg 8317

§ 414.404. Information Required to Be Given

(a) The treating physician, registered nurse (RN), licensed vocational nurse (LVN), physician's assistant (PA), or registered pharmacist (RPh) will explain to the patient and to the patient's legally authorized representative, the information in paragraphs (1) - (10) of this subsection in simple, nontechnical language in the person's primary language, if possible. If the explanation is not provided by the treating physician, he or she must confirm the explanation with the patient and the patient's legally authorized representative, within two working days, not including weekends or legal holidays:

(1) the nature of the patient's mental illness and condition;

(2) the name of the medication and the beneficial effects on the patient's mental illness or condition expected as a result of treatment with that medication;

(3) the probable health and mental health consequences to the patient of not taking the medication, including the occurrence, increase, or reoccurrence of symptoms of mental illness;

(4) the existence of generally accepted alternative forms of treatment, if any, that could reasonably be expected to achieve the same benefits as the medication and why the physician rejects the alternative treatment;

(5) a description of the proposed course of treatment with medication including any necessary evaluations and lab work;

(6) the fact that side effects of varying degrees of severity are a risk of all medication;

(7) the relevant side effects of the medication, including:

(A) any side effects which are known to frequently occur in most persons;

(B) any side effects to which the particular patient may be predisposed; and

(C) the nature and possible occurrence of the potentially irreversible symptoms of tardive dyskinesia;

(8) the need to advise mental health facility staff immediately if any of these side effects occur;

(9) an instruction that the patient may withdraw consent at any time without negative actions on the part of staff; and

(10) the patient's rights under this section.

(b) The patient and his or her LAR must also be provided a summary of this information in writing, along with an offer to answer any questions concerning the treatment. If the LAR is not present, the information must be mailed to the representative (via certified letter) within 24 hours, except on weekdays and legal holidays when the information will be mailed on the next business day.

§ 414.405. Documentation of Informed Consent

(a) Informed medication consent must be obtained for each individual medication, not by medication class.

(b) Informed consent for the administration of each psychoactive medication will be evidenced by a completed copy of the department's form, Consent to Treatment with Psychoactive Medication (MHRS 9-7 form (or other format including the same information)) executed by the patient or his or her LAR, a copy of which may be obtained by contacting TDMHMR, Office of Policy Development, P.O. Box 12668, Austin, TX 78711-2668.

(1) Any time the medication regimen is altered in a way that would result in a significant change in the risks or benefits for the patient, an explanation of the change will be provided to the patient and the patient's legally authorized representative. The explanation will include notification of the right to withdraw consent at any time.

(2) A new consent will be obtained if a change to a different medication is prescribed.

(c) If the patient or his or her LAR consents to the administration of psychoactive medication but refuses or is unable to execute the form, a witness to the consent will be obtained. The consent and its witnessing will be documented in the patient's medical record or on the MHRS 9-7 form (or other format including the same information) and placed in the medical record. The witness will confirm this consent by signing the consent form.

(d) If the RN, LVN, PA, or RPh gives the initial explanation of the consent information to the patient, then the treating physician must confirm the explanation and the consent and sign the MHRS 9-7 form (or other format in-

cluding the same information) within two working days, not including weekends or legal holidays.

(e) A patient's refusal or attempt to refuse to receive psychoactive medication, whether given verbally or by other indications or means, will be documented in the progress notes of the patient's clinical record or on the consent form (MHRS 9-7 form (or other format including the same information)).

(f) An LAR's refusal to consent for the patient's treatment will be documented in the patient's medical record.

(g) All consents will be reviewed with the patient and his or her legally authorized representative at least annually. The review will include a discussion of the information outlined in §414.404 of this title (relating to Information Required to Be Given) as well as a discussion of the patient and his or her legally authorized representative's wishes regarding continuation of the medication.

HISTORY: The provisions of this § 414.405 adopted to be effective August 31, 2004, 29 TexReg 8317

§ 414.406. Patients Admitted under Texas Statutes

(a) Psychoactive medications will not be administered to patients admitted to a mental health facility under the voluntary provisions of the Texas Health and Safety Code (THSC) or detained at a mental health facility under the THSC emergency detention or order of protective custody (OPC) provisions without informed consent from the patient or the patient's legally authorized representative unless the patient is in a psychiatric emergency and medication is administered as provided in § 414.410 of this title (relating to Psychiatric Emergencies).

(b) If an adult under a protective custody order as provided by THSC, Chapter 574, Subchapter B, is a ward, the guardian of the person of the ward may consent to the administration of psychoactive medication as prescribed by the ward's treating physician regardless of the ward's expressed preferences regarding treatment with psychoactive medication.

§ 414.407. Patients Committed to Mental Health Facilities under Provisions of the Texas Health and Safety Code

Psychoactive medications will not be administered to patients committed to a mental health facility under an order for temporary or extended mental health services if the patient or the patient's legally authorized representative refuses the medication unless:

- (1) the patient is in a psychiatric emergency and medication is administered as provided in §414.410 of this title (relating to Psychiatric Emergencies);
- (2) the patient does not have a legally authorized representative and the administration of the medication, regardless of the patient's refusal, is authorized by an order as outlined in THSC §§ 574.101 - 574.110; or
- (3) the patient is a ward who is 18 years of age or older and the guardian of the person of the ward consents to the administration of psychoactive medication regardless of the ward's expressed preferences regarding treatment with psychoactive medication.

§ 414.408. Patients Committed to Mental Health Facilities under Provisions Other than Those Found in the Texas Health and Safety Code (i.e., Code of Criminal Procedure, Family Code)

(a) The decision to administer medication to a patient committed to a TDMHMR mental health facility under pro-

visions other than THSC § 574.034 or §574.035 must be consistent with the holding in *Sell v. United States*, 123 S.Ct. 2174 (2003).

(b) Nothing in this section is intended to preclude the administration of psychoactive medication to any patient in a psychiatric emergency as provided for in §414.410 of this title (relating to Psychiatric Emergencies).

§ 414.409. Involuntary Administration of Medication to Patients Committed to Mental Health Facilities under the Texas Health and Safety Code or by Court Order

(a) The physician will order medications administered involuntarily under §414.407 of this title (relating to Patients Committed to Mental Health Facilities under Provisions of the Texas Health and Safety Code) or §414.411 of this title (relating to Order Authorizing Administration of Psychoactive Medication) to be given by the method most acceptable to the patient, if clinically appropriate.

(b) The authority to administer a medication involuntarily to a patient under §414.407 or §414.411 of this title includes the authority to obtain evaluations and laboratory tests necessary to safely administer the medication.

HISTORY: The provisions of this § 414.409 adopted to be effective August 31, 2004, 29 TexReg 8317

§ 414.410. Psychiatric Emergencies

(a) Nothing in this subchapter is intended to preclude the administration of psychoactive medication to any patient in a psychiatric emergency.

(b) If a physician issues an order to administer psychoactive medication to a patient without the patient's consent because of a psychiatric emergency, then the physician will document in the patient's clinical record in specific medical or behavioral terms:

- (1) why the order is necessary;
- (2) other generally accepted, less intrusive forms of treatment, if any, that the physician has evaluated but rejected; and
- (3) the reasons those treatments were rejected.

(c) Treatment of the patient with the psychoactive medication will be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the patient's personal liberty.

(d) A brief physical hold is not considered restraint for purposes of this subchapter provided that:

- (1) the individual currently exhibits behavior that meets the definition of psychiatric emergency as defined in this subchapter, or the individual is currently under a court order allowing the facility to administer medication without consent of the individual, the individual is refusing medication, and the medication ordered is permitted by the court order;
- (2) the purpose of administering medication is active treatment to reduce symptoms of a diagnosed mental illness;
- (3) using medication to reduce specified symptoms of a diagnosed mental illness is standard clinical practice;
- (4) the specific medication and dosage ordered can be clinically justified as in keeping with standard clinical practice and are appropriate for reduction of specified target symptoms; and
- (5) the physical hold is terminated as soon as the medication is administered.

(e) When the psychiatric emergency is no longer imminent or present, medication prescribed without consent on an emergency basis must be safely discontinued. If con-

tinued use of medication is recommended on a regular basis, the physician must comply with provisions outlined in § 414.406 of this title (relating to Patients Admitted Under Texas Statutes), § 414.407 of this title (relating to Patients Committed to Mental Health Facilities Under Provisions of the Texas Health and Safety Code), or § 414.408 of this title (relating to Patients Committed to Mental Health Facilities under Provisions Other than Those Found in the Texas Health and Safety Code (i.e., Code of Criminal Procedure, Family Code)), as appropriate.

(f) In no case may inappropriate designation of a situation as a psychiatric emergency be used to circumvent the process of obtaining consent or applying to the court for an order authorizing administration of psychoactive medication.

§ 414.411. Order Authorizing Administration of Psychoactive Medication

(a) Filing of Petition. a physician who is treating a patient may petition a probate court or a court with probate jurisdiction for an order to authorize the administration of a class or classes of psychoactive medication regardless of the patient's refusal:

(1) if the physician believes that the patient lacks the capacity to make a decision regarding the administration of the psychoactive medication;

(2) if the physician determines that the medication is the proper course of treatment for the patient; and

(3) if the patient is under an order for temporary or extended mental health services under THSC § 574.034 or § 574.035 and the patient, verbally or by other indication, refuses to take the medication voluntarily.

(b) Hearing on petition. a hearing on a petition for an order to authorize the administration of psychoactive medication regardless of the patient's refusal will be held in accordance with provisions outlined in THSC §§ 576.104 - 574.106.

(c) Issuance of order.

(1) The court may issue an order authorizing the administration of one or more classes of psychoactive medication only if the court finds by clear and convincing evidence after the hearing that:

(A) the patient lacks the capacity to make a decision regarding the administration of the proposed medication; and

(B) treatment with the proposed medication is in the best interest of the patient.

(2) In making its finding, the court shall consider:

(A) the patient's expressed preferences regarding treatment with psychoactive medication;

(B) the patient's religious beliefs;

(C) the risks and benefits, from the perspective of the patient, of taking psychoactive medication;

(D) the consequences to the patient if the psychoactive medication is not administered;

(E) the prognosis for the patient if the patient is treated with psychoactive medication; and

(F) alternatives to treatment with psychoactive medication.

(3) An order entered under this subsection shall authorize the administration to a patient, regardless of the patient's refusal, of one or more classes of psychoactive medications specified in the petition and consistent with the patient's diagnosis. The order shall permit:

(A) an increase or decrease in a medication's dosage;

(B) reinstatement of medication authorized but discontinued during the period the order is valid; or

(C) the substitution of a medication within the same medication class.

(4) The issuance of an order authorizing administration of psychoactive medication is not a determination or adjudication of mental incompetency and does not limit in any other respect the patient's rights as a citizen or the patient's property rights or legal capacity.

(d) Rights of patients.

(1) A patient for whom an application for an order to authorize the administration of a psychoactive medication is filed is entitled to:

(A) representation by a court-appointed attorney who is knowledgeable about issues to be adjudicated at the hearing;

(B) meet with that attorney as soon as is practicable to prepare for the hearing and to discuss any of the patient's questions or concerns;

(C) receive, immediately after the time of the hearing is set, a copy of the application and written notice of the time, place, and date of the hearing;

(D) be told, at the time personal notice of the hearing is given, of the patient's right to a hearing and right to the assistance of an attorney to prepare for the hearing and to answer any questions or concerns;

(E) be present at the hearing;

(F) request from the court an independent expert; and

(G) oral notification, at the conclusion of the hearing, of the court's determinations of the patient's capacity and best interests.

(2) A patient may appeal an order under this subchapter in the manner provided by THSC § 574.070 for appeal of an order requiring court-ordered mental health services. The order authorizing the administration of psychoactive medication remains effective pending the appeal.

(e) Review and expiration of order.

(1) An order authorizing the administration of psychoactive medication expires on the expiration or termination date of the order for temporary or extended mental health services in effect when the order for psychoactive medication is issued.

(2) An order authorizing the administration of medication shall be reviewed by the court on an annual basis.

§ 414.412. Designation of Medication Classes

(a) TDMHMR will maintain an updated list of psychoactive medication classes to be used by the court. The list will be revised and distributed at least annually or more frequently as needed and will include the most common psychoactive medications. The list will be available from the Office of the Medical Director, TDMHMR, and on the TDMHMR website, www.mhmr.state.tx.us (Office of the Medical Director).

(b) As provided by § 414.411(c)(1) of this title (relating to Order Authorizing Administration of Psychoactive Medication), the court will only approve classes of medications unless the specific medication appears in the other category on the list or is not on the list and:

(1) the medication is being used for a non-FDA approved indication; or

(2) the medication is a recently FDA approved psychiatric medication.

HISTORY: The provisions of this § 414.412 adopted to be effective August 31, 2004, 29 TexReg 8317

§ 414.413. Monitoring Compliance with Policies and Procedures

(a) Each service setting will implement policies and procedures in accordance with this subchapter.

(b) Self-monitoring of compliance will include the following components:

- (1) procedures to audit records for compliance;
- (2) procedures to analyze and report audit results to staff responsible for the informed consent process; and
- (3) procedures to improve the performance of individual employees, contractors, and agents, and to improve overall facility performance.

(c) Each service setting will collect information related to obtaining consent to treatment with psychoactive medication and the use of psychoactive medication in psychiatric emergencies as may be required by the medical director of TDMHMR.

(d) Each service setting will maintain a record of self-monitoring of compliance and may present these records to licensing or oversight authorities when requested.

HISTORY: The provisions of this § 414.413 adopted to be effective August 31, 2004, 29 TexReg 8317

§ 414.414. References

The following statutes are referenced in this subchapter:

- (1) the Texas Health and Safety Code;
- (2) the Texas Code of Criminal Procedure; and
- (3) the Texas Family Code.

HISTORY: The provisions of this § 414.414 adopted to be effective August 31, 2004, 29 TexReg 8317

§ 414.415. Distribution

This subchapter is distributed to:

- (1) members of the Texas Mental Health and Mental Retardation Board;
- (2) executive, management, and program staff of Central Office;
- (3) CEOs and medical directors of all facilities and LAs;
- (4) CEOs of psychiatric hospitals and crisis stabilization units;
- (5) advocacy organizations; and
- (6) any person on request.

HISTORY: The provisions of this § 414.415 adopted to be effective August 31, 2004, 29 TexReg 8317

Subchapter K.

Criminal History and Registry Clearances

§ 414.501. Purpose

The purpose of this subchapter is to protect consumers at a facility, local authority, community center, or contract provider of residential services, and the property of those consumers. to do so, this subchapter:

- (1) describes the process by which criminal history clearances are conducted for applicants for employment or volunteer status with facilities, local authorities, community centers, and contract providers of residential services;
- (2) requires facilities, local authorities, community centers, and contract providers of residential services to

have an effective self-reporting procedure for employees and volunteers; and

(3) describes the process by which registry clearances are conducted for applicants for employment or volunteer status with facilities, local authorities, community centers, and contract providers of residential services.

HISTORY: The provisions of this § 414.501 adopted to be effective February 6, 2002, 27 TexReg 749

§ 414.502. Application

(a) This subchapter applies to:

- (1) facilities (which include TDMHMR Central Office);
- (2) local authorities; and
- (3) community centers.

(b) Facilities, local authorities, and community centers must require their contract providers of residential services, including residences certified by the intermediate care facilities for the mentally retarded or persons with a related condition (ICF/MR or ICF/MR/RC) program that are owned and operated by a local authority or community center, to comply with the applicable provisions of this subchapter.

(c) This subchapter does not apply to residences certified by the ICF/MR or ICF/MR/RC program that are owned by a local authority or community center but operated under contract by a private provider, or that are privately owned and operated. Criminal history and registry clearances are conducted for such residences in accordance with rules of the Texas Department of Human Services (TDHS) in 40 TAC §§ 76.101- 76.106.

HISTORY: The provisions of this § 414.502 adopted to be effective February 6, 2002, 27 TexReg 749

§ 414.503. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Applicant—At the employer's discretion, either a person who is one of a select number of final candidates for a position as an employee or volunteer or a person to whom the employer intends to offer a position as an employee or volunteer. The term "applicant" does not include a member of the Texas MHMR Board, a member of a local authority's or community center's board of trustees, or a member of a facility's, local authority's, or community center's advisory committee that is not a public responsibility committee (PRC).

(2) Community center—A community mental health and mental retardation center established under the Texas Health and Safety Code, Title 7, Chapter 534, Subchapter A.

(3) Consumer—An individual receiving services from a facility, local authority, community center, or contract provider of residential services.

(4) Conviction—The adjudication of guilt, plea of guilty or nolo contendere, or the assessment of probation or community supervision for a violation of the Penal Code.

(5) Facility—Any state hospital, state school, or state center operated by TDMHMR, or TDMHMR Central Office.

(6) Local authority—An entity designated by the TDMHMR commissioner in accordance with the Texas Health and Safety Code, § 533.035(a).

(7) Provider—Any entity or person who contracts with a facility, local authority, or community center to deliver residential services to individuals with mental

illness or mental retardation who have been furloughed or discharged from a facility or community center as described in the Texas Government Code, § 411.115(b). This does not include private ICF/MR or ICF/MR/RC providers.

(8) Professional clinical intern—A person who is enrolled in a formal clinical rotation at a university/college in a professional training program accredited by the appropriate licensing authority or board of examiners, or is engaged in a recognized graduate level, clinical professional degree program. Professional degree programs include, but are not limited to, clinical psychology, dentistry, medicine, nursing, occupational therapy, pharmacy, physical therapy, psychiatry, and social work.

(9) Registry—

(A) The Nurse Aide Registry maintained by the Texas Department of Human Services in accordance with § 94.11 of Title 40 (relating to Registry, Findings, Inquiries); and

(B) the Employee Misconduct Registry maintained by the Texas Department of Human Services in accordance with the Texas Health and Safety Code, Chapter 253.

(10) Visiting group—A group of varying individuals associated with an organization (e.g., civic, fraternal, corporate, religious, social, service, or education), which is not affiliated with a facility, local authority, community center, or provider, that visits a facility, local authority, community center, or provider (e.g., tours) or participates in a special event and has constant and adequate staff supervision.

(11) Volunteer—An individual who is not part of a visiting group and who provides time or services to consumers, a facility, local authority, community center, volunteer services council, or provider without compensation from the facility, local authority, community center, volunteer services council, or provider other than reimbursement for actual expenses. The term does not include a professional clinical intern.

(12) Volunteer services council—A 501(c)(3) organization that is formed for the purpose of generating resources on behalf of a facility, local authority, or community center.

HISTORY: The provisions of this § 414.503 adopted to be effective February 6, 2002, 27 TexReg 749

§ 414.504. Pre-employment and Pre-assignment Clearance

(a) Each facility, local authority, community center, and provider must conduct:

(1) a pre-employment criminal history and registry clearance of all applicants (as defined) for employment; and

(2) a pre-assignment criminal history and registry clearance of all applicants for volunteer status.

(b) A provider that is required to conduct criminal history and registry clearances in accordance with the Texas Health and Safety Code, Chapter 250, must provide evidence of compliance with that law to the facility, local authority, or community center with which it contracts.

(c) For professional clinical interns, a written agreement must exist between the facility, local authority, or community center and the university/college. The written agreement must include:

(1) a statement that responsibility for the care of consumers is retained by the facility, local authority, or community center;

(2) a statement that background checks of professional clinical interns must ensure compliance with subsection (d) of this section; and

(3) a description of how background checks of professional clinical interns will be conducted and funded.

(d) The following individuals may not be employed by, assigned volunteer status at, or serve as a professional clinical intern at, a facility, local authority, community center, or provider:

(1) an individual who has been convicted of any of the criminal offenses listed in subsection (g) of this section;

(2) an individual who has been convicted of a criminal offense that the facility, local authority, community center, or provider has determined to be a contraindication to employment or volunteer status at that entity;

(3) an individual who is listed as revoked in the Nurse Aide Registry; or

(4) an individual who is listed as unemployable in the Employee Misconduct Registry.

(e) The facility, local authority, community center, or provider must inform applicants in writing at the time that application is made of the following:

(1) that a pre-employment/pre-assignment criminal history and registry clearance will be conducted;

(2) the types of criminal offenses for which a conviction would bar employment or volunteer status as required by law;

(3) that conviction of other types of criminal offenses may be considered a contraindication to employment or volunteer status at that entity; and

(4) that being listed as revoked in the Nurse Aide Registry or being listed as unemployable in the Employee Misconduct Registry would bar employment or volunteer status.

(f) An applicant who is not listed as revoked in the Nurse Aide Registry and who is not listed as unemployable in the Employee Misconduct Registry may be employed on a temporary or interim basis pending a criminal history clearance if an emergency exists in which there is a risk to the health and safety of consumers as a result of unfilled positions or in which the operations of the organization are severely impaired as determined by the chief executive officer of the facility, local authority, community center, or provider.

(1) The applicant must furnish the employer with an affidavit stating that the applicant has not been convicted of any of the criminal offenses listed in subsection (g) of this section or any criminal offense that the employer has determined is a contraindication to employment. The affidavit will be kept in the applicant's file. A sample affidavit may be obtained by contacting Human Resource Services, TDMHMR, P.O. Box 12668, Austin, Texas 78711-2668.

(2) Within 72 hours of the time the person is employed on a temporary or interim basis, the facility, local authority, community center, or provider must initiate a criminal history clearance of that person as described in § 414.505 of this title (relating to Obtaining or Requesting Criminal History Record Information and Checking Registry).

(3) If the criminal history record information reveals a conviction for any of the criminal offenses listed in subsection (g) of this section or for any criminal offense that the employer has determined is a contraindication to employment, then the facility, local authority, community center, or provider must immediately discharge the person as unemployable.

(4) An applicant may not receive volunteer assignment on a temporary or interim basis pending a criminal history clearance.

(g) Consistent with the Texas Health and Safety Code, § 250.006, convictions of criminal offenses which constitute an absolute bar to employment are:

- (1) criminal homicide (Penal Code, Chapter 19);
- (2) kidnapping and unlawful restraint (Penal Code, Chapter 20);
- (3) indecency with a child (Penal Code, § 21.11);
- (4) sexual assault (Penal Code, § 22.011);
- (5) aggravated assault (Penal Code, § 22.02);
- (6) injury to a child, elderly individual, or disabled individual (Penal Code, § 22.04);
- (7) abandoning or endangering a child (Penal Code, § 22.041);
- (8) aiding suicide (Penal Code, § 22.08);
- (9) agreement to abduct from custody (Penal Code, § 25.031);
- (10) sale or purchase of a child (Penal Code, § 25.08);
- (11) arson (Penal Code, § 28.02);
- (12) robbery (Penal Code, § 29.02);
- (13) aggravated robbery (Penal Code, § 29.03);
- (14) 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 under paragraphs (1) - (13) of this subsection; and
- (15) a conviction which occurred within the previous five years for:
 - (A) assault that is punishable as a Class a misdemeanor or as a felony (Penal Code, § 22.01);
 - (B) burglary (Penal Code, § 30.02);
 - (C) theft that is punishable as a felony (Penal Code, Chapter 31);
 - (D) misapplication of fiduciary property or property of a financial institution that is punishable as a Class a misdemeanor or felony (Penal Code, § 32.45); or
 - (E) securing execution of a document by deception that is punishable as a Class a misdemeanor or a felony (Penal Code, § 32.46).

§ 414.505. Obtaining or Requesting Criminal History Record Information and Checking Registry

(a) Facilities must obtain criminal history record information directly from the Texas Department of Public Safety (TDPS) by contacting Crime Records Services, TDPS, P.O. Box 4143, Austin, TX 78765-4143.

(b) Local authorities and community centers may:

- (1) pay a private agency to obtain criminal history record information directly from TDPS; or
- (2) obtain criminal history record information directly from the Texas Department of Public Safety (TDPS) by contacting Crime Records Services, TDPS, P.O. Box 4143, Austin, TX 78765-4143.

(c) In addition to obtaining criminal history record information from TDPS, facilities, local authorities, community centers, and providers must obtain criminal history information for applicants who have lived outside the State of Texas at any time during the two years preceding the application for employment/volunteer status through the FBI using a complete set of fingerprints on the official FBI card. The FBI charges for this information. The official FBI card may be obtained from Human Resource Services, TDMHMR, P.O. Box 12668, Austin, TX 78711-2668.

(d) A provider that is not required to conduct criminal history clearances in accordance with the Texas Health and

Safety Code, Chapter 250, must obtain criminal history record information through the facility, local authority, or community center with which it contracts.

(e) Facilities, local authorities, community centers, and providers must check the Employee Misconduct Registry and the Nurse Aide Registry by calling 1-800-452-3934.

§ 414.506. Criminal History Record Information and Registry Information

(a) Facilities, local authorities, community centers, and providers will have written policies and procedures consistent with this subchapter that describe how information obtained through a criminal history and registry clearance will be processed and later destroyed. The policies and procedures must include:

(1) processes that protect the confidentiality of criminal history record information pursuant to the Texas Health and Safety Code, § 250.007;

(2) the process for notifying an applicant if:

(A) the applicant's criminal history record information identifies a conviction barring, or a contraindication to, employment or volunteer status; or

(B) the applicant is listed as revoked in the Nurse Aide Registry or is listed as unemployable in the Employee Misconduct Registry;

(3) information on how an applicant can address inaccuracies in criminal history record information (i.e., the opportunity to be heard by Texas Department of Public Safety (TDPS), pursuant to Texas Health and Safety Code, § 250.005(b)) if the applicant believes he/she has been unjustly denied employment or volunteer status as a result of inaccurate criminal history record information; and

(4) procedures for destroying all criminal history record information obtained in accordance with this subchapter after an employment/volunteer decision has been made or personal action has been taken, as required by the Texas Government Code, § 411.115(e).

(b) If an applicant's criminal history record information identifies a conviction barring employment or volunteer status or if the applicant is listed as revoked in the Nurse Aide Registry or is listed as unemployable in the Employee Misconduct Registry, then the applicant must be notified in writing of the following:

(1) the existence of the TDPS or FBI record of the conviction and the registry listing;

(2) the applicant's ineligibility for employment or volunteer status because of the conviction or registry listing; and

(3) how to address possible inaccuracies in criminal history record information (i.e., the opportunity to be heard by Texas Department of Public Safety (TDPS), pursuant to Texas Health and Safety Code, § 250.005(b)) or how to address a possibly inaccurate registry listing (i.e., by calling TDHS registry administrators at 1-800-458-9858).

HISTORY: The provisions of this § 414.506 adopted to be effective February 6, 2002, 27 TexReg 749

§ 414.507. Self-Reporting and Subsequent Criminal History and Registry Checks

(a) Upon the effective date of this subchapter, each facility, local authority, community center, and provider must initiate a registry check of all current employees and volunteers. If an employee/volunteer is listed as revoked in the Nurse Aide Registry or listed as unemployable in the

Employee Misconduct Registry, then the employer must immediately discharge the employee or volunteer.

(b) Following employment with or assignment of volunteer status at a facility, local authority, community center, or provider, all employees and volunteers must report to a person designated by that facility, local authority, community center, or provider:

(1) any subsequent convictions or offenses for which they are charged; and

(2) a subsequent listing as revoked in the Nurse Aide Registry or listing as unemployable in the Employee Misconduct Registry.

(c) A facility, local authority, community center, or provider may conduct subsequent criminal history and registry checks on any employee or volunteer at any time it deems appropriate.

(d) Each facility, local authority, community center, and provider must develop written policies and procedures consistent with this subchapter describing how it will respond to information obtained through self-reporting and subsequent criminal history and registry checks.

(1) Pursuant to the Texas Health and Safety Code, § 533.007(b), adverse personnel action may not be taken if the information received pertains to arrest warrants or wanted persons' notices. However, the employer may reassign the employee/volunteer to a non-direct care area until resolution of the matters relating to the arrest warrant or wanted persons' notice.

(2) If the information reflects a conviction for an offense listed in § 414.504(g) of this title (relating to Pre-employment and Pre-assignment Clearance), then consideration may be given to any contention by the employee/volunteer concerning errors of fact or identity in the criminal history record information. While the employee/volunteer is attempting to rectify the accuracy of the information, the employer must remove the employee/volunteer from direct contact with consumers. If the employee or volunteer fails to rectify the accuracy of the information, as provided by Texas Health and Safety Code, § 250.005(b), then the employer must immediately discharge the employee or volunteer.

(3) If the information reflects a conviction for an offense determined to be a contraindication to employment or volunteer status, then consideration may be given to any contention by the employee/volunteer concerning errors of fact or identity in the criminal history record information. While the employee/volunteer is attempting to rectify the accuracy of the information, the employer may remove the employee/volunteer from direct contact with consumers. If the employee or volunteer fails to rectify the accuracy of the information, as provided by Texas Health and Safety Code, § 250.005(b), then the employer must immediately discharge the employee or volunteer.

(4) If the information indicates the employee/volunteer is listed as revoked in the Nurse Aide Registry or listed as unemployable in the Employee Misconduct Registry, then the employer must immediately discharge the employee or volunteer.

HISTORY: The provisions of this § 414.507 adopted to be effective February 6, 2002, 27 TexReg 749

§ 414.508. References

The following documents were referenced in this subchapter:

- (1) 40 TAC §§ 76.101-76.106 and § 94.11;

(2) Texas Health and Safety Code, Chapters 250, 253, and 534, and § 533.007 and § 533.035;

(3) Texas Government Code, § 411.115; and

(4) Penal Code, Chapters 19-22, 25, 28-29, and 31.

HISTORY: The provisions of this § 414.508 adopted to be effective February 6, 2002, 27 TexReg 749

§ 414.509. Distribution

(a) This subchapter will be distributed to:

(1) members of the Texas MHMR Board;

(2) executive, management, and program staff at TDMHMR Central Office;

(3) chief executive officers of all facilities, local authorities, and community centers; and

(4) advocacy organizations.

(b) A copy of this subchapter will be made available upon request to:

(1) any person who applies for employment or volunteer status with TDMHMR, a local authority, community center, or provider;

(2) any employee or volunteer of TDMHMR, a local authority, community center, or provider;

(3) the counsel of record of an applicant, employee, or volunteer; and

(4) any interested person.

HISTORY: The provisions of this § 414.509 adopted to be effective February 6, 2002, 27 TexReg 749

Subchapter L.

Abuse, Neglect, and Exploitation in Local Authorities and Community Centers

§ 414.551. Purpose

The purpose of this subchapter is to implement § 48.255(c) of the Human Resources Code, which requires TDMHMR to develop joint rules with the Texas Department of Protective and Regulatory Services (TDPRS) to facilitate investigations in local authorities and community centers and to describe the requirements for:

(1) reporting allegations of abuse, neglect, and exploitation of persons served;

(2) ensuring the safety and protections of persons served involved in allegations;

(3) facilitating investigations; and

(4) ensuring proper disciplinary or other action is taken when abuse, neglect, or exploitation is confirmed.

HISTORY: The provisions of this § 414.551 adopted to be effective July 1, 2001, 26 TexReg 4708

§ 414.552. Application

(a) This subchapter applies to local authorities and community centers. However, local authorities and community centers that are Medicaid providers of a home and community-based services waiver program must comply with TDMHMR rules governing the home and community-based services waiver program when addressing abuse, neglect, and exploitation in the home and community-based services waiver program.

(b) Local authorities and community centers are responsible for amending their contracts to ensure contractors' compliance with this subchapter.

HISTORY: The provisions of this § 414.552 adopted to be effective July 1, 2001, 26 TexReg 4708

§ 414.553. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Abuse—For purposes of reporting allegations, the term is defined by the investigatory agency. For purposes of classifying allegations as part of the TDMHMR Client Abuse and Neglect Reporting System (CANRS), the term is defined in CANRS Definitions, which is referenced as Exhibit a of § 414.562 of this title (relating to Exhibits).

(2) Administrator—The individual in charge of a local authority or community center, or designee.

(3) Agent—Any individual not employed by a local authority, community center, or contractor, but working under the auspices of the local authority, community center, or contractor (e.g., student, volunteer).

(4) Allegation—A report by an individual suspecting or having knowledge that a person served has been or is in a state of abuse, neglect, or exploitation as defined by the investigatory agency or in CANRS Definitions, which is referenced as Exhibit a in § 414.562 of this title.

(5) Clinical practice—Relates to the demonstration of professional competence by a licensed professional.

(6) Community center—A community mental health center, community mental retardation center, or community mental health and mental retardation center, established under the Texas Health and Safety Code, Title 7, Chapter 534, Subchapter A.

(7) Confirmed—The finding of an investigation if there is a preponderance of credible evidence to support that abuse, neglect, or exploitation occurred.

(8) Contractor—Any organization, entity, or individual who contracts with a local authority or community center to provide mental health or mental retardation services to a person served. The term includes a local independent school district with which a local authority or community center has a memorandum of understanding (MOU) for educational services.

(9) Contractor CEO—The individual in charge of a contractor that has one or more employees excluding the CEO.

(10) Exploitation—For purposes of reporting allegations, the term is defined by the investigatory agency. For purposes of classifying allegations as part of the TDMHMR CANRS, the term is defined in CANRS Definitions, which is referenced as Exhibit a in § 414.562 of this title.

(11) Investigatory agency—An agency with statutory authority to investigate abuse, neglect, and exploitation of a person served by a local authority, community center, or contractor. For example, the Texas Department of Protective and Regulatory Services investigates allegations in local authorities and community centers (including intermediate care facilities for the mentally retarded or persons with a related condition (ICF/MR or ICF/MR/RC) operated by a local authority or community center) and all contractors of local authorities and community centers except psychiatric hospitals; the Texas Department of Health (TDH) investigates allegations in psychiatric hospitals; and the Texas Commission on Alcohol and Drug Abuse (TCADA) investigates allegations in TCADA-funded programs operated by a local authority or community center pursuant to a contract with TCADA.

(12) Local authority—An entity designated by the TDMHMR commissioner in accordance with the Texas Health and Safety Code, § 533.035(a).

(13) Neglect—For purposes of reporting allegations, the term is defined by the investigatory agency. For purposes of classifying allegations as part of the TDMHMR CANRS, the term is defined in CANRS Definitions, which is referenced as Exhibit a in § 414.562 of this title.

(14) Perpetrator—An individual who has committed an act of abuse, neglect, or exploitation.

(15) Person served—

(A) Any person with mental illness or mental retardation receiving services from a local authority or community center or through a contract with a local authority or community center who is registered or assigned in the Client Assignment and Registration (CARE) system; or

(B) any child or disabled person as defined in the Human Resources Code, Chapter 48, who is otherwise receiving services from a local authority or community center or through a contract with a local authority or community center.

(16) Professional review—A review of clinical and/or professional practice(s) by peer professionals.

(17) Retaliatory action—Any action intended to inflict emotional or physical harm or inconvenience on an employee, agent, or person served that is taken because he or she has reported abuse, neglect, or exploitation. Retaliatory action includes, but is not limited to, harassment, disciplinary measures, discrimination, reprimand, threat, and criticism.

HISTORY: The provisions of this § 414.553 adopted to be effective July 1, 2001, 26 TexReg 4708

§ 414.554. Responsibilities of Local Authorities, Community Centers, and Contractors

(a) Promulgate and implement policies and procedures. Each local authority and community center shall promulgate and implement policies and procedures that meet the requirements of this section.

(b) Prohibition of abuse, neglect, and exploitation. Each local authority, community center, and contractor shall ensure that its employees and agents are informed of the prohibition of abuse, neglect, and exploitation of persons served.

(c) Identifying programs and investigatory agencies.

(1) Each local authority, community center, and contractor shall ensure that the name and phone number of the investigatory agency are clearly identified and displayed for its employees and agents at each of its program and service delivery sites.

(2) Each local authority and community center shall provide to each investigatory agency a list of the names and addresses of its contracted and non-contracted program and service delivery sites in the investigatory agency's purview, including the name of the staff who will serve as contact for investigators, as required in subsection (g)(1) of this section.

(d) Reporting abuse, neglect, and exploitation and securing evidence.

(1) Each local authority, community center, and contractor shall require its employees and agents who suspect or have knowledge of abuse, neglect, or exploitation of a person served to:

(A) make a verbal report to the investigatory agency immediately, but in no case more than one hour after suspicion or knowledge of the abuse, neglect, or exploitation, in compliance with existing

state laws, rules, memorandums of understanding, and this subchapter;

(B) as needed, assist any individual in making a report when the individual alleging abuse, neglect, or exploitation is not an employee or agent, (e.g., a person served, a guest); and

(C) secure evidence related to the allegation in accordance with "Guidelines for Securing Evidence" referenced as Exhibit B in §414.562 of this title (relating to Exhibits).

(2) Failure to make reports of abuse, neglect, or exploitation immediately without sufficient justification is considered a violation of this section and makes the employee or agent subject to disciplinary or other appropriate action and possible criminal prosecution.

(3) In addition to the reporting requirement described in paragraph (1)(A) of this subsection, reports regarding alleged sexual exploitation committed by a mental health services provider are made to the prosecuting attorney in the county in which the alleged sexual exploitation occurred and any state licensing board that has responsibility for the mental health services provider's licensing in accordance with the Texas Civil Practice and Remedies Code, § 81.006, a copy of the Texas Civil Practice and Remedies Code, § 81.006, and §81.001, which includes the definitions of "sexual exploitation" and "mental health services provider," is referenced as Exhibit C in § 414.562 of this title (relating to Exhibits).

(e) Notifying contractor CEO. If the administrator is notified of an allegation involving a contractor, then the administrator must immediately notify the contractor CEO of the allegation unless the contractor CEO is the alleged perpetrator. If the contractor CEO is the alleged perpetrator, then the administrator shall ensure the activities described in subsections (f), (h), and (i) are accomplished.

(f) Safeguarding the alleged victim. Immediately upon notification of an allegation by the investigatory agency the administrator or contractor CEO shall ensure necessary measures are taken to secure the safety of the alleged victim(s) involved in the allegation, including:

(1) ensuring immediate and on-going medical and psychological attention is provided to the alleged victim(s), as necessary; and

(2) separating the alleged victim(s) from the alleged perpetrator(s) until an investigation has been completed.

(g) Prohibiting retaliatory action. Any employee or agent, or any individual affiliated with an employee or agent is prohibited from engaging in retaliatory action against an employee, agent, or person served who in good faith reports an allegation. Any employee or agent found to have engaged in retaliatory action is subject to disciplinary or other appropriate action.

(1) Any employee or agent who believes he or she is being subjected to retaliatory action upon making a report of abuse, neglect, or exploitation, or who believes an allegation has been ignored without cause, should immediately contact the administrator or contractor CEO and may also contact the Office of Consumer Services and Rights Protection - Ombudsman at TDMHMR's Central Office, at the toll free number 1-800-252-8154.

(2) Retaliatory action against a person served which might be considered abuse, neglect, or exploitation must be reported in accordance with this section.

(h) Facilitating investigations.

(1) Administrators and contractor CEOs shall ensure the designation of a contact staff at each program

and service delivery site who will be responsible for coordinating with the investigator to ensure the availability of and access to private interview space, private telephones, and employees, agents, and persons served.

(2) Administrators and contractor CEOs shall require employees and agents to cooperate with investigators so that investigators are afforded immediate access to persons served, employees, agents, records of persons served, and other documents requested by the investigator.

(3) Falsification of fact during an investigation is considered a violation of this section and makes the employee or agent subject to disciplinary or other appropriate action and possible criminal prosecution.

(i) Referring allegations involving clinical practice. If the investigator refers to the administrator or contractor CEO an allegation involving the clinical practice of a licensed professional, then the administrator or contractor CEO shall refer the allegation for professional review or, if the local authority, community center, or contractor does not have a professional review process, the administrator or contractor CEO shall refer the allegation to the appropriate licensing authority. The administrator or contractor CEO shall ensure relevant conclusions of a professional review are submitted to the appropriate licensing authority.

(j) Facilitating resolution of other issues.

(1) Administrators and contractor CEOs shall ensure that general complaints and administrative issues that are referred to them by an investigator are reviewed and resolved in a timely manner.

(2) Local authorities, community centers, and contractors shall afford TDMHMR immediate access to persons served, employees, agents, records of persons served, and other documents when TDMHMR responds to a complaint that the health, welfare, or safety of a person served may be jeopardized.

HISTORY: The provisions of this § 414.554 adopted to be effective July 1, 2001, 26 TexReg 4708

§ 414.555. Information to Be Provided to Victim or Alleged Victim and Others

(a) Each local authority and community center shall promulgate and implement policies and procedures that meet the requirements of this section.

(b) As soon as possible, but no later than 24 hours following notification of an allegation by the investigatory agency, the administrator or contractor CEO shall notify the alleged victim and the alleged victim's guardian or parent (if the alleged victim is a minor) of the allegation.

(c) The administrator or contractor CEO shall ensure that the victim or alleged victim, guardian, or parent (if the victim or alleged victim is a minor) is notified of:

(1) the finding and any decisions made after review and/or appeal of the finding;

(2) the method to appeal the finding, if any;

(3) how to receive a copy of the investigative report; and

(4) if the allegation is confirmed, the disciplinary or other action taken against the perpetrator.

HISTORY: The provisions of this § 414.555 adopted to be effective July 1, 2001, 26 TexReg 4708

§ 414.556. Investigations Conducted by the Texas Department of Protective and Regulatory Services (TDPRS)

(a) TDPRS submits a copy of the investigative report to the administrator or contractor CEO or both in accordance with Chapter 711 of Title 40 (relating to Investigations in TDMHMR Facilities and Related Programs).

(b) The administrator or contractor CEO may not change a confirmed finding made by a TDPRS investigator. The administrator or contractor CEO may request a review of the finding or the methodology used to conduct the investigation in accordance with Chapter 711 of Title 40 (relating to Investigations in TDMHMR Facilities and Related Programs).

HISTORY: The provisions of this § 414.556 adopted to be effective July 1, 2001, 26 TexReg 4708

§ 414.557. Disciplinary and Other Action

(a) Each local authority and community center shall promulgate and implement policies and procedures that meet the requirements of this section.

(b) Administrators and contractor CEOs must take appropriate disciplinary or other action in confirmed cases of abuse, neglect, and exploitation involving employees and agents.

(1) If the investigatory agency has a process by which the administrator or contractor CEO can request a review of the finding and a review is requested, then the outcome of the review is final and forms the basis for disciplinary action.

(2) If the investigatory agency does not have a process by which the administrator or contractor CEO can request a review of the finding, the investigatory agency's finding is final and forms the basis for disciplinary action.

(c) Nothing in this subchapter precludes an administrator or contractor CEO from taking disciplinary or other appropriate action pending investigation, including termination of employment. If disciplinary or other action is taken before the investigation is complete, then the executive director or CEO shall notify the investigator of such action and the investigation continues.

(d) Administrators and contractor CEOs shall ensure that disciplinary or other appropriate action, including seeking criminal prosecution as appropriate, is taken when an employee or agent fails to make reports immediately without sufficient justification or an employee or agent is found to have made a false statement of fact during an investigation.

HISTORY: The provisions of this § 414.557 adopted to be effective July 1, 2001, 26 TexReg 4708

§ 414.558. Data Reporting Responsibilities

If the perpetrator or alleged perpetrator is an employee or agent of a local authority, community center, or contractor, or the perpetrator is unknown, then the administrator shall ensure that a Client Abuse and Neglect Reporting form (AN-1-A) is completed within 14 calendar days of the receipt of the investigative report or decision made after review or appeal using the CANRS Definitions and the CANRS Classifications. (The Client Abuse and Neglect Reporting form (AN-1-A), the CANRS Definitions, and the CANRS Classifications are referenced as Exhibits E, A, and D, respectively, in § 414.562 of this title (relating to Exhibits).) Within one working day after completion of the AN-1-A form, the administrator shall ensure that:

(1) the information contained in the completed AN-1-A is entered into the Client Abuse and Neglect Reporting System (CANRS); or

(2) if access to CANRS is unavailable, a copy of the completed AN-1-A is forwarded for data entry to the Office of Consumer Services and Rights Protection - Ombudsman, TDMHMR, P.O. Box 12668, Austin, TX 78711-2668.

HISTORY: The provisions of this § 414.558 adopted to be effective July 1, 2001, 26 TexReg 4708

§ 414.559. Confidentiality of Investigative Process and Report

(a) The reports, records, and working papers used by or developed in the investigative process by an investigatory agency, and the investigatory agency's resulting investigative report, are confidential and may be disclosed only as allowed by law or rule.

(b) Upon request, the administrator or contractor CEO will provide a copy of the investigative report to the victim or alleged victim or guardian with the identities of other persons served and any information determined confidential by law concealed. The administrator or contractor CEO may charge a reasonable fee for providing a copy of the investigative report.

(c) Advocacy, Inc. is entitled to access the records of persons served in accordance with 42 USC § 10805 and § 10806 or § 6042(a)(2)(I) (Protection and Advocacy of Individuals with Mental Illness and Protection and Advocacy of Individuals with Developmental Disabilities). A copy of 42 USC § 10805, § 10806, and § 6042(a)(2)(I) are referenced as Exhibit F in § 414.562 of this title (relating to Exhibits).

HISTORY: The provisions of this § 414.559 adopted to be effective July 1, 2001, 26 TexReg 4708

§ 414.560. Competency of Employees and Agents

(a) Each local authority, community center, and contractor shall ensure that all employees and agents demonstrate a thorough understanding of the relevant elements of reporting, investigating, and preventing abuse, neglect, and exploitation, before contact with persons served and annually thereafter. The relevant elements of reporting, investigating, and preventing abuse, neglect, and exploitation include:

(1) the acts and signs of possible abuse, neglect, and exploitation;

(2) the prohibition of abuse, neglect, and exploitation of persons served;

(3) the disciplinary consequences for:

(A) committing abuse, neglect, and exploitation;

(B) failing to report abuse, neglect, or exploitation; and

(C) failing to cooperate with an investigation;

(4) the procedures for reporting allegations of abuse, neglect, and exploitation;

(5) the prohibition of retaliatory action and the consequences for engaging in retaliatory action;

(6) the methods for preventing abuse, neglect, and exploitation; and

(7) memoranda of understanding and rules of investigatory agencies.

(b) Each local authority, community center, and contractor shall ensure that employees and agents who will routinely perform any job duty in proximity to persons served demonstrate competency in the safe management of verbally and physically aggressive behavior before contact with persons served and annually thereafter.

(c) Each local authority, community center, and contractor shall ensure that documentation of the competencies of its employees and agents is maintained.

HISTORY: The provisions of this § 414.560 adopted to be effective July 1, 2001, 26 TexReg 4708

§ 414.561. TDMHMR Oversight Responsibilities

The Office of Consumer Services and Rights Protection - Ombudsman in TDMHMR's Central Office is responsible for the maintenance of systems that provide statistical trends in abuse, neglect, and exploitation in local authorities and community centers.

HISTORY: The provisions of this § 414.561 adopted to be effective July 1, 2001, 26 TexReg 4708

§ 414.562. Exhibits

The following exhibits are referenced in this subchapter:

- (1) Exhibit A—CANRS Definitions;
- (2) Exhibit B—"Guidelines for Securing Evidence";
- (3) Exhibit C—a copy of the Texas Civil Practice and Remedies Code, § 81.001 and § 81.006;
- (4) Exhibit D—CANRS Classifications;
- (5) Exhibit E—Client Abuse and Neglect Report form (AN-1-A); and
- (6) Exhibit F—a copy of 42 USC § 10805, § 10806, and § 6042(a)(2)(I).

§ 414.563. References

Reference is made to the following statutes and rules:

- (1) Texas Health and Safety Code, Chapter 534, Subchapter A, and § 533.035(a);
- (2) Texas Civil Practices and Remedies Code, Chapter 81;
- (3) Human Resources Code, § 48.255(c);
- (4) 42 USC § 10805, § 10806, and § 6042(a)(2)(I); and
- (5) Texas Administrative Code, Title 40, Chapter 711 (relating to Investigations in TDMHMR Facilities and Related Programs).

HISTORY: The provisions of this § 414.563 adopted to be effective July 1, 2001, 26 TexReg 4708

§ 414.564. Distribution

(a) This subchapter shall be distributed to:

- (1) members of the Texas MHMR Board;
- (2) investigatory agencies;
- (3) executive, management, and program staff of Central Office;
- (4) administrators of all local authorities and community centers; and
- (5) advocacy organizations.

(b) Each administrator is responsible for disseminating copies of this subchapter to:

- (1) employees and agents;
- (2) contractors; and
- (3) any person served or other individual desiring a copy.

(c) Each contractor CEO is responsible for disseminating copies of this subchapter to all employees and agents.

HISTORY: The provisions of this § 414.564 adopted to be effective July 1, 2001, 26 TexReg 4708

Subchapter P.

Research in TDMHMR Facilities

§ 414.751. Purpose

The purpose of this subchapter is to establish uniform guidelines for the review, approval, conduct, and oversight of research in facilities that:

- (1) ensure the protection of the rights, privacy, and welfare of human subjects involved in research;
- (2) provide for the creation and utilization of a designated Institutional Review Board (IRB) for each facility electing to be involved in the conduct of research;
- (3) provide for the investigation of allegations of misconduct in science related to research conducted at a facility; and
- (4) conform with the requirements of Title 45, Code of Federal Regulations, Part 46 (Protection of Human Subjects), Subparts A, B, and D.

HISTORY: The provisions of this § 414.751 adopted to be effective July 5, 2004, 29 TexReg 6093

§ 414.752. Application

This subchapter applies to all research involving:

- (1) individuals receiving services from a facility; or
- (2) facility resources (e.g., employees, property, and non-public information).

HISTORY: The provisions of this § 414.752 adopted to be effective July 5, 2004, 29 TexReg 6093

§ 414.753. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Assent—Affirmative agreement of a prospective human subject to participate in research, which is obtained when the subject does not have capacity or legal authority to consent.

(2) Authorization—The written permission given by an individual who is participating in a research study or the individual's LAR to use or disclose certain protected health information related to the research study.

(3) Central Office—TDMHMR's administrative offices in Austin.

(4) Designated institutional review board (IRB)—The IRB, chosen by the facility and approved by the Office of Research Administration in accordance with this subchapter, that will review, approve, and monitor all research to be conducted at the facility.

(5) Facility—A state mental health facility, a state mental retardation facility, or Central Office.

(6) Human subject—Consistent with 45 CFR § 46.102(f), referenced as Exhibit a in § 414.763 of this title (relating to Exhibits), a living individual about whom a key researcher conducting research obtains:

- (A) data through intervention or interaction with the individual; or
- (B) identifiable private information.

(7) Individual—A person who has received or is receiving mental health or mental retardation services from a facility.

(8) Informed consent—The knowing approval of an individual or an individual's legally authorized representative (LAR) to participate in a research study, given under the individual's or LAR's ability to exercise free power of choice without undue inducement or any

element of force, fraud, deceit, duress, or other form of constraint or coercion.

(9) Institutional review board (IRB)—A board whose membership meets the requirements of §414.755(d) of this title (relating to Designated Institutional Review Board (IRB)), and whose purpose is to review and approve proposed research as well as oversee the conduct of approved research.

(10) Investigation (of misconduct in science)—The formal examination and evaluation of all relevant facts to determine if misconduct in science has occurred.

(11) Investigational medication or device—Any drug, biological product, or medical device under investigation for human use that is not currently approved by the Food and Drug Administration for the indication being studied.

(12) Key researcher—A principal investigator, a co-investigator, or a person who has direct and ongoing contact with human subjects participating in a research study or with prospective human subjects.

(13) Legally authorized representative (LAR)—A person or entity authorized under applicable law to consent on behalf of a prospective human subject to the subject's participation in a research study and to authorize the use or disclosure of protected health information.

(14) Limited data set—Protected health information that excludes the following direct identifiers of an individual or of relatives, employers, or household members of an individual:

- (A) names;
- (B) postal address information, other than town or city, state, and zip code;
- (C) telephone numbers;
- (D) fax numbers;
- (E) electronic mail addresses;
- (F) social security numbers;
- (G) medical record numbers;
- (H) health plan beneficiary numbers;
- (I) account numbers;
- (J) certificate/license numbers;
- (K) vehicle identifiers and serial numbers;
- (L) device identifiers and serial numbers;
- (M) Web Universal Resource Locators (URLs);
- (N) Internet Protocol (IP) address numbers;
- (O) biometric identifiers, including finger and voice prints; and
- (P) full face photographic images and comparable images.

(15) Mental health priority population—Persons with mental illness, including severe emotional disturbance, identified in TDMHMR's current strategic plan as being most in need of mental health services.

(16) Mental retardation priority population—Persons with mental retardation identified in TDMHMR's current strategic plan as being most in need of mental retardation services.

(17) Minimal risk—The probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine psychical or psychological examination or tests.

(18) Misconduct in science—The fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research. It does not include honest error or

honest differences in interpretations or judgments of data.

(19) Notice of Privacy Practices—A written notice describing:

(A) the uses and disclosures of protected health information that may be made by a facility; and

(B) individuals' rights and the facility's legal duties with respect to protected health information.

(20) Office of Research Administration (ORA)—The Central Office department that is responsible for the duties described in §414.762 of this title (relating to Responsibilities of the Office of Research Administration (ORA)).

(21) Principal investigator—The person identified as responsible for conducting a research study.

(22) Privacy coordinator—A member of the workforce of a facility who is responsible for working with the TDMHMR Central Office Privacy Official in developing and implementing the facility's policies and procedures relating to state and federal medical privacy laws.

(23) Protected health information (PHI)—

(A) Any information that identifies or could be used to identify an individual, whether oral or recorded in any form, that relates to:

- (i) the past, present, or future physical or mental health or condition of the individual;
- (ii) the provision of health care to the individual; or
- (iii) the payment for the provision of health care to the individual.

(B) The term includes, but is not limited to:

- (i) an individual's name, address, date of birth, or Social Security number;
- (ii) an individual's medical record or case number;
- (iii) a photograph or recording of an individual;
- (iv) statements made by an individual, either orally or in writing, while seeking or receiving services from or through a facility;
- (v) any acknowledgment that an individual is seeking or receiving or has sought or received services from or through a facility;
- (vi) direct identifiers of relatives, employers, or household members of the individual; and
- (vii) any information by which the identity of an individual can be determined either directly or by reference to other publicly available information.

(C) The term does not include:

- (i) health information that has been de-identified in accordance with 45 CFR § 164.514(b); and
- (ii) employment records held by a facility as an employer.

(24) Research—A systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this subchapter whether or not they are conducted or supported under a program which is considered research for other purposes. For example, certain demonstration and service programs may include research activities.

(25) Rights officer—An employee appointed by a facility CEO to protect and advocate for the rights of persons receiving services from the facility.

(26) State mental health facility—A state hospital or a state center with an inpatient component that is operated by TDMHMR.

(27) State mental retardation facility—A state school or a state center with a mental retardation residential component that is operated by TDMHMR.

(28) TDMHMR—The Texas Department of Mental Health and Mental Retardation.

HISTORY: The provisions of this § 414.753 adopted to be effective July 5, 2004, 29 TexReg 6093

§ 414.754. General Principles

(a) Participation in research that can advance scientific knowledge of mental disorders and conditions is integral to the mission of TDMHMR.

(b) TDMHMR's guiding principle for all research involving human subjects at its facilities is the protection of the personal rights, safety, well-being, privacy, and dignity of the subjects.

(1) To ensure the protection of human subjects involved in research at its facilities, TDMHMR promulgates this subchapter and adopts by reference Title 45, Code of Federal Regulations, Part 46 (Protection of Human Subjects), Subparts A, B, and D, referenced as Exhibit A in § 414.763 of this title (relating to Exhibits).

(2) To ensure ethical principles are maintained when research involving human subjects is conducted at its facilities, TDMHMR adopts by reference "The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research, Report of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research" (April 18, 1979), referenced as Exhibit B in § 414.763 of this title.

(3) To ensure all research undertaken at its facilities is conducted with a fundamental commitment to high ethical standards regarding the conduct of scientific research, TDMHMR adopts by reference 42 CFR Part 50, Subpart A, (Responsibility of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science), referenced as Exhibit C in § 414.763 of this title.

(4) To protect the privacy of human subjects involved in research at its facilities, TDMHMR adopts by reference the Federal Standards for Privacy of Individually Identifiable Health Information, Title 45, Code of Federal Regulations, Part 160 and Part 164, Subparts a and E, promulgated by the U.S. Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(c) TDMHMR is committed to research conducted in a manner that is consistent with the best interests and protection of personal rights and welfare of human subjects involved in the research.

(1) An individual may not be approached to participate in a research study if the research conflicts with the individual's treatment goals.

(2) No research involving human subjects may be conducted unless the risks to human subjects are minimized and are reasonable in relation to the anticipated benefits.

(3) No undue inducement or coercion may be used to influence human subjects to participate in a research study.

(4) Unless scientifically justified, individuals may not be excluded from participating in research on the basis of personal characteristics, such as race, color, ethnicity, national origin, religion, sex, age, disability, sexual orientation, or political affiliation.

(5) Human subject participation in research studies must be equitable with measures taken to ensure the research sample is adequately representative of the population of interest. Within the population of interest subject selection procedures must offer equitable opportunity for access to participation in research and access to potential benefits of participation.

(6) Individuals receiving mental health services under an order of protective custody pursuant to the Texas Health and Safety Code, Chapter 574, may not be approached about participation in a research study involving an investigational medication or device prior to the entry of an order for temporary or extended mental health services.

(7) Research may not be conducted with human subjects who are involuntarily committed if the research involves:

(A) placebos as the primary medication therapy;

(B) medication or doses of medication as the primary medication therapy which are known to be ineffective for the targeted disorder or condition; or

(C) an investigational medication or device that is proposed to be undertaken when previous research on the medication or device with 100 human subjects or fewer has provided minimal or no documentation of the efficacy and safety of the medication or device for the population with the targeted disorder or condition.

(8) Research may not be conducted at a facility if the protocol:

(A) extends the use of a placebo or washout period unreasonably;

(B) deprives the human subject of reasonable relief; or

(C) extends a human subject's use of placebos as the primary medication therapy after the subject is discharged from the facility.

(9) Unless otherwise provided for in this subchapter, research involving human subjects may not be conducted at a facility unless:

(A) the research has been reviewed and approved by the facility's designated IRB in accordance with § 414.757 of this title (relating to Review and Approval of Proposed Research);

(B) the facility CEO has agreed to have the research conducted at the facility; and

(C) if required, the necessary assurance and certification has been submitted to the appropriate federal agency, (e.g., Health and Human Services, Food and Drug Administration) and the agency has indicated its approval.

(10) Research conducted at a facility may not hinder the facility's ability to accomplish its primary purpose.

(d) Right to file a complaint.

(1) A human subject involved in research or his/her LAR is entitled to file a complaint about alleged mistreatment or other concerns relating to the research with the facility's rights officer or with any other applicable complaint mechanism in place.

(2) An individual or his/her LAR is entitled to file a complaint about violations of the Federal Standards for Privacy of Individually Identifiable Health Information (45 CFR Part 160 and Part 164, Subparts a and E) with the facility's privacy coordinator, the TDMHMR Consumer Services and Rights Protection/Ombudsman Office, or the Office for Civil Rights at the U.S. Department of Health and Human Services, as set forth in the Notice of Privacy Practices.

§ 414.755. Designated Institutional Review Board (IRB)

(a) Each facility electing to participate in research must have a designated IRB. The designated IRB is responsible for reviewing, approving, and monitoring all research conducted at that facility, with the exception of research involving multiple facilities as provided by subsection (c) of this section.

(b) A facility may choose one of the following options for its designated IRB, which must be approved by the ORA as outlined in subsection (f) of this section.

(1) Facility IRB. An IRB, established and operated by a facility, whose membership meets the requirements described in subsection (d) of this section.

(2) Another facility's IRB. A facility IRB as described in paragraph (1) of this subsection.

(3) University IRB. An IRB, established and operated by a university, whose membership meets the requirements described in subsection (d) of this section.

(4) Central Office IRB. An IRB, established and operated by Central Office, whose membership meets the requirements described in subsection (d) of this section.

(c) A facility's CEO may request that the Central Office IRB act as the facility's designated IRB for a research study that involves multiple facilities.

(d) The membership of the IRB must comply with the requirements in 45 CFR § 46.107, referenced as Exhibit A in § 414.763 of this title (relating to Exhibits) and this subsection.

(1) Facility IRB. Membership of a facility IRB must include at least three members who are familiar with the mental disorders or conditions and concerns of the population(s) served by the facility or facilities.

(A) At least one of the three members described in this paragraph must be a professional in the field of mental health or mental retardation, as appropriate to the facility or facilities.

(B) At least two of the three members described in this paragraph must be:

(i) a person who is or has been in the mental health priority population or mental retardation priority population, as appropriate to the facility or facilities;

(ii) a family member of a person who is or has been in the mental health priority population or mental retardation priority population, as appropriate to the facility or facilities; or

(iii) an advocate for persons who are or have been in the mental health priority population or mental retardation priority population, as appropriate to the facility or facilities.

(2) University IRB. Membership of a university IRB must include at least three members or ad hoc members who are familiar with the mental disorders or conditions and concerns of the population(s) served by the facility or facilities.

(A) At least one of the three members described in this paragraph must be a professional in the field of mental health or mental retardation, as appropriate to the facility or facilities.

(B) At least two of the three members described in this paragraph must be:

(i) a person who is or has been in the mental health priority population or mental retardation priority population, as appropriate to the facility or facilities;

(ii) a family member of a person who is or has been in the mental health priority population or mental retardation priority population, as appropriate to the facility or facilities; or

(iii) an advocate for persons who are or have been in the mental health priority population or mental retardation priority population, as appropriate to the facility or facilities.

(3) Central Office IRB. Membership of the Central Office IRB must include local representation from various regions of the state and at least three members who are familiar with the mental disorders or conditions and concerns of the population(s) served by TDMHMR.

(A) At least one of the three members described in this paragraph must be a professional in the field of mental health and mental retardation.

(B) At least two of the three members described in this paragraph must be:

(i) a person who is or has been in the mental health priority population, a family member of a person who is or has been in the mental health priority population, or an advocate for persons who are or have been in the mental health priority population; and

(ii) a person who is or has been in the mental retardation priority population, a family member of a person who is or has been in the mental retardation priority population, or an advocate for persons who are or have been in the mental retardation priority population.

(e) Each IRB must have written policies and procedures that are consistent with this subchapter and TDMHMR's rules governing the care and protection of individuals as described in § 414.764(5) of this title (relating to References) and that address:

(1) the functions and operations of the IRB as required by 45 CFR § 46.103(b)(4) and (5);

(2) the review or screening process to determine whether proposed research is exempt from the requirements of federal regulations made in accordance with 45 CFR § 46.101(b), including required documentation, and any necessary approvals;

(3) the process for ensuring that each IRB member and key researcher involved in an approved research study receives documented training in applicable ethics, laws, and regulations governing research involving human subjects; and

(4) the process for disclosing and considering potential conflicts of interest, financial or otherwise, by IRB members and key researchers.

(f) ORA approval of a designated IRB.

(1) A facility seeking approval for its own facility IRB, another facility's IRB, or a university IRB as its designated IRB, as described in subsection (b)(1), (2), or (3) of this section, must submit the following to the ORA:

(A) IRB membership information in sufficient detail to determine compliance with subsection (d) of this section and which describes each member's chief anticipated contribution to IRB deliberations, and any employment or other relationship between each member and the facility, university, or Central Office, as appropriate;

(B) the written policies and procedures described in subsection (e) of this section;

(C) the written policy for the communication of IRB deliberations, recommendations, and decisions to the facility CEO and the ORA; and

(D) if approval is for a university IRB or another facility's IRB, a copy of the written agreement in

which the university IRB or other facility IRB accepts responsibility for reviewing, approving, and monitoring all research to be conducted at the facility seeking approval; and

(E) if approval is for a university IRB, a detailed description of how the facility will collaborate with the university IRB to ensure compliance with any requirement in this subchapter that is unique to TDMHMR (i.e., the duties, activities, and responsibilities of both the facility and the university IRB).

(2) A facility seeking approval for the Central Office IRB as its designated IRB, as described in subsection (b) (4) of this section, must submit a written request from the facility CEO to the ORA.

(g) The ORA shall review the information submitted by the facility and will approve, disapprove, or enter into negotiations to attain approval for the IRB as the facility's designated IRB. The ORA will provide written notice of approval or disapproval to the requesting facility.

(h) Any change in a designated IRB's membership, policies, or procedures must be reported to and approved by the ORA.

(i) The ORA may require that a designated IRB comply with additional requirements related to documentation and approval if the ORA determines that such requirements are necessary to ensure the protection of human subjects.

(j) The ORA may revoke approval of a designated IRB at any time the ORA determines the IRB fails to maintain standards in accordance with federal regulations and this subchapter.

§ 414.756. IRB Functions and Operations

(a) Each designated IRB shall:

(1) follow its written policies and procedures as described in § 414.755(e) of this title (relating to Designated Institutional Review Board (IRB));

(2) function in accordance with 45 CFR § 46.108, referenced as Exhibit a in § 414.763 of this title (relating to Exhibits);

(3) ensure proposed research is reviewed and approved in accordance with § 414.757 of this title (relating to Review and Approval of Proposed Research);

(4) except when an expedited review is used as described in 45 CFR § 46.108(b), ensure proposed research is reviewed and approved only at meetings in which at least one of each of the following members are present, participating, and voting:

(A) a member who satisfies the requirements of § 414.755(d)(1)(A), (2)(A), or (3)(A) of this title, as appropriate to the IRB; and

(B) a member who satisfies the requirements of § 414.755(d)(1)(B), (2)(B), or (3)(B) of this title, as appropriate to the IRB, and in the case of the Central Office IRB, as appropriate to the facility or facilities for which the research is proposed.

(5) exercise appropriate oversight to ensure that:

(A) its policies and procedures designed for protecting the rights, privacy, and welfare of human subjects are being effectively applied; and

(B) research is being conducted at the facility or facilities in accordance with the approved protocol;

(6) maintain records of its operations in accordance with 45 CFR § 46.115;

(7) submit to the ORA documentation of its continuing review of all approved and active research protocols; and

(8) immediately notify the ORA of any unanticipated serious problems or events involving risks to the human subjects or others.

(b) Each designated IRB has the authority to suspend or terminate research that is not being conducted in accordance with the IRB's requirements or that has been associated with significant unexpected harm to human subjects. If an IRB suspends or terminates research, then the IRB must promptly notify the following in writing of the suspension or termination and include a statement of the reasons for the IRB's action:

(1) the principal investigator;

(2) appropriate facility or facilities officials; and

(3) the ORA.

HISTORY: The provisions of this § 414.756 adopted to be effective July 5, 2004, 29 TexReg 6093

§ 414.757. Review and Approval of Proposed Research

(a) Proposed research must be submitted to the facility's designated IRB and contain adequate written information for the IRB to determine whether the requirements described in 45 CFR § 46.111, referenced as Exhibit a in § 414.763 of this title (relating to Exhibits), are satisfied, including the following:

(1) A complete description of how the research protocol will be implemented at the facility or facilities, including:

(A) the process for recruiting, screening, and selecting human subjects;

(B) procedures for obtaining and documenting informed consent;

(C) how many subjects are required at the facility or facilities;

(D) the process for and level of clinical monitoring of human subjects throughout the research period;

(E) procedures for obtaining and documenting authorization to use or disclose protected health information (PHI) or a request for a waiver or alteration of authorization with justification; and

(F) appropriate and sufficient information to enable the facility to provide an accounting of disclosures as required in 45 CFR § 164.528(b), if the proposed research includes a request for a waiver or alteration of authorization to use or disclose PHI or the proposed research involves using or disclosing decedents' protected health information without an authorization.

(2) A thorough justification of the research protocol and proposed analyses, including:

(A) a description of the procedures designed to minimize risks to subjects; and

(B) the scientific rationale for targeting the proposed population(s) as human subjects.

(3) If the proposed research would extend a human subject's use of an investigational medication or device as the primary treatment after the subject is discharged from the facility, then the research proposal must also contain a memorandum of agreement between the principal investigator and the local authority responsible for the subject's continuity of care which states that, before the conclusion of the subject's participation in the research study, the local authority agrees:

(A) to make face-to-face contact with the subject to determine whether the subject will need medication services when the subject's participation in the research study has ended; and

(B) to arrange for the provision of needed medication services for the subject when the subject's participation in the research study has ended.

(b) Each designated IRB shall review all proposed research at the facility in accordance with 45 CFR § 46.109, concerning IRB review of research.

(c) Each designated IRB has the authority to approve, require modifications to, or disapprove any proposed research. Approval of proposed research shall be based on:

(1) consideration of the information described in subsection (a)(1) - (3) of this section;

(2) the IRB's verification that the requirements in 45 CFR § 46.111, concerning criteria for IRB approval of research, § 414.754 of this title (relating to General Principles), and § 414.758 of this title (relating to Informed Consent) are met; and

(3) the IRB's verification that procedures for obtaining and documenting authorization to use or disclose PHI meet the requirements in 45 CFR § 164.508, unless:

(A) the IRB approves a waiver or alternation of the authorization requirement as permitted in § 414.760(b) of this title (relating to Using and Disclosing Protected Health Information in Research); or

(B) the IRB determines and documents that:

(i) the data needed for the research is contained in a limited data set and the researcher will comply with the requirements in 45 CFR § 164.514(e), including the execution of a data use agreement; or

(ii) the data needed for the research is limited to decedents' protected health information and documentation submitted by the researcher meets the requirements in 45 CFR § 164.512(i)(1)(iii).

(d) The designated IRB may take into consideration deliberations and reviews from another IRB that has approved the protocol for a specific research proposal, but the designated IRB is ultimately responsible for approval of the proposed research.

(e) Research review and documentation process.

(1) Facility IRB as the designated IRB. The research review and documentation process for a facility IRB, as described in § 414.755(b)(1) and (2) of this title (relating to Designated Institutional Review Board (IRB)), is generally as follows.

(A) The research proposal is reviewed by the facility IRB and, if approved, forwarded to the CEO of the facility where the research is to be conducted.

(B) The facility CEO is informed of the facility IRB's approval or disapproval and recommendations, if any.

(C) If the research proposal is approved by the facility IRB, the facility CEO considers the facility IRB's recommendations, if any, and either approves or disapproves the research proposal for implementation at the facility.

(D) If the research proposal is approved, the ORA is notified in writing of the CEO's and IRB's approval including copies of the IRB's meeting minutes concerning the review of the proposal, the proposal itself, and the CEO's and IRB's documentation of approval.

(2) University IRB as the designated IRB. The research review and documentation process for a facility using a university IRB is generally as follows.

(A) The research proposal is screened by the facility CEO and, if determined appropriate for implementation at the facility, forwarded to the university IRB for review.

(B) The research proposal is reviewed by the university IRB.

(C) The facility CEO is informed of the university IRB's approval or disapproval and recommendations, if any.

(D) If the research proposal is approved by the university IRB, the facility CEO considers the university IRB's recommendations, if any, and either approves or disapproves the research proposal for implementation at the facility.

(E) If the research proposal is approved, the ORA is notified in writing of the CEO's and IRB's approval including copies of the IRB's meeting minutes concerning the review of the proposal, the proposal itself, and the CEO's and IRB's documentation of approval.

(3) Central Office IRB as the designated IRB. The research review and documentation process for a facility using the Central Office IRB is generally as follows.

(A) The research proposal is screened by the facility CEO and, if determined appropriate for implementation at the facility, forwarded to the Central Office IRB.

(B) The research proposal is reviewed by the Central Office IRB.

(C) The facility CEO is informed of the Central Office IRB's approval or disapproval and recommendations, if any.

(D) If the research proposal is approved by the Central Office IRB, the facility CEO considers the Central Office IRB's recommendations, if any, and either approves or disapproves the research proposal for implementation at the facility.

(E) If the research proposal is approved, the ORA is notified in writing of the CEO's and IRB's approval including copies of the IRB's meeting minutes concerning the review of the proposal, the proposal itself, and the CEO's and IRB's documentation of approval.

(4) Central Office IRB as a facility's designated IRB for research studies involving multiple facilities. When a facility's CEO requests that the Central Office IRB act as its designated IRB for a research study involving multiple facilities, pursuant to § 414.755(c) of this title, then the research review and documentation process is generally as follows.

(A) The research proposal is reviewed and approved by:

(i) each facility CEO;

(ii) the Central Office IRB; and

(iii) the appropriate Central Office director(s), (i.e., director of state mental health facilities or director of state mental retardation facilities).

(B) If the research proposal is approved by the facility CEOs, the Central Office IRB, and the appropriate Central Office director(s), the ORA is notified in writing of the approval, including copies of the IRB's meeting minutes concerning the review of the proposal, the proposal itself, and documentation of approval of the CEOs and the Central Office IRB.

(f) In addition to approval by the designated IRB and facility CEO, review and approval by the TDMHMR medical director is required for any research proposal involving:

(1) a placebo as the primary medication therapy;

(2) medication or doses of medication as the primary medication therapy which are known to be ineffective for the targeted disorder or condition; or

(3) an investigational medication or device.

(g) The review process for proposed research may require additional steps as necessary, (e.g., in the event a proposal is initially rejected).

(h) The facility CEO or designee is responsible for ensuring that all key researchers are qualified to perform any clinical duties assigned to them and are knowledgeable of TDMHMR's rules governing the care and protection of individuals as described in § 414.764(5) of this title (relating to References).

§ 414.758. Informed Consent

Requirements for approval of proposed research.

(1) The procedures for obtaining and documenting informed consent meet the requirements in 45 CFR § 46.116 and § 46.117, referenced as Exhibit a in § 414.763 of this title (relating to Exhibits), and adequately address:

(A) any extension of the subject's length of stay at the facility as a result of participation in the research;

(B) if the research involves an investigational medication or device, the subject's ability to receive the medication or device after the research has concluded;

(C) whether the research involves the use of a placebo and the likelihood of assignment to the placebo condition;

(D) whether the research involves medication or doses of medication which are known to be ineffective for the targeted disorder or condition and the likelihood of assignment to such medication or doses of medication; and

(E) any risk of deterioration in the subject's condition and the potential consequences of such deterioration (e.g., an extension in the length of stay, the use of interventions such as restraint, seclusion, or emergency medications).

(2) For research protocols that present greater than minimal risk, there are procedures to ensure prospective human subjects are adequately assessed for capacity to consent and:

(A) provide for a qualified professional, who is independent of the research study, to assess prospective human subjects for capacity to consent;

(B) describe who will conduct the assessments; and

(C) describe the nature of the assessment and justification if less formal procedures to assess capacity will be used.

(3) If minors are the proposed human subjects, the requirements in 45 CFR § 46.408 (concerning Requirements for Permission by Parents or Guardians and for Assent by Children) have been met.

(4) There are procedures to ensure that:

(A) before obtaining consent, each prospective human subject or the subject's LAR understands the information provided; and

(B) if consent is obtained from the subject's LAR, attempts are made, to the extent possible given the prospective subject's capacity, to obtain the subject's assent to participation.

(5) There are adequate safeguards to minimize the possibility of coercion or undue influence. For example, the possible advantages of the subject's participation in the research may not be so valuable as to impair the subject's ability to weigh the risks of the research against those advantages. Possible advantages within the limited choice environment of a facility may include enhancement of general living conditions, medical care, quality of food, or amenities; opportunity for earnings; or change in commitment status.

(6) There are procedures to ensure that a prospective human subject's objection to enrollment in research or a human subject's objection to continued participation in a research protocol is heeded in all circumstances, regardless of whether the subject or the subject's LAR has given consent. Objection may be conveyed verbally, in writing, behaviorally, or by other indications or means. The procedures may, however, provide for a key researcher, with approval of the LAR (if appropriate) and acting with a level of sensitivity to avoid the possibility or the appearance of coercion, to approach an individual who has previously objected to ascertain whether the individual has changed his/her mind or to approach an individual who has not given consent to ascertain whether the individual wants to enroll in the research protocol.

(7) Because informed consent is an ongoing process, there are procedures to ensure that, throughout the course of the research study, human subjects' comprehension and capacity are assessed and enhanced.

§ 414.759. Research Involving Offenders as Human Subjects

(a) Definition of offender. "Offender" means any individual involuntarily confined or detained in a penal institution, including:

(1) individuals sentenced to a penal institution under criminal or civil statute;

(2) individuals detained in other facilities by virtue of statutes or commitment procedures that provide alternatives to criminal prosecution or incarceration in a penal institution; and

(3) individuals detained pending arraignment, trial, or sentencing.

(b) IRB membership. In addition to the requirements in § 414.755(d) of this title (relating to Designated Institutional Review Board (IRB)), membership of an IRB that will review proposed research involving offenders or alleged offenders as human subjects must include at least one member who is an offender advocate or representative with appropriate background and experience to serve in that capacity.

(c) Permitted research. Research at a facility may involve offenders or alleged offenders as human subjects only if, in the judgment of the designated IRB, the proposed research involves solely the following:

(1) study of the possible causes, effects, and processes of criminal commitment or criminal confinement, or of criminal behavior, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects;

(2) study of facilities as institutional structures or of individuals criminally committed to a facility, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects;

(3) research on conditions particularly affecting individuals criminally committed to a facility as a class; or

(4) research on treatments or practices, both innovative and accepted, which have the intent and reasonable probability of improving the health or well-being of the subjects.

HISTORY: The provisions of this § 414.759 adopted to be effective July 5, 2004, 29 TexReg 6093

§ 414.760. Using and Disclosing Protected Health Information (PHI) in Research

(a) Except as provided by this section, in order to use or disclose protected health information (PHI), an authorization is required that:

- (1) conforms with the requirements of 45 CFR § 164.508; and
- (2) if the research includes treatment, includes a statement that the subject's right to access his or her PHI created or obtained during the course of research may be temporarily suspended for as long as the research is in progress, and will be reinstated upon completion of the research.

(b) During the review of proposed research, the designated IRB has the authority to approve a waiver or alteration of the authorization requirement in accordance with 45 CFR § 164.512(i).

(c) The designated IRB has the authority to approve the use or disclosure of PHI for purposes preparatory to research if the IRB obtains from the researcher adequate representations as required by 45 CFR § 164.512(i)(1)(ii).

(d) For a research study approved prior to April 14, 2003, the PHI of a human subject participating in the study may be used or disclosed for the research study if one of the following was obtained prior to April 14, 2003:

- (1) an authorization or other express legal permission from the subject or the subject's LAR to use or disclose PHI for the research study;
- (2) informed consent of the subject to participate in the research study or informed consent from the subject's LAR for the subject to participate in the research study; or
- (3) a waiver of informed consent by the designated IRB for the research study.

§ 414.761. Investigation of Allegations of Misconduct in Science

(a) All research undertaken at facilities shall be conducted with a fundamental commitment to high ethical standards regarding the conduct of scientific research.

(b) Reports of alleged misconduct in science are made to the ORA, who shall ensure that:

- (1) each allegation is reviewed and investigated by an appropriate entity in accordance with 42 CFR 50, Subpart A, referenced as Exhibit C in § 414.763 of this title (relating to Exhibits);
- (2) the investigating entity submits to the ORA information documenting the disposition of each allegation; and
- (3) the following are notified of confirmed incidents of misconduct in science:
 - (A) the IRB that approved the research protocol; and
 - (B) the agency funding the research.

HISTORY: The provisions of this § 414.761 adopted to be effective July 5, 2004, 29 TexReg 6093

§ 414.762. Responsibilities of the Office of Research Administration (ORA)

The ORA is responsible for:

- (1) approving the establishment or utilization of an IRB by a facility as the facility's designated IRB;
- (2) providing staff support to the Central Office IRB;
- (3) reviewing and developing TDMHMR rules and policies governing the conduct of research at facilities;
- (4) maintaining all documentation regarding a designated IRB's review of research for a facility;

(5) receiving reports of misconduct in science, ensuring each allegation of misconduct in science is reviewed and investigated, and maintaining and reporting information regarding misconduct in science as required by the Office of Research Integrity in accordance with 42 CFR 50, Subpart A, referenced as Exhibit C in § 414.762 of this title (relating to Exhibits); and

(6) providing technical assistance and interpretation of policies, procedures, TDMHMR rules, and regulations concerning the conduct of research involving human subjects at facilities.

§ 414.763. Exhibits

The following exhibits are referenced in this subchapter, copies of which are available by contacting TDMHMR, Office of Policy Development, P.O. Box 12668, Austin, TX 78711-2668:

- (1) Exhibit A—Title 45, Code of Federal Regulations, Part 46 (Protection of Human Subjects), Subparts A, B, and D;
- (2) Exhibit B—"The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research, Report of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research" (April 18, 1979); and
- (3) Exhibit C—Title 42, Code of Federal Regulations, Part 50, Subpart a (Responsibility of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science).

§ 414.764. References

The following statutes and TDMHMR rules are referenced in this subchapter:

- (1) Title 45, Code of Federal Regulations, Part 46 (2002) (Protection of Human Subjects), Subparts A, B, and D;
- (2) Title 42, Code of Federal Regulations, Part 50, Subpart a (2002) (Responsibility of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science);
- (3) Title 45, Code of Federal Regulations, Part 160 and Part 164, Subparts a and E (2002) (Standards for Privacy of Individually Identifiable Health Information);
- (4) Texas Health and Safety Code, Chapter 574 and § 533.035; and
- (5) TDMHMR rules governing the care and protection of individuals, which address:
 - (A) rights and protection of persons receiving services in TDMHMR facilities;
 - (B) consent to treatment with psychoactive or psychotropic medication;
 - (C) interventions involving persons receiving services in TDMHMR facilities; and
 - (D) abuse, neglect, and exploitation of persons receiving services in TDMHMR facilities.

§ 414.765. Distribution

This subchapter is distributed to:

- (1) all members of the Texas Mental Health and Mental Retardation Board;
- (2) executive, management, and program staff of Central Office;
- (3) CEOs of all facilities; and
- (4) advocacy organizations.

HISTORY: The provisions of this § 414.765 adopted to be effective July 5, 2004, 29 TexReg 6093

CHAPTER 415.**Provider Clinical Responsibilities—
Mental Health Services**

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*Subchapter A.**Prescribing of Psychoactive Medication***§ 415.1. Purpose**

(a) The purpose of this subchapter is to establish standards for prescribing psychoactive medication to patients served by the state mental health and mental retardation system in Texas.

(b) This subchapter is not a clinical guide to prescribing psychoactive medication and is not the only source of information concerning related issues of appropriate practice.

(c) Accepted guidelines, as defined in § 415.3 of this title (relating to Definitions) supplement the use of this subchapter.

HISTORY: The provisions of this § 415.1 adopted to be effective August 31, 2004, 29 TexReg 8325

§ 415.2. Application

(a) The provisions of this subchapter apply to the employees and contractors of:

- (1) the facilities of the Texas Department of Mental Health and Mental Retardation (TDMHMR); and
- (2) TDMHMR local authorities.

(b) The provisions of this subchapter may not apply to prescribing practice in research projects that have been approved in accordance with TDMHMR's policies and procedures concerning the review and approval of research involving human subjects.

HISTORY: The provisions of this § 415.2 adopted to be effective August 31, 2004, 29 TexReg 8325

§ 415.3. Definitions

The following words and terms, when used in this subchapter, have the following meanings:

(1) Accepted guidelines—The Texas Implementation of Medication Algorithms (TIMA) or an alternative guideline formally approved in writing by the TDMHMR medical director. In cases in which none are formally approved, current professionally recognized clinical guidelines or accepted standards of care are considered the accepted guidelines.

(2) Child psychiatrist—A physician who is certified by the American Board of Psychiatry and Neurology and holds a subspecialty certificate in child and adolescent psychiatry, or who is board eligible, i.e., has an active approved application on file in the board office, or who is currently in training in an approved residency and is supervised by a board eligible or board-certified child and adolescent psychiatrist.

(3) DSM—The current edition of The Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Press.

(4) Legally authorized representative (LAR)—A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, who may be a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(5) Local authority (LA)—The entity designated by TDMHMR to plan, facilitate, coordinate, and ensure the provision of services to individuals with mental illness or mental retardation.

(6) Medication error—Any preventable event that may cause or lead to inappropriate medication use or patient harm while the medication is in the control of the health care professional.

(7) Physician—A doctor of medicine or osteopathy who holds a current license or institutional permit to practice medicine in Texas.

(8) Plan of care—The written document specifying how comprehensive care of the person with mental illness or mental retardation is to be carried out (sometimes called the “multidisciplinary treatment plan” or “interdisciplinary plan of care”).

(9) Polypharmacy—Concurrent use of more than one psychoactive medication having identical or very similar mechanisms of action.

(10) Prescribing professional—A physician or other health care professional who, as authorized by statute, may prescribe under the supervision of a physician.

(11) PRN—As needed (pro re nata).

(12) Psychiatric emergency—A situation in which, in the opinion of the physician, it is immediately necessary to administer medication to a patient to ameliorate the signs and symptoms of that patient’s mental illness and to prevent:

(A) imminent probable death or substantial bodily harm to the patient because the patient:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the patient is unable to satisfy the patient’s need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to others, because of threats, attempts, or other acts the patient makes or commits.

(13) Psychiatrist—A physician who is certified by the American Board of Psychiatry and Neurology or who is board eligible, i.e., has an active approved application on

file in the board office, or a physician who is currently in training in such a program and is supervised by a board eligible or board certified psychiatrist.

(14) Psychoactive medication—Medication whose primary intended therapeutic effect is to treat or ameliorate the signs or symptoms of mental disorder or to modify mood, affect, perception, or behavior, consistent with THSC, Chapter 574, Subchapter G, § 574.101.

(15) Service setting—A state mental health facility, state mental retardation facility, a local authority (LA) site, or a service site contracted to one of these entities.

(16) Team—The patient, patient’s LAR, and with the patient’s consent, the patient’s family members, and the group of professionals and direct care workers responsible for the care of the patient, sometimes called the “multidisciplinary team” or “interdisciplinary team.”

§ 415.4. Philosophy

The standard of care for psychoactive medication use in patients should not vary according to service setting. The variations in treatment should be individualized according to patient needs.

HISTORY: The provisions of this § 415.4 adopted to be effective August 31, 2004, 29 TexReg 8325

§ 415.5. General Principles

(a) All state facilities and LAs will establish and implement written policies and procedures as approved by their medical staff in accordance with this subchapter.

(b) The prescribing professional will practice within the scope of his or her license with supervision as appropriate to that license.

(c) The prescribing of psychoactive medication will be in accordance with accepted guidelines. Use of psychoactive medication that falls outside accepted guidelines may be permissible if the clinical rationale is documented in the patient record.

(d) In no case will psychoactive medication be used for punishment, for convenience of staff, as a substitute for appropriate psychosocial treatments, or in amounts that interfere with a patient’s quality of life or plan of care.

(e) The patient’s plan of care will reflect any use of psychoactive medication as part of an integrated treatment approach aimed at increasing the patient’s functioning and quality of life.

(f) The prescribing professional will document the rationale for initiating, continuing, or discontinuing psychoactive medication in the clinical record.

(g) Medications traditionally considered psychoactive may be prescribed for nonpsychiatric indications if such use is supported by accepted guidelines and the provisions of this subchapter would not apply.

(h) If a service setting must meet other standards (external or otherwise), the more stringent standards will prevail.

(i) The service setting will have policies and procedures governing the scope of practice regarding prescription of psychoactive medications when the prescribing professional is not a psychiatrist. These policies and procedures must require involvement of a psychiatrist and describe the nature, extent, and time frame of this involvement regarding the following:

(1) initiation of any psychoactive medication;

(2) significant changes in the medication regimen other than simple titration or substitution of equivalent medications;

(3) institution of polypharmacy under § 415.7(e)(4) of this title (relating to Prescribing Parameters); and

(4) prescription of any regimen that falls outside accepted guidelines, including dosing guidelines.

(j) Each service setting must ensure psychiatric consultation is available at all times.

HISTORY: The provisions of this § 415.5 adopted to be effective August 31, 2004, 29 TexReg 8325

§ 415.6. Evaluation and Diagnosis

(a) Prior to initiating psychoactive medication according to accepted guidelines, the prescribing professional will:

(1) assess and document the medical history including the chief complaint, psychiatric history, substance use history, and medication history along with medication allergies of the patient;

(2) conduct and document a mental status examination of the patient according to accepted guidelines;

(3) assess and document the current physical status and general health of the patient in detail sufficient for safe prescription of the medication contemplated and may include a reference to a physical examination conducted within the past 12 months, a physical examination by the physician, or a referral of the patient for a more thorough examination as appropriate to health status and service setting;

(4) assess and document the need for laboratory screening and other procedures to gather relevant clinical information; and

(5) make and document the psychiatric diagnosis in accordance with the DSM and within the scope of the professional's license.

(b) The prescribing professional will solicit input and discuss with the team the proposed treatment with psychoactive medication.

(c) If psychoactive medication known to cause movement disorders is contemplated, an appropriately trained and competent staff will screen the patient for abnormal involuntary movements using a standardized procedure such as the Abnormal Involuntary Movement Scale (AIMS) or Dyskinesia Identification System Condensed User Scale (DISCUS), as appropriate, and document the result of the examination prior to initiation of the medication.

(d) In a psychiatric emergency, the assessments and documentation required by this section will take place as soon as is feasible after the emergency. If the patient has already received such assessments during this treatment episode, then the prescribing professional will document only those assessments and decisions that directly relate to the emergency.

HISTORY: The provisions of this § 415.6 adopted to be effective August 31, 2004, 29 TexReg 8325

§ 415.7. Prescribing Parameters

(a) Target signs and symptoms. The prescribing professional will identify and document the target signs and symptoms along with their initial frequency and severity for each medication prescribed prior to its initial use.

(b) Choice of psychoactive medication. The prescribing professional will choose the psychoactive medication in accordance with accepted guidelines.

(c) Laboratory and screenings. The prescribing professional will identify, order, and follow up any laboratory tests, screenings, or other procedures indicated by the proposed

psychoactive medication and the physical condition of the patient in accordance with accepted guidelines.

(d) Dose and route of administration. The prescribing professional will choose doses at or below the maximum doses indicated in the TDMHMR Formulary. Higher doses or unusual routes of administration may be used with documentation in the patient record of appropriate supporting clinical rationale. The use of nasogastric intubation requires consultation with a second physician with documentation of the consultation in the supporting clinical rationale.

(e) Polypharmacy. The prescribing professional will not prescribe polypharmacy as a mechanism to avoid single drug dosage recommendations, adequate monotherapy drug trials, or adequate psychosocial treatment or programming. Polypharmacy is acceptable practice when:

(1) overlapping medications are used as part of a change from one medication to another;

(2) currently prescribed medication is not available in the route most appropriate to a psychiatric emergency situation;

(3) documentation exists of inadequate patient response after simpler and safer regimens have been attempted following accepted guidelines; or

(4) accepted guidelines provide no guidance and appropriate single drug trials have failed, provided the rationale for determining the choice to prescribe polypharmacy is documented to support the situation, and:

(A) the prescribing professional is privileged through the medical staff privileging process to prescribe psychoactive medication; and

(B) the prescribing professional is a psychiatrist, or in the case of a child patient, a child psychiatrist, or consults with a psychiatrist or a child psychiatrist as appropriate prior to initiating polypharmacy.

(f) Orders not written in person. The service setting will have policies and procedures which govern orders not written in person (such as verbal, telephone, fax, or electronic orders) by the prescribing professional. These will address who may give orders, who may accept them, and how orders will be documented in the patient record. Orders will be authenticated by the prescribing professional within a time frame appropriate to the service setting as set forth in that setting's approved policies and procedures.

(g) PRN orders. The prescribing professional may write PRN orders in accordance with accepted guidelines and Chapter 414, Subchapter I of this title (relating to Consent to Treatment with Psychoactive Medication-Mental Health Services). The service setting will have policies and procedures for PRN orders that address:

(1) indications;

(2) appropriate medication classes and dosing, including maximum dose in 24 hours; and

(3) time frames for:

(A) medication administration;

(B) order duration;

(C) assessment of effectiveness;

(D) continued PRN use; and

(E) documentation standards that apply to the order itself and the assessments.

(h) Psychiatric emergency orders. The physician may order a single, immediate administration of a psychoactive medication(s) for a psychiatric emergency. The service setting will have policies and procedures for emergency use of psychoactive medications in accordance with accepted guidelines and Chapter 414, Subchapter I of this title, governing Consent to Treatment with Psychoactive Medication-

Mental Health Services, and Chapter 412, Subchapter H, governing Standards and Quality Assurance for Mental Retardation Community Services and Supports as appropriate that address:

- (1) indications;
- (2) appropriate medication classes and dosing, including maximum dose in 24 hours;
- (3) assessment of effectiveness;
- (4) patient education;
- (5) review with consideration of changing the current plan of care if a pattern of use of psychiatric emergency orders emerges; and
- (6) documentation time frames and standards that address the incident, the use of medications, and the outcome.

§ 415.8. Emergency Use of Psychoactive Medication

(a) Emergency psychoactive medications are used to treat the signs and symptoms of mental illness in a psychiatric emergency when other interventions are ineffective or inappropriate.

(b) The selection of the medication should take into account the patient's current medication regimen. Using a medication that the patient is currently prescribed is preferable, if clinically indicated.

(c) All required documentation will be entered into the patient's record as soon as the emergency abates.

HISTORY: The provisions of this § 415.8 adopted to be effective August 31, 2004, 29 TexReg 8325

§ 415.9. Consent and Patient Education

(a) Informed consent for treatment with a psychoactive medication will be obtained in accordance with the provisions of Chapter 414, Subchapter I of this title (relating to Consent to Treatment with Psychoactive Medication - Mental Health Facilities) or Chapter 405, Subchapter I of this title (relating to Consent to Treatment with Psychotropic Medication - Mental Retardation Facilities), as appropriate.

(b) The use of PRN medication requires an appropriate consent process in accordance with the provisions referred to in subsection (a) of this section.

(c) The service setting will provide individual and group medication education when appropriate to patients, their families, and LARs according to accepted guidelines (e.g., TIMA patient and family education guidelines). If accepted guidelines do not exist, the education will discuss characteristics of the medication, including expected benefits, potential adverse or side effects, dosage, standard alternative treatments, legal rights, and any questions the patient, family, or LAR may have. Education is also provided to address significant changes in the patient's medication regimen.

(d) The service setting will have policies and procedures to address medication education and documentation standards.

HISTORY: The provisions of this § 415.9 adopted to be effective August 31, 2004, 29 TexReg 8325

§ 415.10. Medication Monitoring

(a) All patients receiving psychoactive medication will receive timely ongoing face-to-face evaluation and documentation by the prescribing professional of:

- (1) data collected since the last follow-up, including data about the frequency, severity, and timing of target signs and symptoms;

(2) effectiveness of the medication in treating target signs and symptoms; and

(3) assessment for side effects and adverse effects.

(b) Using the assessment data and with input from the team, the prescribing professional will continue or alter the medication regimen to maximize the benefit to the patient.

(c) At initiation of a new medication or significant change in medication regimen, medication monitoring will occur as often as medically necessary and for the period of time needed to stabilize the clinical response. Such monitoring will occur at least weekly for one month in hospitals and crisis stabilization units (unless discharged in the interim) and at least monthly in outpatient and residential settings. Rationale for less frequent monitoring will be documented.

(d) Further minimum frequencies of medication monitoring in patients are:

(1) state mental health facility settings—monthly as described in subsections (a) and (b) of this section. Also, every 90 days, the medication monitoring includes review of consent issues and long-term consequences of psychoactive medication;

(2) state mental retardation facility settings—monthly review of data with appropriate members of the team and every third month (quarterly) face-to-face evaluation of the patient. Rationale for less frequent monitoring will be documented;

(3) LA programs—medication monitoring appointments will be scheduled quarterly as described in subsections (a) and (b) of this section. Rationale for less frequent monitoring will be documented.

(e) For medications known to cause movement disorders, appropriately trained and competent staff will screen the patient quarterly for abnormal involuntary movements using a standardized procedure such as AIMS, document the results, and arrange for any appropriate follow-up with a psychiatrist or neurologist, if indicated.

(f) Clinically significant adverse effects or side effects will be evaluated by a physician, managed according to accepted guidelines, and addressed in the plan of care.

(g) Laboratory testing or other procedures needed for the continued safe and effective use of medication will be ordered according to accepted guidelines.

(h) In any service setting that operates a pharmacy, the pharmacist will evaluate medication orders and patient medication records in accordance with the rules of the Texas State Board of Pharmacy (Texas Administrative Code, Title 22, Part 15) and will include a review for dosage range according to the TDMHMR Formulary, polypharmacy, and PRN use. The service setting will have policies and procedures in place for doing this review and the documentation and outcome of any questions arising out of this review.

HISTORY: The provisions of this § 415.10 adopted to be effective August 31, 2004, 29 TexReg 8325

§ 415.11. Special Populations

Special populations will be managed according to accepted guidelines as appropriate to their special needs.

(1) Patients with dyskinesias, including tardive dyskinesia.

(A) A diagnosis of a dyskinesia will be verified by a psychiatrist or neurologist and documented in the patient record along with suspected or known duration and severity.

(B) The patient and, as appropriate, family and LAR will receive relevant education about the diagnosis and its implications for psychoactive medication use.

(C) Risks and benefits of continued psychoactive medication use will be assessed and communicated to the patient and, as appropriate, family or LAR. If continued use is recommended, a new consent for medication will be obtained.

(D) If continued use of psychoactive medication is contemplated, then the prescribing professional, if not a psychiatrist or neurologist, must obtain and document consultation from a psychiatrist or neurologist.

(2) Children.

(A) Except in an emergency, if the prescribing professional is not a child psychiatrist, then prescribing psychoactive medication which falls outside accepted guidelines requires consultation from a child psychiatrist in addition to any other requirements.

(B) If the prescribing professional is a child psychiatrist, then use of polypharmacy is governed as indicated in § 415.7 of this title (relating to Prescribing Parameters).

(3) Patients with mental retardation.

(A) A specific psychiatric diagnosis will be made in accordance with the DSM prior to initiating psychoactive medication. If it is not possible to make a specific diagnosis in accordance with the DSM, clinical justification for initiating psychoactive medication will be documented.

(B) Except in an emergency or acute psychiatric hospitalization, psychoactive medications are prescribed only after behavioral and clinical baselines have been established.

(C) Specific target behaviors or clinical signs and quality of life outcomes must be objectively defined, quantified, and tracked using recognized empirical measurement methods appropriate to the service setting in order to monitor psychoactive medication efficacy.

(4) Patients with substance use disorders.

(A) Service settings will assess the occurrence of co-occurring psychiatric and substance use disorders during evaluations for medication, initiation of medication, and medication monitoring, and will have policies and procedures which address the assessment.

(B) Provision of medication services to this population will be in accordance with accepted guidelines for patients with these comorbid conditions and will be in collaboration and coordination with other treatments that the patient may be receiving for substance use.

(5) Pregnant or nursing patients.

(A) Informed consent for use of psychoactive medication in this population must specifically document that the risk and benefits of that use on the fetus or infant have been discussed with the patient and, as appropriate, LAR and family.

(B) Prior to prescribing psychoactive medication, the prescribing professional will seek to collaborate with the physician or clinic providing prenatal, postnatal, or pediatric care to include providing, with consent, appropriate documentation of diagnoses and plan of care to that service provider.

(6) Geriatric patients. Service settings will have policies and procedures for prescribing psychoactive medication which are responsive to the special needs of geriatric patients..

(7) Other special populations. Prescribing professionals will be aware that other populations exist that may have particular clinical or special risk factors associated with their treatment with psychoactive medications. Consultation with an appropriate specialist or expert will be considered when treating these populations.

HISTORY: The provisions of this § 415.11 adopted to be effective August 31, 2004, 29 TexReg 8325

§ 415.12. Quality Improvement

(a) Each service setting will have in place policies and procedures that address standards monitoring and related procedures for quality management of provision of psychoactive medication related services.

(b) At a minimum, psychoactive medication utilization in each service setting must be reviewed and evaluated at least semiannually and strategies for improvement identified using accepted guidelines.

(c) Required areas of review include:

- (1) appropriateness of prescribing (including choice of medication, dose, and route);
- (2) documentation;
- (3) polypharmacy;
- (4) emergency use of psychoactive medication;
- (5) PRN use;
- (6) medication errors;
- (7) adverse drug reactions; and
- (8) frequency of medication monitoring.

(d) Medication utilization will be reviewed by the medical staff and necessary strategies for improvement approved by the medical staff for implementation.

HISTORY: The provisions of this § 415.12 adopted to be effective August 31, 2004, 29 TexReg 8325

§ 415.13. References

The following statutes and TDMHMR rules are referenced in this subchapter:

- (1) Texas Administrative Code, Title 25, Part II, Chapter 414, Subchapter I, relating to Consent to Treatment with Psychoactive Medications - Mental Health Services; and
- (2) Texas Administrative Code Title 25, Part II, Chapter 405, Subchapter I, relating to Consent to Treatment with Psychotropic Medication.

HISTORY: The provisions of this § 415.13 adopted to be effective August 31, 2004, 29 TexReg 8325

§ 415.14. Distribution

This subchapter is distributed to:

- (1) all members of the Texas Mental Health and Mental Retardation Board;
- (2) executive, management, and program staff of Central Office;
- (3) CEOs and medical directors of all facilities and LAs;
- (4) advocacy organizations; and
- (5) any person on request.

HISTORY: The provisions of this § 415.14 adopted to be effective August 31, 2004, 29 TexReg 8325

Subchapter C.

Use and Maintenance of Department of State Health Services / Department of Aging and Disability Services Drug Formulary

§ 415.101. Purpose

The purpose of this subchapter is to provide policies and procedures governing the use and maintenance of the Department of State Health Services/Department of Aging and Disability Services (DSHS/DADS) Drug Formulary.

HISTORY: The provisions of this § 415.101 adopted to be effective February 6, 2002, 27 TexReg 755; amended to be effective April 29, 2012, 37 TexReg 2875

§ 415.102. Application

(a) This subchapter applies to Department of State Health Services (DSHS) facilities, local authorities, and their respective contractors for medications and medication-related services funded by DSHS. The DSHS/DADS Drug Formulary in its entirety applies to all DSHS facilities in all circumstances except when DSHS transfers an individual to a general hospital to receive non-mental health acute care services.

(b) DSHS facilities and local authorities are responsible for drafting contracts with their contractors that provide DSHS-funded medications and medication-related services to ensure that contractors comply with this subchapter.

HISTORY: The provisions of this § 415.102 adopted to be effective February 6, 2002, 27 TexReg 755; amended to be effective April 29, 2012, 37 TexReg 2875

§ 415.103. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Adverse drug reaction—Any adverse symptom or sign that is an unexpected reaction to medication and that is noxious, unintended, and occurs at doses normally used in humans for the prophylaxis, diagnosis, or therapy of disease, or for the modification of physiological function.

(2) Contractor—An entity that provides DSHS-funded mental health services pursuant to a contract with a service system component or DSHS.

(3) DADS—The Department of Aging and Disability Services.

(4) Drug entity—A specific chemical compound and all of its pharmaceutically equivalent salt forms that are used in the diagnosis, cure, mitigation, treatment or prevention of disease.

(5) DSHS—The Department of State Health Services.

(6) DSHS/DADS Drug Formulary—An annually updated listing by nonproprietary name of all drugs approved for use by service system components and their contractors.

(7) DSHS facility—A facility operated by DSHS, including a state mental health facility, the Texas Center for Infectious Disease, and the Rio Grande State Center.

(8) Emergency—A situation in which it is immediately necessary to administer medication to an individual to prevent:

- (A) imminent probable death or substantial bodily harm to the individual because the individual: (i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or (ii)

is behaving in a manner that indicates that the individual is unable to satisfy the individual's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to others because of threats, attempts, or other acts the individual overtly or continually makes or commits.

(9) Individual—Any person receiving services from a service system component or contractor.

(10) Interim Formulary Update—A quarterly update to the DSHS/DADS Drug Formulary, which is incorporated into the annual DSHS/DADS Drug Formulary.

(11) Local authority—A local mental health authority designated in accordance with Texas Health and Safety Code, § 533.035(a) or a local behavioral health authority designated in accordance with Texas Health and Safety Code, § 533.0356.

(12) Mental health services—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 substance abuse or chemical dependency.

(13) Practitioner—A person who acts within the scope of a professional license to prescribe, distribute, administer, or dispense a prescription drug or device, (e.g., a physician, registered nurse, advanced practice registered nurse, physician assistant, licensed vocational nurse, pharmacist, dentist).

(14) Pharmacy and therapeutics committee—A DSHS facility committee composed of physicians, pharmacists, registered nurses, and others as appointed by the facility CEO that assists in the formulation of broad professional policies regarding the evaluation, selection, distribution, handling, use, and administration, and all other matters relating to the use of drugs and devices in the facility.

(15) Reserve drug—A formulary drug with specific guidelines for use as described in the DSHS/DADS Drug Formulary.

(16) Service system component—DSHS, a DSHS facility, or local authority.

(17) State mental health facility—A state hospital or a state center with an inpatient component that is operated by DSHS.

§ 415.104. General Requirements

(a) The Department of State Health Services maintains a closed formulary (DSHS/DADS Drug Formulary) that lists drugs approved by the Executive Formulary Committee for use by service system components and their contractors.

(b) A drug is not available for general use by service system components or their contractors unless it is approved by the Executive Formulary Committee. Drugs not listed in the DSHS/DADS Drug Formulary or the Interim Formulary Update may not be used except under the limited circumstances described in § 415.110 of this title (relating to Prescribing Non-formulary Drugs).

(c) The use of formulary drugs in unusual clinical situations or the use of unusual drug combinations must be accompanied by written justification in the individual's medical record. Additional clinical consultation in these situations should occur as deemed necessary by the prescribing physician.

(d) Reserve drugs, as defined in § 415.103 of this title (relating to Definitions), may be prescribed for use outside

the guidelines described in the formulary if the prescription is justified in the individual's medical record and reviewed in routine audits of reserve drug use conducted by the service system component.

(e) Drug research conducted at a DSHS facility is governed by Chapter 414, Subchapter P of this title (concerning Research in DSHS Facilities). Local authorities conducting drug research must comply with all applicable state and federal laws, rules, and regulations, including Title 45, Code of Federal Regulations, Part 46 (Protection of Human Subjects), as required by §412.313 of this title (relating to Rights and Protection) of Chapter 412, Subchapter G of this title (concerning Mental Health Community Services Standards).

HISTORY: The provisions of this § 415.104 adopted to be effective February 6, 2002, 27 TexReg 755; amended to be effective April 29, 2012, 37 TexReg 2875

§ 415.105. Organization of DSHS/DADS Drug Formulary

(a) Drugs are listed in the DSHS/DADS Drug Formulary by nonproprietary name. The list is based on a modified format of the American Hospital Formulary Service Drug Information and includes an alphabetical index. The use of proprietary names, which may follow in parentheses, is for information purposes only and is not meant to be an endorsement. Cost comparisons and prescribing information are provided as determined necessary by the Executive Formulary Committee. The DSHS/DADS Drug Formulary provides tables summarizing the recommended dosage ranges for the psychotropic drugs for clinician reference. These tables are intended as guidelines and are not intended to replace other references or the clinician's clinical judgment. Clinicians should consult the American Hospital Formulary Service Drug Information, the approved Food and Drug Administration product labeling, and other guidelines on the appropriate prescribing of psychoactive medications. The DSHS/DADS Drug Formulary notes limitations recommended by the Executive Formulary Committee regarding the use of a drug, including specific limitations or guidelines for the use of a reserve drug.

(b) The Interim Formulary Updates are incorporated into the annual DSHS/DADS Drug Formulary. The Interim Formulary Update conforms to the same format as the DSHS/DADS Drug Formulary.

HISTORY: The provisions of this § 415.105 adopted to be effective February 6, 2002, 27 TexReg 755; amended to be effective April 29, 2012, 37 TexReg 2875

§ 415.106. Executive Formulary Committee

(a) Composition.

(1) The chairperson of the Executive Formulary Committee is a physician appointed by the DSHS Assistant Commissioner for Mental Health and Substance Abuse Services.

(2) The DSHS State Hospitals Section pharmacy discipline head serves as the permanent secretary of the committee and is responsible for preparing the agenda and minutes of committee meetings.

(b) Membership. DSHS members of the Executive Formulary Committee are appointed by the DSHS Assistant Commissioner for Mental Health and Substance Abuse Services. The Executive Formulary Committee consists of:

(1) two state mental health facility physicians, at least one of whom must be a psychiatrist;

(2) two state supported living center physicians, at least one of whom must be a psychiatrist;

(3) four local authority practitioners;

(4) one DSHS facility pharmacy director;

(5) one DADS state supported living center facility pharmacist;

(6) one DSHS facility clinical pharmacologist;

(7) two DSHS facility registered nurses;

(8) the DSHS pharmacy services director;

(9) the DADS medical director;

(10) the DSHS behavioral health medical director;

(11) the DADS statewide clinical pharmacy director;

(12) the following ex officio, non-voting members:

(A) the DSHS State Hospital Section director;

(B) the DSHS State Hospital Section Medical Director;

(C) the DADS Assistant Commissioner for State Supported Living Centers;

(D) the DSHS director, Community Mental Health and Substance Abuse Program Services Section; and

(E) other persons as appointed by the DSHS Assistant Commissioner for Mental Health and Substance Abuse Services.

(c) Term of service. With the exception of the DSHS State Hospitals Section pharmacy discipline head, which is a standing membership position, members serve staggered three-year terms and may be reappointed to one additional term. Ex officio members may be reappointed at the discretion of the DSHS Assistant Commissioner for Mental Health and Substance Abuse.

(d) Meetings. The Executive Formulary Committee meets at least quarterly.

(e) Administrative support. The DSHS State Hospitals Section provides administrative support to the Executive Formulary Committee.

HISTORY: The provisions of this § 415.106 adopted to be effective February 6, 2002, 27 TexReg 755; amended to be effective April 29, 2012, 37 TexReg 2875

§ 415.107. Responsibilities of the Executive Formulary Committee

(a) The Executive Formulary Committee maintains and updates the DSHS/DADS Drug Formulary by:

(1) recommending standards of drug use that discourage unnecessary duplication of therapeutic alternatives and encourage the highest standards of medical and pharmacy practice;

(2) periodically reviewing the drugs listed in the formulary to ensure consistency with need, effectiveness, risk, and cost;

(3) consulting with experts in clinical pharmacy, pharmacology, and other medical specialties as necessary to objectively assess drugs under consideration; and

(4) considering the applications submitted in accordance with §415.108 of this title (relating to Applying to Have a Drug Added to the Formulary) or as:

(A) presented by committee members; or

(B) submitted by other qualified persons at the invitation of the Executive Formulary Committee chairperson.

(b) The Executive Formulary Committee makes other recommendations concerning drug use and policy as requested by the DSHS behavioral health medical director.

(c) Approval of a drug entity for inclusion in the DSHS/DADS Drug Formulary does not imply approval of all formulations for that drug. The Executive Formulary Committee designates the formulations that are allowed for general use by service system components and their contractors.

(d) Approval of a drug formulation constitutes approval of all brands of the product that have been proven to be bioequivalent as listed in the then-current Approved Drug Products with Therapeutic Equivalence Evaluations, published by the United States Food and Drug Administration.

(e) For a drug entity that has known bioequivalency problems, the Executive Formulary Committee may limit its use to a specific brand based on objective clinical pharmacokinetics data.

HISTORY: The provisions of this § 415.107 adopted to be effective February 6, 2002, 27 TexReg 755; amended to be effective April 29, 2012, 37 TexReg 2875

§415.108. Applying to Have a Drug Added to the Formulary

(a) Any member of the Executive Formulary Committee, any service system component practitioner, or any contract practitioner may apply to have a drug added to the DSHS/DADS Drug Formulary by completing the New Drug Application form in subsection (d) of this section and including:

- (1) published articles in biomedical literature that substantiate the efficacy and safety of the proposed drug;
 - (2) information on the advantages of the proposed drug compared with similar formulary drugs;
 - (3) a list of formulary drugs that the proposed drug would replace or supplement; and
 - (4) cost effectiveness data.
- (b) Submitting the application.

(1) If the person submitting the application is a DSHS facility practitioner or a DSHS facility contract practitioner, then that practitioner submits the application to the facility's pharmacy and therapeutics committee for approval. If the committee approves the application, then it forwards the application to the Executive Formulary Committee.

(2) If the person submitting the application is a non-facility service system component practitioner or a non-facility service system component contract practitioner, then that practitioner submits the application to the component's clinical/medical director or designee who determines if the application is appropriate and complete, and if so, forwards the application to the Executive Formulary Committee.

(3) If the person completing the application is a member of the Executive Formulary Committee, then that person submits the application directly to the Executive Formulary Committee.

(c) The Executive Formulary Committee considers the drug application and recommends:

- (1) approving the proposed drug's inclusion and, if appropriate, approving audit criteria and recommending dosage guidelines;
 - (2) approving the proposed drug on a trial basis for a specified period of time;
 - (3) approving the proposed drug as a reserve drug, with guidelines;
 - (4) postponing the decision until a later meeting; or
 - (5) denying the proposed drug's inclusion.
- (d) The New Drug Application form.

Display Image

§415.109. Changing the DSHS/DADS Drug Formulary

(a) Changes to the DSHS/DADS Drug Formulary are based on need, effectiveness, risk, and cost as contained in current and unbiased biomedical literature.

(b) The DSHS/DADS Drug Formulary is updated and published once a year. Quarterly updates to the DSHS/DADS Drug Formulary, if any, will be listed in an Interim Formulary Update.

(c) Recommendations by the Executive Formulary Committee for changes to the DSHS/DADS Drug Formulary, as reflected in the meeting's minutes, are submitted to the chairperson of the Executive Formulary Committee.

(d) If the chairperson of the Executive Formulary Committee approves the recommendations, then the recommendations must be:

- (1) identified as approved in writing before implementation; and
- (2) listed in the Interim Formulary Update and distributed to the CEOs, clinical/medical directors, and pharmacy directors of all service system components, and to members of the Executive Formulary Committee.

HISTORY: The provisions of this § 415.109 adopted to be effective February 6, 2002, 27 TexReg 755; amended to be effective April 29, 2012, 37 TexReg 2875

§415.110. Prescribing Non-formulary Drugs

(a) Non-formulary drugs may be prescribed:

- (1) if no formulary drug exists that is as safe or effective in the specified situation;
- (2) if a limited trial of the drug appears to be safer or more effective than any drug listed in the formulary and the prescribing practitioner anticipates applying to have the drug added to the formulary;
- (3) if the course of therapy established prior to the individual's admission would be interrupted; or
- (4) in an emergency, as defined in §415.103 of this title (relating to Definitions).

(b) Each local authority shall develop and enforce written policies and procedures for monitoring and approving the prescribing of non-formulary drugs by its practitioners and its contract practitioners.

(c) DSHS shall develop and enforce written policies and procedures for monitoring and approving the prescribing of non-formulary drugs by DSHS facility practitioners and facility contract practitioners. The written policies and procedures are contained in DSHS's Pharmacy Management Operating Instruction.

§415.111. Adverse Drug Reactions

(a) Each local authority shall develop written policies and procedures for reporting adverse drug reactions to the Food and Drug Administration.

(b) DSHS shall develop written policies and procedures for DSHS facilities when reporting adverse drug reactions to the Food and Drug Administration. The written policies and procedures are contained in DSHS's Pharmacy Management Operating Instruction.

HISTORY: The provisions of this § 415.111 adopted to be effective February 6, 2002, 27 TexReg 755; amended to be effective April 29, 2012, 37 TexReg 2875

Subchapter F.

Interventions in Mental Health Services

§415.251. Purpose

The purpose of this subchapter is to reduce the use of restraint and seclusion as much as possible and to ensure that:

(1) the least restrictive methods of intervention are used and that, wherever possible, alternatives are first attempted and determined ineffective; and

(2) the rights and well-being of individuals are protected during the use of restraint or seclusion.

HISTORY: The provisions of this § 415.251 adopted to be effective July 22, 2014, 39 TexReg 5581

§ 415.252. Application

This subchapter applies to the following types of facilities:

(1) a state hospital or a state center operated by the Department of State Health Services;

(2) a psychiatric hospital licensed pursuant to Texas Health and Safety Code, Chapter 577 (relating to Private Mental Hospitals and Other Mental Health Facilities) to the extent and as provided by Chapter 134 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units);

(3) a hospital that is licensed pursuant to Texas Health and Safety Code, Chapter 241 (relating to Hospitals) to the extent and as provided by Chapter 133 of this title (relating to Hospital Licensing), as follows:

(A) an identifiable mental health services unit within the hospital; and

(B) for all other areas within the hospital (including an emergency department), only to the extent that the requirements of this subchapter are consistent with, and not more stringent than, the requirements of the 42 CFR § 482.13 (relating to Medicare Conditions of Participation); 42 CFR § 489.20 (relating to Essentials of Provider Agreements); and § 133.44 of this title (relating to Hospital Patient Transfer Policy).

(4) a crisis stabilization unit licensed pursuant to Texas Health and Safety Code, Chapter 577 and Chapter 134 of this title;

(5) the Waco Center for Youth;

(6) a community mental health service provider governed by Chapter 412, Subchapter G of this title (relating to Mental Health Community Services Standards); and

(7) the Texas Center for Infectious Disease, to the extent that mental health services are provided by that facility pursuant to its authority, under Texas Health and Safety Code, § 13.004, to receive an individual who is mentally ill and who is infected with tuberculosis.

§ 415.253. Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Advanced practice registered nurse or APRN**—A registered nurse authorized by the Texas Board of Nursing to practice as an advanced practice registered nurse.

(2) **Behavioral emergency**—A situation involving an individual who is behaving in a violent or self-destructive manner and in which preventive, de-escalative, or verbal techniques have been determined to be ineffective and it is immediately necessary to restrain or seclude the individual to prevent:

(A) imminent probable death or substantial bodily harm to the individual because the individual is attempting to commit suicide or inflict serious bodily harm; or

(B) imminent physical harm to others because of acts the individual commits.

(3) **Chemical restraint**—The use of any chemical, including pharmaceuticals, through topical application, oral administration, injection, or other means, for purposes of restraining an individual and which is not a standard treatment for the individual's medical or psychiatric condition.

(4) **Chief executive officer (CEO)**—The highest ranking administrator of a facility or such person's designee.

(5) **Clinical timeout**—A procedure in which an individual, in response to verbal suggestion from a staff member, voluntarily enters and remains for a period of time in a designated area from which the individual is not prevented from leaving.

(6) **Competence**—Demonstrated knowledge, skill, and ability.

(7) **Continuous face-to-face observation**—An in-person line of sight that is maintained in an uninterrupted manner and is free of distraction.

(8) **Declaration for mental health treatment**—A document making a statement of preferences or instructions for mental health treatment as set forth in Texas Civil Practice and Remedies Code, Chapter 137.

(9) **DSHS**—The Department of State Health Services.

(10) **Emergency medical condition**—A non-psychiatric medical condition manifesting itself by acute symptoms, including severe pain, of sufficient severity such that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily functions, serious dysfunction of any bodily organ or part, or a threat to the health or safety of a pregnant woman or her unborn child.

(11) **Emergency medication**—A psychoactive medication that is used to treat the signs and symptoms of mental illness in a psychiatric emergency, as that term is defined in Chapter 415, Subchapter a of this title (relating to Prescribing of Psychoactive Medication), when other interventions are ineffective or inappropriate.

(12) **Episode**—The time period from the initiation of restraint or seclusion until the release of the individual.

(13) **Face-to-face**—Describes a contact with an individual that occurs in person. Face-to-face does not include a contact made through the use of video or telecommunication conferencing or technologies, including telemedicine.

(14) **Facility**—An entity to which this subchapter applies as identified in § 415.252 of this title (relating to Application).

(15) **Individual**—Any person receiving mental health services from a facility.

(16) **Initiate**—The first overt act to restrain or seclude an individual.

(17) **Legally authorized representative (LAR)**—A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and who may include a parent, guardian, or managing conservator of a minor individual; guardian of the person of an adult individual; or person with activated power of attorney for health care decisions.

(18) **Mechanical restraint**—Any device, material, or equipment that immobilizes or reduces the ability of the individual to move his or her arms, legs, body, or head freely.

(19) **Mental health services**—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.

(20) Non-violent, non-self-destructive behavior—Behavior related to a non-psychiatric medical condition or symptom that indicates the need for an intervention to protect the individual from harm.

(21) Personal restraint—Any manual method by which a person holds or otherwise bodily applies physical pressure that immobilizes or reduces the ability of the individual to move his or her body or a portion of his or her body.

(22) Physician assistant—A person who is licensed under Texas Occupations Code, Chapter 204.

(23) PRN—As needed (pro re nata).

(24) Protective device—A device used to prevent injury or to permit wounds to heal.

(25) Quiet time—A procedure in which an individual, on the individual's own initiative, enters and remains for a period of time in a designated area from which the individual is not prevented from leaving.

(26) Registered nurse—A person who is licensed under Texas Occupations Code, Chapter 301, and who has demonstrated the clinical competencies required by this subchapter.

(27) Restraint—The use of any personal restraint or mechanical restraint that immobilizes or reduces the ability of the individual to move his or her arms, legs, body, or head freely.

(28) Seclusion—The involuntary separation of an individual from other individuals for any period of time and or the placement of the individual alone in an area from which the individual is prevented from leaving.

(29) Seclusion room—A hazard-free room or other area in which direct observation of an individual can be maintained and from which the individual is prevented from leaving.

(30) Serious injury—An injury determined by a physician to require medical treatment by a licensed medical professional (e.g., physician, osteopath, dentist, physician's assistant, or advance practice nurse), or requires medical treatment in an emergency department or licensed hospital.

(31) Staff member—A person directly involved in an individual's care, including professionals who are credentialed and granted privileges by the facility, full-time and part-time employees, and contractors.

(32) Supportive device—A device voluntarily used by an individual to posturally support the individual or to assist the individual who cannot obtain or maintain normal bodily functioning.

(33) Treating physician—The physician assigned by the facility and designated in the individual's medical record as the physician responsible for the coordination and oversight of the implementation of an individual's comprehensive treatment plan and who is:

(A) licensed as a physician by the Texas Medical Board in accordance with Texas Occupations Code, Chapter 155; or

(B) authorized to perform medical acts under an institutional permit at a Texas postgraduate training program approved by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or the Texas Medical Board.

(34) Treatment team—A group of staff members, the individual, and LAR (if any) who work together in a coordinated manner for the purpose of providing comprehensive mental health services to an individual.

§ 415.254. General Requirements for Use of Restraint or Seclusion

(a) Prohibition. Except as provided by this subchapter, the use of restraint or seclusion is prohibited.

(b) Use of personal or mechanical restraint or seclusion. The use of personal or mechanical restraint or seclusion is permissible on the facility's premises, and personal or mechanical restraint is permissible for transportation of an individual only if implemented:

(1) in accordance with this subchapter;

(2) when less restrictive interventions (such as those listed in the safety plan if there is one) are determined ineffective to protect other individuals, the individual, staff members, or others from harm;

(3) in accordance with, and using only those safe and appropriate techniques as determined by the facility's written policies or procedures and training program as specified in subsection (e) of this section;

(4) by staff members who have been trained in accordance with the applicable requirements specified in § 415.257 of this title (relating to Staff Member Training);

(5) in connection with the applicable evaluation and monitoring requirements specified in § 415.266 of this title (relating to Observation, Monitoring, and Care of the Individual in Restraint or Seclusion Initiated in Response to a Behavioral Emergency);

(6) in accordance with the applicable initiation and physician order requirements specified in § 415.260 of this title (relating to Initiation of Restraint or Seclusion in a Behavioral Emergency);

(7) in accordance with any alternative strategies and special considerations documented in the treatment plan pursuant to § 415.259(c) of this title (relating to Special Considerations, Responsibilities, and Alternative Strategies);

(8) when the type or technique of restraint or seclusion used is the least restrictive intervention that will be effective to protect the other individuals, the individual, staff members, or others from harm; and

(9) is discontinued at the earliest possible time, regardless of the length of time identified in a physician's order.

(c) Facility requirements. a facility's use of restraint and seclusion is prohibited unless:

(1) the facility adopts, implements, and enforces written policies and procedures, in accordance with this subchapter, governing the use of restraint and seclusion;

(2) the facility adopts, implements, and enforces a staff member training program that meets the requirements of § 415.257 of this title; and

(3) staff members of the facility are trained and have demonstrated competence in the use of restraint and seclusion in accordance with the facility's written policies and procedures and training program before assuming direct care duties and before performing restraint and seclusion on the individual.

(d) Policy notification. Upon admission of an individual, or as soon as possible thereafter, the facility shall notify each individual and each individual's legally authorized representative (LAR), if any, of the facility's policies related to the use of restraint and seclusion. The policy notification may be a summary of the facility's policy. If an LAR cannot be notified, the facility shall document the reason in the individual's medical record.

(e) This subchapter represents minimum standards. The facility may, through its written policies and proce-

dures, adopt more stringent standards that are consistent with this subchapter and do not conflict with:

- (1) DSHS rules;
- (2) state or federal laws; and
- (3) applicable accreditation standards.

HISTORY: The provisions of this § 415.254 adopted to be effective July 22, 2014, 39 TexReg 5581

§ 415.255. Prohibited and Restricted Practices

(a) The following practices are prohibited:

(1) a personal or mechanical restraint shall not be used that:

(A) obstructs the individual's airway, including a procedure that places anything in, on, or over the individual's mouth or nose;

(B) impairs the individual's breathing, including applying pressure to the individual's torso or neck;

(C) restricts circulation;

(D) secures an individual to a stationary object while the individual is in a standing position;

(E) causes pain to restrict an individual's movement (pressure points or joint locks); and

(F) inhibits, reduces, or hinders the individual's ability to communicate; and

(2) a chemical restraint.

(b) A prone or supine hold shall not be used during a personal restraint. Should an individual become prone or supine during a restraint, then any staff member involved in administering the restraint shall immediately transition the individual to a side lying or other appropriate position.

(c) Neither restraint nor seclusion shall be used:

(1) as a means of discipline, retaliation, punishment, or coercion;

(2) for the purpose of convenience of staff members or other individuals; or

(3) as a substitute for effective treatment or habilitation.

(d) The use of seclusion is prohibited except in a behavioral emergency.

HISTORY: The provisions of this § 415.255 adopted to be effective July 22, 2014, 39 TexReg 5581

§ 415.256. Mechanical Restraint Devices

(a) If a facility's policies and procedures permit the use of mechanical restraint, only commercially available or DSHS-approved devices specifically designed for the safe and comfortable restraint of humans shall be used. Any alteration of commercially available devices or independent development of devices must:

(1) be based on the individual's special physical needs, if any (e.g., obesity or physical impairment);

(2) take into consideration any potential medical (including psychiatric) contraindications, including any history of physical or sexual abuse;

(3) be approved by a committee whose membership and functions are specified in the bylaws of medical staff members of the facility; and

(4) be described fully in writing, with a copy of the description and a photograph forwarded to the DSHS medical director for behavioral health for review. Such altered or independently developed device may not be used by the facility unless and until its use is approved, in writing, by the DSHS medical director for behavioral health.

(b) A staff member shall inspect a device before and after each use to ensure that it is clean, in good repair, and is free from tears or protrusions that may cause injury.

Damaged devices shall not be used to restrain an individual and shall be repaired or discarded.

(c) Regardless of their commercial availability, the following types of devices shall not be used to implement a restraint:

(1) those with metal wrist or ankle cuffs;

(2) those with rubber bands, rope, cord, or padlocks or key locks as fastening devices;

(3) long ties (e.g., leashes);

(4) bed sheets;

(5) gags;

(6) spit hoods, or anything that obstructs an individual's airway, including a device that places anything in, on, or over the individual's mouth or nose; and

(7) strait jackets.

(d) Except as otherwise permitted in this subsection, all forms of restraint, as well as a form of restraint in conjunction with seclusion, are intended to be used independently of one another. The physician shall document the clinical justification in the individual's medical record for the simultaneous use of more than one mechanical restraint device, a mechanical restraint device and personal restraint, a mechanical restraint device and seclusion, or personal restraint and seclusion.

(e) The following are approved mechanical restraint devices.

(1) Anklets—Padded bands of cloth or leather that are secured around the individual's ankles or legs using hook-and-loop (e.g., Velcro(R)) or buckle fasteners and attached to a stationary object (e.g., bed or chair frame). The device shall not be secured so tightly as to interfere with circulation, or so loosely as to permit chafing of the skin.

(2) Arm splints or elbow immobilizers—Strips of any material with padding that extend from below to above the elbow and which are secured around the arm with ties or hook-and-loop (e.g., Velcro(R)) tabs. If appropriate under the circumstances, they shall be secured so that the individual has full use of the hands. The device shall not be secured so tightly as to interfere with circulation, or so loosely as to permit chafing of the skin.

(3) Belts—A cloth or leather band that is fastened around the waist and secured to a stationary object (e.g., chair frame) or used for securing the arms to the sides of the body. The device shall not be secured so tightly as to interfere with breathing or circulation.

(4) Camisole—A sleeveless cloth jacket that covers the arms and upper trunk and is secured behind the individual's back. The device shall not be secured so tightly as to interfere with breathing or circulation or to cause muscle strain. Staff members shall exercise caution when using this device, if at all, because it may impair balance and the individual's ability to break a fall.

(5) Chair restraint—A padded stabilized chair that supports all body parts and prevents the individual's voluntary egress from the chair without assistance (e.g., tabletop chair, Geri-chair). When wristlets or anklets are used to restrict movement from the chair, the devices must not be secured so tightly as to interfere with breathing or circulation.

(6) Enclosed bed—A bed with high side rails or another type of side enclosure and, in some cases, an enclosure (e.g., mesh or rails) over the bed that prevents the individual's voluntary egress from the bed without assistance.

(7) **Helmet**—A plastic, foam rubber, or leather head covering, such as a sports helmet, that may include an attached face guard but does not include a spit guard that interferes with breathing or obstructs the airway. The device shall be the proper size and the chinstrap shall not be so tight as to interfere with breathing or circulation.

(8) **Mittens**—A cloth, plastic, foam rubber, or leather hand covering such as boxing and other types of sport gloves that are secured around the wrist or lower arm with elastic, hook-and-loop (e.g., Velcro(R)) tabs, ties, paper tape, pull strings, buttons, or snaps. The device shall not be secured so tightly as to interfere with circulation.

(9) **Restraining net**—Mesh fabric that is placed over an individual's upper and lower trunk with the head, arms, and lower legs exposed; the net shall be secured over a mattress to a bed frame and shall never be placed over the individual's head. The restraining net shall be loose enough to allow some movement. The device shall not be secured so tightly as to interfere with breathing or circulation.

(10) **Restraint bed**—A stretcher of steel frame construction with a fabric cover. The restraint bed shall have an adjustable backrest and a padded mat which shall be used under the individual's head and upper body to prevent injury. Approved wristlets, anklets, and belts shall be used to safely and securely limit the individual's physical activity.

(11) **Restraint board**—A padded, rigid board to which an individual is secured face-up, unless that position is clinically contraindicated for that individual, in which case a clinically indicated position will be used and documented. This device shall not be used to restrain an individual in a behavioral emergency except when necessary to promptly transport an individual to another location.

(12) **Restraint chair or gurney**—A chair or gurney manufactured for the purpose of transporting or restraining an individual.

(13) **Ties**—A length of cloth or leather used to secure approved mechanical restraints (e.g., mittens, wristlets, arm splints, belts, anklets, vests) to a stationary object (e.g., bed or wheelchair frame) or to another approved mechanical restraint. Ties shall not be secured so tightly as to interfere with breathing or circulation.

(14) **Transport jacket**—A heavy canvas sleeveless jacket that encases the arms and upper trunk, fastens with hook-and-loop (e.g., Velcro(R)) tabs and roller buckles, and is held in place with a strap between the legs. The device shall be used only as a temporary measure during transport.

(15) **Vest**—A sleeveless cloth jacket that covers the upper trunk and is fastened in the back or front with ties or hook-and-loop tabs (e.g., Velcro(R)). The vest may be secured to a stationary object (e.g., bed or chair frame). The vest and ties shall not be secured so tightly as to interfere with breathing or circulation.

(16) **Wristlets**—Padded cloth or leather bands that are secured around the individual's wrists or arms using hook-and-loop (e.g., Velcro(R)) or buckle fasteners and attached to a stationary object (e.g., bed frame, chair frame, or waist belt). The device shall not be secured so tightly as to interfere with circulation or so loosely as to permit chafing of the skin.

§ 415.257. Staff Member Training

(a) The facilities to which this subchapter applies shall ensure that staff members are informed of their roles and

responsibilities under this subchapter and are trained and demonstrate competence accordingly.

(b) The training program shall be consistent with the requirements of this subchapter and shall:

(1) target the specific needs of each patient population being served;

(2) be tailored to the competency levels of the staff members being trained;

(3) emphasize the importance of reducing and preventing the use of restraint and seclusion;

(4) be evaluated annually, which shall include evaluation to ensure that the training program, as planned and as implemented, complies with the requirement of this section;

(5) incorporate evidence-based best practices;

(6) provide information about declarations for mental health treatment, including:

(A) the right of individuals to execute declarations for mental health treatment; and

(B) the duty of staff members and other health care providers to act in accordance with declarations for mental health treatment to the fullest extent possible.

(c) Before assuming job duties involving direct care responsibilities, and at least annually thereafter, staff members other than physicians must receive training and demonstrate competence in at least the following knowledge and applied skills that shall be specific and appropriate to the population(s) the facility serves:

(1) using team work, including team roles and techniques for facilitating team communication and cohesion;

(2) identifying the causes of aggressive or threatening behaviors of individuals who need mental health services, including behavior that may be related to an individual's non-psychiatric medical condition;

(3) identifying underlying cognitive functioning and medical, physical, and emotional conditions;

(4) identifying medications and their potential effects;

(5) identifying how age, weight, cognitive functioning, developmental level or functioning, gender, culture, ethnicity, and elements of trauma-informed care, including history of abuse or trauma and prior experience with restraint or seclusion, may influence behavioral emergencies and affect the individual's response to physical contact and behavioral interventions;

(6) explaining how the psychological consequences of restraint or seclusion and the behavior of staff members can affect an individual's behavior, and how the behavior of individuals can affect a staff member;

(7) applying knowledge and effective use of communication strategies and a range of early intervention, de-escalation, mediation, problem-solving, and other non-physical interventions, such as clinical timeout and quiet time; and

(8) recognizing and appropriately responding to signs of physical distress in individuals who are restrained or secluded, including the risks of asphyxiation, aspiration, and trauma.

(d) Before any staff member may initiate any restraint or seclusion the staff member shall receive training and demonstrate competence in:

(1) safe and appropriate initiation and use of seclusion as a last resort in a behavioral emergency;

(2) safe and appropriate initiation and application, and use of personal restraint as a last resort in a behavioral emergency;

(3) safe and appropriate initiation and application, and use of mechanical restraint devices as a last resort in a behavioral emergency or as a protective or supportive device, and knowledge of the mechanical restraint devices permitted under § 415.256 of this title (relating to Mechanical Restraint Devices) and approved by the facility; and

(4) management of emergency medical conditions in accordance with the facility's policies and procedures and other applicable requirements for:

(A) obtaining emergency medical assistance; and

(B) obtaining training in and using techniques for cardiopulmonary respiration and removal of airway obstructions.

(e) Before assuming job duties, and at least annually thereafter, a registered nurse or a physician assistant who is authorized to:

(1) perform assessments of individuals who are in restraint or seclusion shall receive training, which shall include a demonstration of competence in:

(A) monitoring cardiac and respiratory status and interpreting their relevance to the physical safety of the individual in restraint or seclusion;

(B) recognizing and responding to nutritional and hydration needs;

(C) checking circulation in, and range of motion of, the extremities;

(D) providing for hygiene and elimination;

(E) identifying and responding to physical and psychological status and comfort, including signs of distress;

(F) assisting individuals in de-escalating, including through identification and removal of stimuli, that meet the criteria for a behavioral emergency if known;

(G) recognizing when continuation of restraint or seclusion is no longer justified by a behavioral emergency; and

(H) recognizing when to contact emergency medical services to evaluate and/or treat an individual for an emergency medical condition.

(2) conduct evaluations of individuals, including face-to-face evaluations pursuant to § 415.260(c) of this title (relating to Initiation of Restraint or Seclusion in a Behavioral Emergency) of individuals who are in restraint or seclusion, shall receive training, which shall include a demonstration of competence in:

(A) identifying restraints that are permitted by the facility, by this subchapter, and by other applicable law;

(B) identifying stimuli that trigger behaviors;

(C) identifying medical contraindications to restraint and seclusion;

(D) recognizing psychological factors to be considered when using restraint and seclusion, such as sexual abuse, physical abuse, neglect, and trauma.

(f) Before assuming job duties, and at least annually thereafter, staff members who are authorized to monitor, under the supervision of a registered nurse, individuals during restraint or seclusion shall receive training, which shall include a demonstration of competence in:

(1) monitoring respiratory status;

(2) recognizing nutritional and hydration needs;

(3) checking circulation in, and range of motion of, the extremities;

(4) providing for hygiene and elimination;

(5) addressing physical and psychological status and comfort, including signs of distress;

(6) assisting individuals in de-escalating, including through identification and removal of stimuli, if known.

(7) recognizing when continuation of restraint or seclusion is no longer justified by a behavioral emergency; and

(8) recognizing when to contact a registered nurse.

(g) For physicians who may order restraint or seclusion, the facility's credentialing and privileging processes must require that such physicians:

(1) demonstrate competency in ordering restraint or seclusion; and

(2) receive training and refresher training in:

(A) the use of alternatives to restraint or seclusion; and

(B) how to reduce the physical and emotional harm caused by restraint or seclusion.

(h) When a staff member's duties change, the facility shall reassess the staff member's training and competence and require and ensure the staff member's retraining, as required under this subchapter, based upon the facility's re-assessment and the staff member's new duties.

(i) The facility shall maintain documentation of training for each staff member. Documentation shall include the date that training was completed, the name of the instructor, a list of successfully demonstrated competencies, the date competencies were assessed, and the name of the person who assessed competence.

§ 415.258. Actions to be Taken to Release from Restraint or Seclusion for an Emergency Medical Condition or Evacuation Emergency

(a) Emergency medical condition. If an individual experiences an emergency medical condition while in restraint or seclusion, the staff member providing continuous face-to-face observation of the individual or other staff member must release the individual from restraint or seclusion as soon as possible, as indicated by the emergency medical condition, and the medical condition shall be assessed and treated.

(1) The facility shall ensure that the individual's emergency medical condition is promptly addressed and that aid is rendered to the extent possible in accordance with the facility's policies and procedures for management of emergency medical conditions.

(2) Unlocking the seclusion room door or fully releasing the restraints ends the episode.

(3) If the situation continues to meet the criteria for a behavioral emergency after the individual's emergency medical condition is addressed, a staff member must obtain a new order for restraint or seclusion.

(b) Emergency evacuation. If an emergency evacuation or evacuation drill occurs while an individual is in restraint or seclusion, the staff member providing continuous face-to-face observation of the individual or other staff member must release the individual from restraint or seclusion as soon as possible, as indicated by the circumstances that prompted the emergency evacuation or the evacuation drill, and staff members shall implement the facility's established procedures to ensure the individual's safety.

HISTORY: The provisions of this § 415.258 adopted to be effective July 22, 2014, 39 TexReg 5581

§ 415.259. Special Considerations, Responsibilities, and Alternative Strategies

(a) Special considerations. Before ordering restraint or seclusion, the physician shall take the following into consideration:

(1) information about the individual that could contraindicate or otherwise affect the use of restraint or seclusion;

(2) information obtained during the initial assessment of each individual at the time of admission or intake, including, but not limited to:

(A) pre-existing medical conditions or any physical disabilities and limitations, including, without limitation, cognitive functioning, substance use disorders, obesity, or pregnancy, that would place the individual at greater risk during restraint or seclusion;

(B) any history of sexual abuse, physical abuse, neglect, trauma, or previous restraint or seclusion that would place the individual at greater psychological risk during restraint or seclusion;

(C) any history or trauma that would contraindicate seclusion, the type of restraint (personal or mechanical), or a particular type of restraint device for the individual;

(D) cultural factors; and

(E) information contained in a declaration for mental health treatment, if there is one.

(b) Staff member responsibilities. Staff members shall:

(1) respect and preserve the rights of an individual during restraint or seclusion. Rights of individuals are described in Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(2) provide an environment that is protected and private from other individuals and that safeguards the personal dignity and well-being of an individual placed in restraint or seclusion;

(3) ensure that undue physical discomfort, harm or pain to the individual does not occur when initiating or using restraint or seclusion;

(4) use only the amount of physical force that is reasonable and necessary to implement a particular restraint or seclusion; and

(5) use psychoactive medication in an emergency only in accordance with Chapter 414, Subchapter I of this title (relating to Consent to Treatment with Psychoactive Medication—Mental Health Services). Physically holding an individual during a forced administration of a psychoactive medication, including for court-ordered medication, constitutes personal restraint.

(c) Alternative strategies. The treatment team shall review and, when appropriate, implement and document alternative strategies for dealing with behaviors in each of the following circumstances:

(1) in any case in which behaviors have necessitated the use of restraint or seclusion for the same individual more than two times during the individual's facility or program admission, or within any 30-day period, whichever period is shorter;

(2) when two or more separate episodes of restraint or seclusion of any duration have occurred within the same 12 hour period; and

(3) when an episode of restraint or seclusion has reached the maximum time permitted under § 415.261(b) of this title (relating to Time Limitation on an Order for Restraint or Seclusion Initiated in Response to a Behavioral Emergency).

(d) Treatment plan modification. If the circumstances described in subsection (c)(1) - (3) of this section recur or continue after treatment team review of alternative strategies under subsection (c) of this section, the treatment team shall consult with the facility's chief medical physician administrator or designee to explore alternative treatment strategies and a written modification of the individual's treatment plan.

§ 415.260. Initiation of Restraint or Seclusion in a Behavioral Emergency

(a) Initiation.

(1) Only staff authorized by the facility's policies and procedures and who have met the training requirements of § 415.257 of this title (relating to Staff Member Training) and demonstrated competency in the facility's restraint and seclusion training program, may initiate personal restraint in a behavioral emergency.

(2) Only a physician, registered nurse, or physician assistant in accordance with a physician's delegated authority, may initiate mechanical restraint or seclusion.

(b) Physician's order. Only a physician member of the facility's medical staff may order restraint or seclusion.

(1) The physician's order for restraint or seclusion shall:

(A) designate the specific intervention and procedures authorized, including any specific measures for ensuring the individual's safety, health, and well-being;

(B) specify the date, time of day, and maximum length of time the intervention and procedures may be used, consistent with the time limitations provided for under § 415.261 of this title (relating to Time Limitation on an Order for Restraint or Seclusion Initiated in Response to a Behavioral Emergency);

(C) describe the specific behaviors which constituted the behavioral emergency which resulted in the need for restraint or seclusion;

(D) be signed and dated, including the time of the order, by the physician or the registered nurse who accepted the prescribing physician's telephone order.

(2) If restraint or seclusion was ordered by telephone, the ordering physician shall personally sign and date the telephone order, including the time of the order, within 48 hours of the time the order was originally issued.

(3) If the physician who ordered the intervention is not the treating physician, the physician ordering the intervention shall consult with the treating physician or physician designee as soon as possible. The physician who ordered the intervention shall document the consultation in the individual's medical record.

(c) Face-to-face evaluation. A physician, physician assistant as provided in paragraph (3) of this subsection, or a registered nurse who is trained and has demonstrated competence in assessing medical and psychiatric stability, other than the registered nurse who initiated the use of restraint or seclusion, shall conduct a face-to-face evaluation of the individual within one hour following the initiation of restraint or seclusion to personally verify the need for restraint or seclusion.

(1) The face-to-face evaluation required by this subsection includes, but is not limited to, an assessment of the:

(A) individual's immediate situation;

(B) individual's reaction to the restraint or seclusion;

(C) individual's medical and behavioral condition; and

(D) need to continue or terminate the restraint or seclusion.

(2) The Waco Center for Youth, a facility accredited as a residential treatment program, a physician or a registered nurse who is trained and has demonstrated competence to assess medical and psychiatric stability other than the registered nurse who initiated the use of restraint or seclusion shall conduct the face-to-face evaluation within two hours following the initiation of restraint or seclusion unless the individual is released prior to the expiration of the original order. If the individual is released prior to the expiration of the original order, the physician or registered nurse, shall conduct the face-to-face evaluation within 24 hours.

(3) A physician may delegate the face-to-face evaluation to a physician assistant who is:

(A) privileged to practice in the facility or that portion of the facility to which this subchapter applies; and

(B) under the clinical supervision of a physician appointed by the facility's medical staff and privileged to practice in the facility or that portion of the facility.

(4) If a physician assistant to whom the physician has delegated the face-to-face evaluation or a registered nurse who has conducted the face-to-face evaluation, in his or her professional judgment determines that the physician should evaluate the individual due to circumstances that are outside the physician assistant's or registered nurse's scope of practice or expertise, the physician assistant or registered nurse shall contact a physician and request that the physician perform a face-to-face evaluation of the individual. The physician assistant or registered nurse shall document the determination in the individual's medical record.

(5) If the face-to-face evaluation is conducted by a registered nurse or physician assistant, the registered nurse or physician assistant shall consult the treating physician or physician designee who is responsible for the care of the individual as soon as possible after the completion of the one hour face-to-face evaluation and document the consultation in the individual's medical record.

§ 415.261. Time Limitation on an Order for Restraint or Seclusion Initiated in Response to a Behavioral Emergency

(a) Original order: a physician may order restraint or seclusion in response to a behavioral emergency for a period of time not to exceed:

- (1) 15 minutes for personal restraint;
- (2) one hour for mechanical restraint or seclusion for individuals under the age of 9;
- (3) two hours for mechanical restraint or seclusion for individuals ages 9 - 17; and
- (4) four hours for mechanical restraint or seclusion for individuals age 18 and older.

(b) Order continuing use of restraint or seclusion. If the original order has not yet expired and the registered nurse has evaluated the individual face-to-face and determined the continuing existence of a behavioral emergency, the registered nurse must contact the physician. The physician shall conduct a face-to-face evaluation before issuing an order that continues the use of the restraint or seclusion. a physician may renew the original order provided it would not result in the use of:

- (1) personal restraint beyond 15 minutes total from the time of initiation of the original personal restraint;

(2) mechanical restraint or seclusion beyond two hours total from the time of initiation of the original mechanical restraint or seclusion, for individuals under age 9;

(3) mechanical restraint or seclusion beyond four hours total from the time of initiation of the original mechanical restraint or seclusion, for individuals ages 9 - 17; or

(4) mechanical restraint or seclusion beyond eight hours total from the time of initiation of the original mechanical restraint or seclusion, for individuals age 18 and older.

(c) Issuing and renewal documentation. The physician shall document the clinical justification for continuing the restraint or seclusion before issuing or renewing an order that continues the use of restraint or seclusion.

§ 415.262. Family Notification

(a) The CEO or CEO's designee shall notify the individual's legally authorized representative if any, or authorized family member of each episode of restraint or seclusion initiated for the management of a behavioral emergency as follows:

(1) except as provided by 42 Code of Federal Regulations, Part 2, and subsection (c) of this section, a staff member shall notify as soon as possible, but no later than 12 hours following the initiation of the restraint or seclusion, the legally authorized representative of a minor under age 18 who is not or has not been married; and

(2) except as provided by subsection (c) of this section, in cases in which the adult individual has consented to have one or more specified family members informed regarding the individual's care, and the family member or members have agreed to be informed, a staff member will inform the family member or members of the restraint or seclusion episode within the time frame determined by prior agreement between the individual and specified family member(s).

(b) The date and time of notification and the name of the staff member providing the notification must be documented in the individual's medical record. The documentation shall include any unsuccessful attempts, the phone number called, and the name(s) of person(s) with whom the staff member spoke.

(c) As permitted by Texas Health and Safety Code, § 611.0045(b), a professional may deny an individual's legally authorized representative access to any portion of an individual's record if the facility determines that the disclosure of such portion would be harmful to the individual's physical, mental, or emotional health.

HISTORY: The provisions of this § 415.262 adopted to be effective July 22, 2014, 39 TexReg 5581

§ 415.263. Safekeeping of Personal Possessions During Mechanical Restraint or Seclusion

(a) The individual's right to retain personal possessions and personal articles of clothing may be suspended during mechanical restraint or seclusion when necessary to ensure the safety of the individual or others as described in Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services).

(b) An inventory of any personal possessions or personal articles of clothing temporarily taken from the individual shall be listed in the individual's medical record. The inventory shall be witnessed by two staff members who shall sign or authenticate this list in individual's medical record. If

personal articles of clothing are taken from the individual, appropriate other clothing shall be issued.

(c) The items shall be kept in a locked place.

(d) Upon release of the individual from a restraint, seclusion, or combination of the two, the individual, if willing, and two staff members shall be asked to sign documentation in the individual's medical record indicating the status of items returned and the date and time the items were returned.

(e) If the individual is unwilling or unable to sign the documentation, a staff member shall document the refusal in the individual's medical record and list the items that were returned to the individual, the time they were returned, and the staff member who returned the items.

HISTORY: The provisions of this § 415.263 adopted to be effective July 22, 2014, 39 TexReg 5581

§ 415.264. Restraint Off Facility Premises or for Transportation

(a) All off-premises transport, a registered nurse or physician assistant, as appropriate to the individual's clinical condition and the requirements of this subchapter, shall accompany the staff member(s) transporting an individual off premises when it has been clinically determined that during the time away from the facility the individual may require:

- (1) medical attention;
- (2) administration of medication; or
- (3) restraint.

(b) Excursion off facility premises. a staff member may not restrain an individual being transported off facility premises unless the individual meets the criteria for a behavioral emergency, a physician orders the restraint, and transport is medically necessary with documented clinical justification.

(1) If restraint is required while an individual is on an excursion off facility premises, the staff member initiating the restraint shall contact a registered nurse to assist in obtaining a physician's order for the restraint as soon as feasible within the applicable timeframes prescribed in this subchapter.

(2) The staff members on the excursion shall implement, monitor, document, and report, in accordance with the requirements of this subchapter, any episode of restraint that occurs off premises.

(c) Restraint initiated prior to transportation. a staff member may not restrain an individual being transported prior to departure unless the situation meets the criteria for a behavioral emergency or the individual has been determined and documented manifestly dangerous in accordance with Chapter 415, Subchapter G of this title (relating to Determination of Manifest Dangerousness) within one month prior to transportation, a physician orders the restraint, and transport is medically necessary with documented clinical justification.

(1) If a behavioral emergency exists and a physician orders restraint prior to departure, at least one of the staff members accompanying the individual to the destination facility shall be a registered nurse.

(2) A female staff member shall accompany a female individual.

(3) If the duration of transport exceeds the maximum allowable duration of restraint on the original order, and a behavioral emergency continues to exist, or the person has been determined manifestly dangerous within one month prior to transportation, the registered nurse may either obtain a physician's telephone order to renew

the restraint or obtain a new order for restraint, and renewal, as soon as feasible but within the applicable timeframes prescribed in this subchapter.

(4) Staff members accompanying the individual from the originating facility shall implement, monitor, document, and report, in accordance with the requirements of this subchapter, a restraint that is ordered and implemented prior to transportation. If transportation is for the purposes of transfer to another facility, staff members at the originating facility must fax the required documentation to the destination facility on the day of transport. Staff members at the destination facility are responsible for filing the documentation in the individual's medical record at the destination facility.

(d) Restraint initiated during transportation. If restraint is required following departure, a registered nurse shall obtain a physician's order from the originating facility for any restraint as soon as feasible within the applicable timeframes prescribed in this subchapter. If a registered nurse is not present during transportation, the staff member initiating any restraint shall contact a registered nurse to obtain a physician's order for the restraint as soon as possible within the applicable timeframes prescribed in this subchapter.

(1) If an individual is restrained during transportation, the staff member accompanying the individual shall implement, monitor, document, and report the episode of restraint in accordance with the requirements of this subchapter, and shall ensure that all documentation required under this subchapter relating to the restraint, including the physician's order, is transmitted to the destination facility within 24 hours following the time the individual is delivered to the destination facility.

(2) Staff members at the originating facility shall document and report restraint that is ordered and implemented during transportation. Staff members at the destination facility shall maintain documentation of the restraint at the destination facility.

(e) Comfort during transportation. The staff members shall provide an individual in restraint during transport the care required under § 415.266(c) of this title (relating to Observation, Monitoring, and Care of the Individual in Restraint or Seclusion Initiated in Response to a Behavioral Emergency).

HISTORY: The provisions of this § 415.264 adopted to be effective July 22, 2014, 39 TexReg 5581

§ 415.265. Communicating with the Individual During Restraint or Seclusion Initiated in Response to a Behavioral Emergency

(a) As soon as feasible after restraint or seclusion has been implemented in response to a behavioral emergency, the staff member shall refer to the individual's declaration for mental health treatment, if any, as a reference in determining and implementing an individual's preferences. The staff member shall communicate reassurance and commitment to the individual's safety on an ongoing basis, including inquiring as to how the staff member can assist the individual to de-escalate.

(b) Communication with the individual shall be conducted in developmentally appropriate language and by a method that is understandable to the individual (e.g., American Sign Language, Spanish, Vietnamese) and that accommodates the individual's method of communication (e.g., releasing a hand of an individual who communicates using American Sign Language).

(c) A staff member shall document in the individual's medical record all attempts to communicate with the individual and the individual's response to these attempts.

HISTORY: The provisions of this § 415.265 adopted to be effective July 22, 2014, 39 TexReg 5581

§ 415.266. Observation, Monitoring, and Care of the Individual in Restraint or Seclusion Initiated in Response to a Behavioral Emergency

(a) Observation.

(1) A staff member of the same gender as the individual shall maintain continuous face-to-face observation of an individual in mechanical restraint, unless the individual's history or other factors indicate this would be contraindicated (e.g., sexual or physical abuse perpetrated by someone of the same gender, in which case a staff member of the opposite gender may be used).

(2) A staff member who is not physically applying personal restraint shall maintain continuous face-to-face observation of an individual in personal restraint.

(3) A staff member shall maintain continuous face-to-face observation of an individual in seclusion for at least one hour. After one hour, the staff member may monitor the individual continuously using simultaneous video and audio equipment in close proximity to the individual.

(b) Monitoring. a staff member shall ensure adequate respiration and circulation of the individual in restraint at all times.

(1) Respiratory status, circulation, and skin integrity must be monitored continuously and documented every 15 minutes (or more often if deemed necessary by the ordering physician). Cardiac status must be monitored and documented hourly (or more often if deemed necessary by the ordering physician).

(2) An assigned staff member must perform range of motion exercises for each extremity, one extremity at a time, for at least five minutes no less frequently than every 60 minutes that an individual is in mechanical restraint.

(c) Care. a staff member must provide for the hygiene, hydration, nutrition, elimination needs, and safety of an individual in restraint or seclusion. The individual in restraint or seclusion shall be provided:

(1) bathroom privileges at least once every two hours (or more frequently, if requested and not contraindicated, or otherwise required by the individual's circumstances and physical or medical needs);

(2) an opportunity to drink water or other appropriate liquids every two hours (or more frequently, if requested and not contraindicated, or otherwise required by the individual's circumstances and physical or medical needs);

(3) an opportunity to bathe at least once daily (or more frequently, if clinically indicated or in the presence of incontinence);

(4) medications and medical equipment as ordered;

(5) regularly scheduled meals and snacks served on dishes that are appropriate for safety; and

(6) an environment that is free of safety hazards, adequately ventilated during warm weather, adequately heated during cold weather, and appropriately lighted.

§ 415.267. Safe and Appropriate Techniques for Restraint or Seclusion

(a) A facility shall ensure that:

(1) when personal restraint is used, staff members act to protect the individual's privacy as much as possible without compromising the safety of individuals or staff members during the episode;

(2) if the individual does not calm and mechanical restraint is required, the individual is moved to a protected environment observable by other staff members and away from other individuals as soon as possible;

(3) when a mechanical restraint is used, the individual has a protected environment that is observable by other staff members and is away from other individuals that safeguards the individual's personal dignity and well-being;

(4) the individual is protected (e.g., from assault by others) while in restraint or seclusion; and

(5) the facility uses a seclusion room, as defined in § 415.253 of this title (relating to Definitions), for any individual placed in seclusion.

(b) A facility shall develop and implement policies and procedures to ensure that it is in compliance with the requirements of this section.

HISTORY: The provisions of this § 415.267 adopted to be effective July 22, 2014, 39 TexReg 5581

§ 415.268. Actions to be Taken when an Individual Falls Asleep in Restraint or Seclusion Initiated in Response to a Behavioral Emergency

(a) If the individual appears to fall asleep while in mechanical restraint or seclusion, the registered nurse shall assess the individual to determine if the individual is asleep.

(b) If the individual is determined to be asleep, the registered nurse shall instruct an authorized staff member to immediately release the individual from restraint or unlock the seclusion room door. Authorized staff members shall maintain continuous face-to-face observation until the individual is awake and re-evaluated by the registered nurse.

(c) The registered nurse shall assess the individual upon awakening.

(d) If the individual exhibits behaviors requiring restraint or seclusion upon awakening, the registered nurse shall obtain a new physician's order for any new initiation of restraint or seclusion.

HISTORY: The provisions of this § 415.268 adopted to be effective July 22, 2014, 39 TexReg 5581

§ 415.269. Transfer of Primary Responsibility for Individual in Restraint or Seclusion

(a) At the time of transfer of primary responsibility between staff members for the individual in restraint or seclusion, including transfer of responsibility at the change of shift, the staff member with primary responsibility must meet with the staff member who will assume primary responsibility to review the individual's status. a staff member shall monitor the individual during the transfer process.

(b) The review shall be documented and shall include:

(1) information regarding the time a restraint or seclusion was initiated;

(2) the nature of the circumstances requiring restraint or seclusion;

(3) the current status of the individual's physical, emotional, and behavioral condition;

(4) any medication administered; and

(5) the type of care needed.

HISTORY: The provisions of this § 415.269 adopted to be effective July 22, 2014, 39 TexReg 5581

§ 415.270. Release of an Individual From Restraint or Seclusion

(a) Personal restraint. When a personal restraint has been initiated by a staff member, but the individual has not yet been evaluated by a physician, a physician's assistant, or a registered nurse, and the staff member determines that the individual's behavior has changed sufficiently to no longer require the personal restraint, the staff member must immediately release the individual from the restraint but shall remain with the individual until a physician, physician's assistant, or registered nurse has evaluated the individual for release based on a determination that the individual no longer requires the restraint or seclusion.

(b) Mechanical restraint or seclusion. When a mechanical restraint or seclusion has been initiated, and the unsafe situation ends, a staff member shall contact a physician, a physician's assistant, or a registered nurse. The physician, physician's assistant, or registered nurse must evaluate the individual for release based on a determination as to whether the unsafe situation has resolved. A staff member must immediately release an individual whose behavior has been evaluated by a physician, physician's assistant, or registered nurse and determined to no longer require the restraint or seclusion.

HISTORY: The provisions of this § 415.270 adopted to be effective July 22, 2014, 39 TexReg 5581

§ 415.271. Actions to be Taken Following Release of an Individual from Restraint or Seclusion Initiated in Response to a Behavioral Emergency

(a) Immediately following the release of an individual from restraint or seclusion, a staff member shall:

(1) take action, if appropriate, to facilitate the individual's reentry into the social milieu by providing the individual with transition activities and an opportunity to return to ongoing activities;

(2) observe the individual for at least 15 minutes; and

(3) document in the individual's medical record the steps taken and observations made of the individual's behavior during this transition period.

(b) The facility shall conduct or attempt to conduct debriefings based on the following:

(1) identify what led to the episode and what could have been handled differently;

(2) identify strategies to prevent future restraint or seclusion of the individual, taking into consideration suggestions from the individual and the individual's declaration for mental health treatment, if any;

(3) ascertain whether the individual's physical well-being, psychological comfort, including trauma, and right to privacy were protected or otherwise addressed, as applicable;

(4) counsel the individual(s) in relation to any trauma that may have resulted from the episode; and

(5) when indicated, make appropriate modifications to the individual's treatment plan and/or the treatment plans of other individuals.

(c) Following an episode of restraint or seclusion, the facility shall conduct, or attempt to conduct, the following debriefings.

(1) Staff members who were involved in the episode, other staff members who the facility determine are

appropriate, and supervisors shall debrief together as a support mechanism and to identify successes, problems, or necessary modifications as soon after the episode as is practicable in light of facility operations.

(2) When clinically indicated and at a time when the individual has cognitive capacity to understand what could have been done differently to avoid restraint or seclusion, a staff member or members shall conduct a private discussion with the individual, the individual's LAR, if practicable, and family members, if clinically appropriate and available, with the consent of the individual.

(3) If the episode was a restraint, when clinically indicated or upon request of individuals who witnessed the restraint, a staff member or members shall have a private discussion with individuals who witnessed the restraint.

(d) If an individual has been discharged from the facility, does not have the cognitive capacity to understand what he or she could have done differently to avoid restraint or seclusion, where clinically inappropriate, or where not requested pursuant to subsection (c)(3) of this section, the facility does not need to attempt the debriefings described in subsection (c)(2) and (3) of this section. The facility shall document in the individual's medical record the reason for not conducting the debriefing described in subsection (c)(2) of this section.

(e) Any debriefings conducted under subsection (c)(2) or (3) of this section shall be documented in the individual's medical record in a timely manner. Any debriefing conducted pursuant to subsection (c)(1) of this section shall be documented in accordance with facility policy. If debriefing is not conducted, the reasons for not completing the debriefing shall be documented in the individual's medical record.

HISTORY: The provisions of this § 415.271 adopted to be effective July 22, 2014, 39 TexReg 5581

§ 415.272. Documenting, Reporting, and Analyzing Restraint or Seclusion

(a) Facility documentation. The facility shall document the assessment, monitoring, and evaluation of an individual in restraint or seclusion on a facility approved form. Documentation in an individual's medical record shall include:

(1) the date and time the intervention began and ended;

(2) the name, title, and credentials of any staff members present at the initiation of the intervention, with identification of the staff member's role in the intervention, including as an observer, or status as an uninvolved witness, as applicable;

(3) the name of the individual restrained or secluded and the type of restraint or seclusion used;

(4) the time and results of any assessments, observation, monitoring, and evaluations, including those required under this subchapter, and attention given to personal needs;

(5) the physician's documentation of the order authorizing restraint or seclusion in accordance with the requirements of § 415.260 of this title (relating to Initiation of Restraint or Seclusion in a Behavioral Emergency);

(6) any specific alternatives and less restrictive interventions, including preventive or de-escalatory interventions that were attempted by any staff member prior to the initiation of restraint or seclusion, and the individual's response to any such intervention;

(7) the individual's response to the use of restraint or seclusion; and

(8) other documentation relating to an episode of restraint or seclusion otherwise required under this subchapter.

(b) Report to CEO. Staff members shall report daily to the facility CEO or designee any use of a restraint or seclusion.

(1) The CEO or designee shall take appropriate action to identify and correct unusual or unwarranted utilization patterns on a systemic basis, and shall address each specific use of restraint or seclusion that is determined or suspected of being improper at the time it occurs.

(2) The CEO or designee shall maintain a central file containing the following information:

(A) age, gender, and race of the individual;

(B) deaths or injuries to the individual or staff members;

(C) length of time the restraint or seclusion was used;

(D) types and dosage of emergency medications administered during the restraint or seclusion, if any;

(E) type of intervention, including each type of restraint used;

(F) name of staff members who were present for the initiation of the restraint or seclusion; and

(G) date, day of the week, and time the intervention was initiated.

(c) Additional reporting in the case of death or serious injury. By the next business day following an individual's death or serious injury, facilities shall report the following information to the appropriate entity designated in subsection (d) of this section.

(1) Each death or serious injury that occurs while an individual is in restraint or seclusion;

(2) Each death that occurs within 24 hours after the individual has been removed from restraint or seclusion; and

(3) Each death known to the facility that occurs within one week after restraint or seclusion where it is reasonable to assume that use of restraint or placement in seclusion contributed directly or indirectly to a individual's death. "Reasonable to assume" in this context includes, but is not limited to, deaths related to restrictions of movement for prolonged periods of time, or death related to chest compression, restriction of breathing, or asphyxiation.

(d) Reporting deaths or serious injury. Facilities shall report the deaths or serious injuries of individuals in restraint or seclusion as follows.

(1) Medicare- or Medicaid-certified facilities shall report a death to the appropriate office for the Center for Medicare and Medicaid Services in accordance with the federal death reporting requirements relating to restraint and seclusion.

(2) Facilities that are neither Medicare- nor Medicaid-certified shall report a death or serious injury to DSHS's medical director for behavioral health.

(3) In addition to reporting in accordance with paragraphs (1) and (2) of this subsection, all facilities licensed under Chapter 133 of this title (relating to Hospital Licensing) or Chapter 134 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units) shall report a death or serious injury to the Patient Quality Care Unit of DSHS's Division for Regulatory Services.

(4) Facilities shall comply with any additional reporting requirements relating to restraint or seclusion to which they are subject, including any applicable reporting requirements under The Children's Health Act of 2000 and federal regulations promulgated pursuant to the Act.

(e) Facility review of data. The facility shall review and analyze, at least quarterly, the data that is required by subsection (b)(2) of this section to identify and correct trends and patterns that may contribute to the use of restraint or seclusion (e.g., disproportionate use of restraint or seclusion with specific populations or shifts).

(f) Continuous improvement. The facility shall use the data continuously to improve and ensure:

(1) a positive environment that minimizes the use of an involuntary intervention;

(2) the safety of every individual and staff member;

(3) the use of restraint and seclusion is implemented in accordance with the requirements of this subchapter;

(4) that the risks of injury and other negative effects to individuals and staff members are reduced; and

(5) that policies and training curriculum incorporate the requirements of this subchapter.

(g) On or before November 1, 2014, and quarterly thereafter, any facility that is a Medicare or Medicaid provider shall submit to DSHS the data required by Centers for Medicare and Medicaid Services for hospital-based inpatient psychiatric service measures related to the use of restraint or seclusion.

(h) On or before November 1, 2015, and quarterly thereafter, a facility to which this subchapter applies shall prepare and submit to DSHS a report, consistent with the Department of State Health Services Behavioral Interventions Reporting Guidelines (guidelines) available at: <http://www.dshs.state.tx.us/Licensing-Facilities.shtm>, of the following data from the immediately preceding quarter:

(1) interventions used during a behavioral emergency, including:

(A) rate of seclusions (per 1,000 bed days);

(B) rate of personal restraints (per 1,000 bed days);

(C) rate of mechanical restraints (per 1,000 bed days); and

(D) rate of emergency medication orders (per 1,000 bed days).

(2) number of serious injuries related to an intervention used in a behavioral emergency.

(3) number of deaths related to an intervention used in a behavioral emergency.

(4) de-escalation techniques—description of all de-escalation techniques commonly used by the facility in connection with any of the emergency interventions described in paragraph (1) of this subsection.

HISTORY: The provisions of this § 415.272 adopted to be effective July 22, 2014, 39 TexReg 5581

§ 415.273. Use of Restraint in Situations Involving Non-violent, Non-self-destructive Behavior

(a) If an assessment reveals non-violent, non-self-destructive behavior, as defined in §415.253 of this title (relating to Definitions), the facility shall use the least restrictive intervention that effectively protects the individual from harm. If the intervention is a restraint as defined in this subchapter, it shall only be used in the following circumstances:

(1) medically necessary;

(2) ordered by a physician;

(3) needed to ensure the individual's safety; and

(4) used only after less restrictive interventions have been considered, or attempted and determined to be ineffective, or are judged to be unlikely to protect the individual or others from harm.

(b) Prior to the application of a restraint for the management of non-violent, non-self-destructive behavior, an assessment of the individual shall be done to determine that the risks associated with the use of the restraint are outweighed by the risks of not using it.

(c) The physician's order for the restraint shall specify:

- (1) a time limit on the use of the restraint;
- (2) any special considerations for the use of restraint;
- (3) the specific type of restraint to be used;
- (4) who is responsible for implementing the restraint;

and

(5) instructions for monitoring the individual.

(d) The physician shall renew the order as frequently as determined by facility policy.

(e) The order for the restraint shall be followed by consultation with the individual's treating physician if the restraint was not ordered by the individual's treating physician. The consultation shall be documented in the individual's medical record no later than the next business day, except that it shall be done sooner, when an earlier consultation is clinically indicated.

(f) The care of the individual shall be based on a rationale that reflects consideration of the individual's medical needs and health status.

(1) If the facility has made a clinical determination that its use of restraint for the management of non-violent, non-self-destructive behavior requires a frequency of assessment or an aspect of care or treatment that differs from the provisions of this subchapter governing restraint in a behavioral emergency, facility policies and procedures on the use of restraint for the management of non-violent, non-self-destructive behavior shall address:

(A) the facility's required frequency of assessment of the individual during restraint; and

(B) how the individual's circulation, hydration, elimination, level of distress and agitation, mental status, cognitive functioning, cardiac functioning, skin integrity, nutrition, exercise, and range of motion of extremities are to be assessed and addressed during restraint.

(2) The plan for monitoring the individual and the rationale for the frequency of monitoring shall be documented in the individual's medical record.

(g) A dentist at a facility, including any contractor providing dental services on the facility premises shall not restrain an individual for dental care or rehabilitation unless the restraint is ordered by the individual's physician. The dentist shall maintain a copy of the order in the individual's medical record and shall ensure compliance with the requirements of the order.

(h) Whenever a restraint is ordered by a physician, the ordering physician shall prescribe the frequency of assessment required for the individual during restraint and how the individual's circulation, hydration, elimination needs, level of distress and agitation, mental status, cognitive functioning, cardiac functioning, skin integrity, nutrition, exercise, and range of motion of extremities are to be assessed and addressed during restraint.

HISTORY: The provisions of this § 415.273 adopted to be effective July 22, 2014, 39 TexReg 5581

§ 415.274. Permitted Practices

(a) Escort or brief physical prompt. An individual may be assisted to move from one location to another when guidance is needed if the individual agrees verbally or with gestures and is able to cooperate with the staff member who is attempting to assist the individual to move.

(b) Activities of daily living. a staff member may assist an individual who is willing and able to cooperate with toileting, bathing, dressing, eating, or other personal hygiene activities that normally involve the use of touch.

(c) Immediate danger of harm. a staff member may escort, prompt, or move an individual who is unable to respond in the affirmative or negative or is unable to move due to his or her psychiatric or medical condition if there is an imminent danger of harm to the individual because of a circumstance in the individual's immediate environment.

(d) Immobilization during medical, dental, diagnostic, or surgical procedure. a positioning or securing device used to maintain the position of, limit mobility of, or temporarily immobilize an individual, with the individual's consent, during medical, dental, diagnostic, or surgical procedures and that is a standard part of the procedure is not considered a restraint. The care of the individual shall be based on a rationale that reflects consideration of the individual's medical needs and health status.

(1) Facility policies and procedures on the use of immobilization during medical, dental, diagnostic and surgical procedures shall address:

(A) the frequency of assessment of the individual during immobilization; and

(B) how the individual's circulation, hydration, elimination needs, level of distress and agitation, mental status, cognitive functioning, cardiac functioning, skin integrity, nutrition, exercise, and range of motion of extremities are to be assessed during immobilization.

(2) The plan for monitoring the individual and the rationale for the frequency of monitoring shall be documented in the individual's medical record.

HISTORY: The provisions of this § 415.274 adopted to be effective July 22, 2014, 39 TexReg 5581

§ 415.275. Clinical Timeout and Quiet Time

(a) The facility shall develop, implement, and enforce policies and procedures that address the use of clinical timeout and quiet time as preventive and de-escalating interventions to prevent a behavioral emergency from occurring and to alleviate or otherwise reduce the necessity for any use of restraint or seclusion.

(b) The policies and procedures shall include the following requirements.

(1) Clinical timeout. a staff member may suggest that an individual initiate clinical timeout.

(A) Prior to clinical timeout, the staff member suggesting that an individual initiate clinical timeout shall explain to the individual that clinical timeout is voluntary.

(B) Each time an individual uses clinical timeout, a staff member shall document that use in the individual's medical record.

(C) The facility's documentation of any use of clinical timeout shall include a description of the conditions under which the clinical timeout was suggested and the individual's response to the suggestion.

(D) A decision by the individual to decline to begin, or remain in, clinical timeout or similar interventions

may not result in the staff member's use of restraint or seclusion of the individual, unless the initiation and use of the restraint or seclusion is permitted under, and otherwise meets the requirements of, this subchapter. to physically force or use personal restraint or coercion to direct the individual to a clinical timeout areas or to prevent an individual from leaving an area separated from other individuals receiving services, constitutes a restraint and/or seclusion and renders the procedure subject to the requirements for restraint or seclusion, as applicable, described in this subchapter.

(2) Quiet time. An individual may request the use of quiet time and, unless clinically contraindicated, be granted quiet time.

(A) Under no circumstances may a staff member mandate quiet time for an individual. If a staff member does so, or if the individual wishes to terminate any self-initiated use of quiet time, and a staff member requires the individual to remain, the situation becomes a restraint and/or seclusion, as applicable, and becomes subject to the requirements for restraint or seclusion, as applicable, described in this subchapter.

(B) Unless a staff member terminates quiet time for clinical reasons, the individual may terminate quiet time at any time. Under no circumstances, except for clinical reasons, may a staff member coerce or force a client out of quiet time. If a staff member does so, the situation becomes a restraint and/or seclusion, and becomes subject to the requirements for restraint or seclusion, as applicable, described in this subchapter.

(C) On every occasion that quiet time is denied or terminated for clinical reasons, a staff member shall document in the medical record the conditions under which the quiet time was denied or terminated.

HISTORY: The provisions of this § 415.275 adopted to be effective July 22, 2014, 39 TexReg 5581

§ 415.276. Protective and Supportive Devices

(a) Voluntary use of protective and supportive devices. a protective or supportive device that is easily removable by the individual without a staff member's assistance is not restraint.

(1) A protective or supportive device may only be used with the consent of the individual.

(2) A supportive device must allow greater freedom of mobility than would be possible without the use of the device.

(3) Use of a protective or supportive device shall be based upon a prior order of a physician, physician's assistant, or advanced practice registered nurse.

(4) If an individual uses a protective or supportive device, the individual's treatment team shall include an occupational or physical therapist and the individualized treatment plan shall specify that a protective or supportive device is to be used and shall:

(A) include any special considerations for the use of the device based on the findings of the comprehensive initial assessment performed at admission or intake;

(B) include an outcome oriented goal;

(C) describe the specific type of device to be used;

(D) specify who is responsible for applying the device;

(E) describe the plan for monitoring the individual; and

(F) reflect periodic assessment, intervention, and evaluation by the treatment team, including the physical therapist, on an ongoing basis.

(5) The facility shall have written policies and procedures that address the proper implementation of this subsection and monitoring requirements with reference to individuals with particular types of protective and supportive devices.

(b) Involuntary use of protective and supportive devices. a protective or supportive device that is not easily removable by the individual without a staff member's assistance constitutes a restraint, and becomes subject to the requirements for restraint or seclusion, as applicable, described in this subchapter.

(c) Protective devices for wound healing. After a wound has healed, the continued use of a protective device constitutes a mechanical restraint and becomes subject to the requirements for restraint or seclusion, as applicable, described in this subchapter.

HISTORY: The provisions of this § 415.276 adopted to be effective July 22, 2014, 39 TexReg 5581

Subchapter G.

Determination of Manifest Dangerousness

§ 415.301. Purpose

The purpose of this subchapter:

(1) establishes the two types of review boards that conduct hearings to determine whether an individual is manifestly dangerous;

(2) defines the elements to be considered in the determination of manifest dangerousness by review boards;

(3) describes which persons may and may not be subject to a hearing to determine manifest dangerousness;

(4) enumerates the rights of an individual who is subject to a hearing to determine manifest dangerousness;

(5) provides due process for individuals who have been determined manifestly dangerous; and

(6) provides procedures governing the transfer of an individual to the maximum security unit/secure adolescent unit (MSU/SAU) and from the MSU/SAU.

HISTORY: The provisions of this § 415.301 adopted to be effective July 17, 2002, 27 TexReg 6297; amended to be effective July 19, 2011, 36 TexReg 4567

§ 415.302. Application

This subchapter applies to facilities, as defined in § 415.303(8) of this title (relating to Definitions).

HISTORY: The provisions of this § 415.302 adopted to be effective July 17, 2002, 27 TexReg 6297; amended to be effective July 19, 2011, 36 TexReg 4567

§ 415.303. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Adolescent—A person who is 13, 14, 15, 16, or 17 years of age.

(2) Adult—A person who is 18 years of age or older.

(3) Assessment of risk for manifest dangerousness—An age and developmentally appropriate comprehensive evaluation of the commonly accepted risk factors for violence and the results of evidence based tools that assess and/or measure risk of violence.

(4) Child—A person who is 12 years of age or younger.

(5) Commissioner—The commissioner of the Texas Department of State Health Services or designee.

(6) DSHS—The Texas Department of State Health Services.

(7) DSHS Dangerousness Review Board (DRB)—Five mental health professionals impaneled in accordance with § 415.305(e) of this title (relating to Procedures and Requirements for All Review Boards) to conduct a hearing to determine whether or not an individual served in the MSU/SAU is manifestly dangerous.

(8) Facility—Any state hospital, or a state center with an inpatient component, that is operated by DSHS, excluding Waco Center for Youth.

(9) Facility CEO (chief executive officer)—The superintendent or director of a facility or his/her designee.

(10) Facility review board—Five mental health professionals impaneled in accordance with § 415.305(e) of this title to conduct a hearing to determine whether or not an individual served in a facility is manifestly dangerous.

(11) Hearing—An oral proceeding conducted by a review board in accordance with § 415.305(g) of this title in which evidence relating to an individual's possible manifest dangerousness is heard.

(12) Independent evaluator—A licensed physician or mental health professional (as defined) retained by an individual or LAR who conducts an evaluation or examination of the individual.

(13) Individual—An adult or adolescent committed to a facility (as defined) who is to be the subject of a hearing to determine manifest dangerousness or who has been determined manifestly dangerousness in accordance with this subchapter.

(14) LAR or legally authorized representative—A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and who may include a parent, guardian, or managing conservator of a minor individual, or a guardian of an adult individual.

(15) Local authority—An entity designated by the commissioner in accordance with the Texas Health and Safety Code, § 533.035(a).

(16) Manifestly dangerous—The term used to describe an individual who, despite receiving appropriate treatment, including treatment targeted to the individual's dangerousness, remains likely to endanger others and requires a maximum security environment in order to continue treatment and protect public safety.

(17) Mental health professional—A person, licensed in the State of Texas, who has at least one year of experience as a provider of mental health services within the past five years and who is:

(A) a licensed physician who has successfully completed a psychiatric residency;

(B) a licensed psychologist or licensed psychological associate;

(C) a licensed master social worker (LMSW);

(D) a licensed registered nurse with a bachelor's degree in nursing with American Nurses Credentialing Center (ANCC) certification in psychiatric/mental health nursing;

(E) an advanced practice registered nurse licensed to practice in the area of psychiatric/mental health nursing; or

(F) a licensed registered nurse with a master's degree in psychiatric/mental health nursing.

(18) Maximum security unit—A facility unit designated by the commissioner to treat adults who are determined manifestly dangerous in accordance with this subchapter and persons who have been committed pursuant to the Texas Code of Criminal Procedure, Article 46B or 46C.

(19) MSU/SAU (maximum security unit/secure adolescent unit)—Either the maximum security unit or the secure adolescent unit, as appropriate to the individual.

(20) MSU/SAU CEO (chief executive officer)—The superintendent or director, or his/her designee, of the facility at which the MSU/SAU is located.

(21) Receiving facility—

(A) For an individual who was transferred to the MSU/SAU—The receiving facility is the facility that transferred the individual to the MSU/SAU unless another facility is identified as the receiving facility.

(B) For an individual who was committed to the MSU/SAU pursuant to the Texas Code of Criminal Procedure—The receiving facility is the facility in the service area of the local authority that serves the individual's county of residence unless another facility or state mental retardation facility is identified as the receiving facility.

(22) Risk management plan—A plan for managing the factors contributing to an individual's potential for dangerousness that is implemented following transfer from the MSU/SAU and which includes a description of the level of external controls needed to ensure the safety of others and effective treatment for the individual, the type of commitment needed to support these controls, and recommendations for continuing care.

(23) Secure adolescent unit—A facility unit designated by the commissioner to treat adolescents who are determined manifestly dangerous in accordance with this subchapter.

(24) Spokesperson—A person appointed by an individual or LAR to represent the individual or LAR at a hearing. a spokesperson may be an attorney, a relative, a friend, or advocate.

§ 415.304. Persons Who May and May Not Be Subject to a Hearing to Determine Manifest Dangerousness

(a) Only an adult or adolescent who is committed by a court of law to a facility (as defined) may be subject to a hearing to determine manifest dangerousness.

(b) The following persons may not be subject to a hearing to determine manifest dangerousness:

(1) an adult, adolescent, or child who is voluntarily admitted to a facility (as defined) or who is under an order of protective custody in accordance with the Texas Health and Safety Code, § 574.022; and

(2) a child who is committed by a court of law to a facility (as defined).

HISTORY: The provisions of this § 415.304 adopted to be effective July 17, 2002, 27 TexReg 6297; amended to be effective July 19, 2011, 36 TexReg 4567

§ 415.305. Procedures and Requirements for All Review Boards

(a) Pool of mental health professionals.

(1) Facility review board. Each facility CEO is responsible for having access to a pool of mental health professionals who will be available to be impaneled as members on the facility review board. a CEO may appoint a pool of professionals or may arrange to have

access to a pool of professionals appointed by another facility CEO.

(2) DSHS Dangerousness Review Board. The commissioner will appoint a pool of at least 16 mental health professionals who will be available to be impaneled as members on the DSHS Dangerousness Review Board.

(b) Chair.

(1) Facility review board. The facility CEO will appoint the chair of the facility review board from the pool of mental health professionals described in subsection (a)(1) of this section. If the chair is unable to serve on the review board for a particular hearing, then the chair will appoint another review board member to act as chair for the hearing. If the chair is unable to appoint an acting chair, then the facility CEO will make the appointment.

(2) DSHS Dangerousness Review Board. The commissioner will appoint the chair of the DSHS Dangerousness Review Board from the pool of mental health professionals described in subsection (a)(2) of this section. If the chair is unable to serve on the review board during a convening date of the board or for a particular hearing, then the chair will appoint another review board member to act as chair for the convening date or the particular hearing, as appropriate. If the chair is unable to appoint an acting chair, then the commissioner will make the appointment.

(c) Qualification of certain members impaneled for a hearing.

(1) If the individual who is the subject of the hearing is an adolescent, then:

(A) at least one member must be a psychiatrist with training and experience in the care of adolescents; and

(B) at least two members must have training and experience in the care of adolescents as a provider of mental health services.

(2) If the individual who is the subject of the hearing is an adult, then:

(A) at least one member must be a psychiatrist with training and experience in the care of adults; and

(B) at least two members must have training and experience in the care of adults as a provider of mental health services.

(3) If the individual who is the subject of the hearing has mental retardation, then at least one member must have training and experience in the care of persons with mental retardation.

(d) Disqualification from being impaneled as a review board member for a hearing.

(1) A mental health professional in a pool may not be impaneled as a facility review board member or as a DSHS Dangerousness Review Board member for the hearing of an individual if:

(A) the professional has been a staff member on the individual's unit or a member of the individual's treatment team within the past 12 months or during the individual's current admission, whichever is longer; or

(B) the review board chair and the individual or LAR agree that the participation of the professional would constitute a conflict of interest.

(2) A mental health professional in a pool may not be impaneled as a facility review board member for the hearing of an individual if the professional has had personal or professional involvement with the individual's behavior or incident that precipitated the hearing.

(3) A mental health professional in a pool may not be impaneled as a DSHS Dangerousness Review Board member for the hearing of an individual if the professional served on the facility review board that determined the individual to be manifestly dangerous and which resulted in the individual's transfer to the MSU/SAU.

(e) Impaneling review board members for a hearing. For each hearing, the chair will select five mental health professionals from the pool to be impaneled as review board members.

(1) For each hearing, at least three of the five review board members must meet the qualifications described in subsection (c) of this section.

(2) For each hearing, none of the five review board members may be disqualified as described in subsection (d) of this section.

(f) Legal assistance. An attorney from the DSHS Office of General Counsel will provide legal assistance to a review board as needed.

(g) Conduct of hearings.

(1) Each hearing must be tape-recorded or transcribed, with the recording or transcription made a part of the individual's medical record.

(2) The review board must consider all pertinent and relevant information including the hearing documentation submitted in accordance with § 415.307(3)(A) of this title (relating to Procedures and Requirements Specific to a Facility Review Board) or § 415.310(4)(A) of this title (relating to Procedures and Requirements Specific to the DSHS Dangerousness Review Board) and the source documents that correspond to the hearing documentation.

(3) Only review board members, the individual, LAR, and spokesperson(s) may participate in the hearing, except that other persons may provide testimony as permitted under this subchapter.

(4) If requested by the individual or LAR, or at the chair's discretion, the chair will require each witness to provide his/her testimony without other witnesses being present. The chair is not required to exclude any person whose presence is determined by the chair to be essential to the hearing. The individual and LAR are not subject to being excluded from the hearing room under this paragraph.

(5) The review board will assure that, prior to providing testimony to the review board, each witness will swear or affirm that his/her testimony will be the truth, the whole truth, and nothing but the truth.

(6) The chair or the facility CEO may permit persons to attend the hearing to provide technical assistance or for professional training purposes.

(7) All persons attending and participating in a hearing must conduct themselves with proper dignity, courtesy, and respect for the hearing. Disorderly conduct will not be tolerated. Attorneys must observe and practice the standards of ethical behavior prescribed for attorneys at law by the State Bar of Texas.

(8) The chair must provide the individual with an opportunity to be interviewed by the review board. The individual may decline to be interviewed.

(9) The chair is responsible for ensuring that hearings are conducted according to the provisions in this subchapter and that a safe environment is maintained during the hearing.

(h) Deliberations.

(1) After all evidence has been heard, the review board chair will adjourn the hearing and the review board members will begin deliberations.

(2) Only review board members may be present and participate in deliberations.

(3) The review board may cease deliberating in order to reopen the hearing if the board decides that additional information is necessary. If the board reopens the hearing, then the board must allow all persons who participated in the hearing before it was adjourned to attend and participate in the reopened hearing.

(4) A review board may not view the mere fact that an individual chooses not to participate in the hearing as evidence that the individual is manifestly dangerous.

(i) Review board determination.

(1) A review board may determine that an individual is manifestly dangerous only if there is sufficient clinical justification that the individual is manifestly dangerous (as defined).

(2) A facility review board may determine that an individual is manifestly dangerous only if the vote by review board members is unanimous.

(3) The DSHS Dangerousness Review Board may determine that an individual is not manifestly dangerous only if the vote by review board members is unanimous.

(4) If the vote by review board members is not unanimous, then any member may prepare a written dissent, stating the reason for such dissent.

(j) Written report.

(1) Within 14 days after the review board's determination, the chair of the review board or designee shall prepare a written report and submit it to the facility CEO or MSU/SAU CEO (as appropriate), along with copies to the individual, LAR, and spokesperson(s). The report must include:

- (A) findings of fact;
- (B) the determination of whether or not the individual is manifestly dangerous;
- (C) the rationale for the determination; and
- (D) written dissents, if any.

(2) The facility CEO shall ensure a copy of the report is filed in the individual's medical record.

§ 415.306. Rights of the Individual

(a) The individual and LAR have the right to represent themselves at the hearing or to be represented by a spokesperson of their choice.

(b) The individual and LAR and their spokesperson(s) have the right to:

- (1) be present at the hearing; and
- (2) examine before the date of the hearing:

(A) the hearing documentation referenced as § 415.307(3)(A) of this title (relating to Procedures and Requirements Specific to a Facility Review Board) unless an exception exists as provided by § 415.307(3)(B) of this title; or

(B) the hearing documentation referenced as § 415.310(4)(A) of this title (relating to Procedures and Requirements Specific to the DSHS Dangerousness Review Board).

(c) The individual and LAR or their spokesperson(s) have the right to:

- (1) present witnesses on the individual's behalf;
- (2) present evidence and establish all pertinent facts and circumstances;
- (3) present an argument on any issue involved;
- (4) cross-examine witnesses; and
- (5) respond to or refute any testimony or evidence.

(d) The individual and LAR have the right to have each witness provide his/her testimony without other witnesses being present as described in § 415.305(g)(4) of this title (relating to Procedures and Requirements for All Review Boards).

HISTORY: The provisions of this § 415.306 adopted to be effective July 17, 2002, 27 TexReg 6297; amended to be effective July 19, 2011, 36 TexReg 4567

§ 415.307. Procedures and Requirements Specific to a Facility Review Board

If the facility CEO has reason to believe that a person receiving services in the facility may be manifestly dangerous and in need of transfer to the MSU/SAU, then the facility CEO may convene the facility review board to conduct a hearing to determine whether the person is manifestly dangerous in accordance with this section.

(1) Convening the board. The facility CEO will inform the chair of the facility review board of the need to convene the board. The chair will impanel a review board in accordance with § 415.305(e) of this title (relating to Procedures and Requirements for All Review Boards) and identify the time and location of the hearing. The chair will serve as one of the five members unless the chair is disqualified as described in § 415.305(d) of this title. If the chair is disqualified, then the chair will appoint one of the five impaneled members to act as chair for the hearing.

(2) Notice and statement(s). The facility CEO will provide notice of the hearing and receive statement(s) in accordance with this paragraph.

(A) Notice. At least three days before the hearing, the facility CEO will complete the Notice of Hearing by Facility Review Board, referenced in § 415.314 of this title (relating to Notice of Hearing Forms), and deliver it to the individual and LAR, if any, for signature. (i) The facility CEO must ensure that the content of the notice is communicated in a language and format likely to be understandable to the recipient(s) and initiating a discussion with the individual and LAR regarding the right to be represented by a spokesperson. If the individual or LAR requests a spokesperson, then the CEO will assist him/her with identifying and securing a spokesperson. If an individual who lacks capacity does not request a spokesperson, then the CEO will make a reasonable effort to identify and secure a spokesperson. If the CEO is unable to secure a spokesperson, then the facility rights protection officer will serve as the individual's spokesperson to ensure the individual's rights are protected during the hearing. (ii) The facility CEO will provide a copy of the signed notice to the individual, LAR, and spokesperson(s) and will file a copy of the signed notice in the individual's medical record.

(B) Statement(s). At least three days before the hearing, the facility CEO will provide the individual and LAR with an opportunity to submit a statement concerning the possible manifest dangerousness of the individual. The CEO will offer assistance to the individual or LAR in preparing a statement, and will provide assistance if requested. The individual or LAR may decline to submit a statement.

(3) Hearing documentation.

(A) At least one day before the hearing the facility CEO will ensure the following documentation is distributed to each impaneled review board member, the individual, LAR, and spokesperson(s): (i) a written summary, prepared by the individual's treatment

team, of all pertinent background information, including:

- (I) a legal history, including current legal status;
- (II) a clinical history and assessments, including identified strengths that may contribute to success in treatment;
- (III) a chronology of aggressive behaviors with emphasis upon those that have occurred since the last admission;
- (IV) the treatment interventions used to address the aggressive behaviors and behavioral responses of the individual to the interventions;
- (V) an assessment of risk for manifest dangerousness, including the results of any applicable standardized assessment tools; and
- (VI) a description of the alleged behavior or incident believed to indicate manifest dangerousness and the rationale for making the individual the subject of a hearing; (ii) statement(s) from the individual and LAR, as described in paragraph (2) (B) of this section, if submitted; and (iii) any other pertinent information considered appropriate by the individual's treatment team.

(B) The hearing will not be delayed solely as a result of the hearing documentation not being received by the LAR or spokesperson(s) if a reasonable effort was made to deliver the documentation and the facility CEO determines that the safety of the individual and others will be compromised by delaying the hearing.

(4) Hearing, deliberations, and determination. The chair will ensure the hearing, deliberations, and determination are conducted in accordance with § 415.305(g) - (i) of this title.

(5) Action taken upon determination.

(A) Notification. Within 24 hours after the facility review board's determination, the facility CEO will provide written notification to the individual, LAR, and spokesperson(s) of: (i) the facility review board's determination; and (ii) if the review board determines that the individual is manifestly dangerous, the right of the individual or LAR to appeal the determination and the procedures for requesting an appeal as described in § 415.309 of this title (relating to Appealing a Facility Review Board's Determination of Manifest Dangerousness).

(B) Determined manifestly dangerous. (i) If the facility review board determines that an individual is manifestly dangerous, then the facility CEO will ensure compliance with § 415.308 of this title (relating to Transfer of an Individual to the MSU/SAU). (ii) If, prior to being transferred to the MSU/SAU, the facility CEO believes that the individual is no longer manifestly dangerous, then the CEO must reconvene the facility review board to conduct another hearing in accordance with paragraphs (1) - (4) of this section. Transfer of the individual to the MSU/SAU is stayed pending the hearing.

(C) Determined not manifestly dangerous. If the facility review board determines that an individual is not manifestly dangerous, then the individual will remain at the facility. The facility CEO may not convene the facility review board to conduct another hearing to determine whether the individual is manifestly dangerous unless the CEO has reason to believe that there has been sufficient change in the individual's condition to indicate that the individual may be manifestly dangerous.

§ 415.308. Transfer of an Individual to the MSU/SAU

(a) Prior to the transfer of an individual who has been determined manifestly dangerous by a facility review board, the facility CEO will ensure:

(1) the hearing documentation described in § 415.307(3)(A) of this title (relating to Procedures and Requirements Specific to a Facility Review Board) is submitted to the MSU/SAU CEO; and

(2) the individual's treating physician communicates with the MSU/SAU physician who will treat the individual regarding the characteristics of the individual. The individual's treating physician may communicate with another physician at the MSU/SAU if the other physician at the MSU/SAU is the designee of MSU/SAU physician who will treat the individual.

(b) The facility is responsible for the individual's transportation to the MSU/SAU, which will occur as soon as clinically and practicably feasible.

(c) The facility CEO will ensure the following are informed of the individual's transfer to the MSU/SAU when it occurs:

(1) the committing court;

(2) the individual's LAR, if any; and

(3) the local authority that serves the individual's county of residence.

§ 415.309. Appealing a Facility Review Board's Determination of Manifest Dangerousness

The individual, LAR, or facility CEO may appeal a facility review board's determination that the individual is manifestly dangerous on the grounds that the determination was substantively flawed or on the grounds that the determination was affected by an error in a procedure specified in this subchapter. Transfer of the individual to the MSU/SAU is not stayed pending appeal.

(1) A request for an appeal from the individual or LAR must be in writing and received by the facility CEO within 10 days after receipt of the written report as described in § 415.305(j) of this title (relating to Procedures and Requirements for All Review Boards). The request must include:

(A) the reason(s) why the requestor believes the review board's determination was substantively flawed; or

(B) the reason(s) why the requestor believes the review board's determination was affected by an alleged procedural error, including a description of the procedure specified in this subchapter and the alleged error.

(2) If the facility CEO believes that the determination was substantively flawed or that a procedural error may have affected the determination or if the CEO agrees with the person who requested an appeal that the determination was substantively flawed or that a procedural error may have affected the determination, then the facility CEO will convene the facility review board to conduct a new hearing in accordance with § 415.307(1) - (4) of this title (relating to Procedures and Requirements Specific to a Facility Review Board), except that the facility review board members who were impaneled for the original hearing may not be impaneled on the facility review board that convenes for the new hearing. If the individual has already been transferred to the MSU/SAU, then the facility is responsible for returning the individual to the facility for the new hearing. A determination that the individual is manifestly dangerous by the facility review board in accordance with this paragraph may not be appealed.

(3) If the facility CEO does not agree with the person who requested an appeal that the determination was substantively flawed or that a procedural error may have affected the determination, then the facility CEO will notify the person in writing that the appeal has been denied.

§ 415.310. Procedures and Requirements Specific to the DSHS Dangerousness Review Board

The DSHS Dangerousness Review Board must convene at least once every month in accordance with this section.

(1) Schedule of hearings. The DSHS Dangerousness Review Board chair, in consultation with the MSU/SAU CEO, is responsible for scheduling hearings in accordance with this paragraph.

(A) Initial hearing. (i) a hearing for an individual committed to the MSU/SAU under the Texas Code of Criminal Procedure must be scheduled to occur on such a date so as to ensure the individual, if determined not manifestly dangerous, will be transferred from the MSU/SAU within 60 days after arrival at the MSU/SAU, as required by the Texas Code of Criminal Procedure, Article 46B.105 or 46C.260. (ii) a hearing for an individual transferred to the MSU/SAU from a facility must be scheduled within 60 days after transfer.

(B) Regularly scheduled hearing(s). If an individual is determined manifestly dangerous at the initial hearing, then another hearing must be scheduled no later than six months after the initial hearing. If the individual continues to be determined manifestly dangerous, then another hearing must be scheduled no later than every six months after the previous hearing for as long as the individual remains at the MSU/SAU.

(C) Hearings scheduled upon request. (i) If, between regularly scheduled hearings, an individual's treating physician or treatment team determines that there has been sufficient change in the individual's condition to indicate that the individual may no longer be manifestly dangerous, then the physician or team will request that a hearing be scheduled. The request must be in writing, submitted to the MSU/SAU CEO, and include the individual's name, the reason(s) for the request, and supporting documentation.

(I) If the MSU/SAU CEO concurs with the request, then a hearing must be scheduled for the next convening date of the board that will enable adequate notice as described in paragraph (3) of this section.

(II) If the MSU/SAU CEO does not concur with the request, then the CEO will notify the physician or team that the request has been denied. (ii) If, between regularly scheduled hearings, an independent evaluator (as defined) determines that there is sufficient evidence that the individual may no longer be manifestly dangerous, then the individual or LAR may request that a hearing be scheduled. The request must be in writing, submitted to the MSU/SAU CEO, and include the individual's name, the reason(s) for the request, and supporting documentation.

(I) If the MSU/SAU CEO concurs with the request, then a hearing must be scheduled for the next convening date of the board that will enable adequate notice as described in paragraph (3) of this section.

(II) If the MSU/SAU CEO does not concur with the request, then the CEO will notify the individual or LAR that the request has been denied.

(2) Convening the board. The chair will convene the review board by impaneling review board members for each hearing that is scheduled for the convening date in accordance with § 415.305(e) of this title (relating to Procedures and Requirements for All Review Boards). If the chair does not select him/herself to serve as one of the five members for a hearing, then the chair will appoint one of the five impaneled members to act as chair for the hearing.

(3) Notice and statement(s). The MSU/SAU CEO will provide notice of a hearing and receive statement(s) in accordance with this paragraph.

(A) Notice. At least 10 days before the hearing, the MSU/SAU CEO will complete the Notice of Hearing by DSHS Dangerousness Review Board, referenced in § 415.314 of this title (relating to Notice of Hearing Forms), and deliver it to the individual and LAR, if any, for signature. (i) The MSU/SAU CEO must ensure that the content of the notice is communicated in a language and format likely to be understandable to the recipient(s) and initiating a discussion with the individual and LAR regarding the right to be represented by a spokesperson. If the individual or LAR requests a spokesperson, then the CEO will assist him/her with identifying and securing a spokesperson. If an individual who lacks capacity does not request a spokesperson, then the CEO will make a reasonable effort to identify and secure a spokesperson. If the CEO is unable to secure a spokesperson, then the facility rights protection officer will serve as the individual's spokesperson to ensure the individual's rights are protected during the hearing. (ii) The MSU/SAU CEO will provide a copy of the signed notice to the individual, LAR, and spokesperson(s) and will file a copy of the signed notice in the individual's medical record.

(B) Statement(s). At least 10 days before the hearing, the MSU/SAU CEO will provide the individual and LAR with an opportunity to submit a statement concerning the possible manifest dangerousness of the individual. The CEO will offer assistance to the individual or LAR in preparing a statement, and will provide assistance if requested. The individual or LAR may decline to submit a statement.

(4) Hearing documentation.

(A) At least seven days before the hearing the MSU/SAU CEO will ensure the following documentation is distributed to each review board member impaneled for the hearing, the individual, LAR, and spokesperson(s): (i) a written summary, prepared by the individual's MSU/SAU treatment team, of all pertinent background information, including:

(I) a legal history, including current legal status;

(II) a clinical history and assessments, including identified strengths that may contribute to success in treatment;

(III) a chronology of aggressive behaviors with emphasis upon those that have occurred since the last admission;

(IV) the treatment interventions used to address the aggressive behaviors and behavioral responses of the individual to the interventions;

(V) an assessment of risk for manifest dangerousness, including the results of any applicable standardized assessment tools; and

(VI) a description of the behavior or incident that resulted in the individual's transfer or commitment to the MSU/SAU; (ii) statement(s)

from the individual and LAR, as described in paragraph (3)(B) of this section, if submitted; (iii) if an independent evaluator requested the hearing, the request, including the reason(s) for the request and the supporting documentation; and (iv) any other pertinent information considered appropriate by the individual's MSU/SAU treatment team.

(B) Any additional relevant documentation that becomes available after the hearing documentation has been distributed shall be submitted to the MSU/SAU CEO. The CEO will ensure the chair receives a copy of the additional documentation as soon as possible before the hearing.

(C) With the approval of the chair, the individual or LAR may agree to receive the hearing documentation less than seven days before the hearing.

(5) Preparing for possible transfer from the MSU/SAU. At least seven days prior to the hearing, the MSU/SAU CEO must ensure:

(A) that a copy of the hearing documentation (referenced in paragraph (4)(A) of this section), is sent to the receiving facility CEO; and

(B) that the individual's MSU/SAU treating physician consults with a physician at the identified receiving facility regarding the individual's characteristics, including those with implications for risk management, to facilitate the development of an appropriate risk management plan by the receiving facility.

(6) Hearing, deliberations, and determination. The chair will ensure the hearing, deliberations, and determination are conducted in accordance with § 415.305(g) - (i) of this title (relating to Procedures and Requirements for All Review Boards).

(7) Action taken upon determination.

(A) Notification. Within 24 hours after the DSHS Dangerousness Review Board's determination, the MSU/SAU CEO will provide written notification to the individual, LAR, and spokesperson(s) of: (i) the review board's determination; and (ii) the right of the individual or LAR to request that the MSU/SAU CEO refer the matter to the commissioner and the procedures for requesting a referral as described in § 415.311 of this title (relating to Disagreement with DSHS Dangerousness Review Board Determination and Referral to Commissioner) if the individual or LAR disagrees with the determination.

(B) Determined manifestly dangerous. If the DSHS Dangerousness Review Board determines that an individual is manifestly dangerous, then the individual will remain at the MSU/SAU. A subsequent hearing will be scheduled for the individual in accordance with paragraph (1) of this section.

(C) Determined not manifestly dangerous. If the DSHS Dangerousness Review Board determines that an individual is not manifestly dangerous, then the MSU/SAU CEO will: (i) notify the receiving facility CEO of the determination; and (ii) ensure compliance with § 415.312 of this title (relating to Transferring an Individual from the MSU/SAU).

(D) New hearing. The DSHS Dangerousness Review Board may conduct a new hearing at any time upon request by the MSU/SAU CEO or upon its own motion. The new hearing must be conducted in accordance with paragraphs (2) - (6) of this section.

§ 415.311. Disagreement with DSHS Dangerousness Review Board Determination and Referral to Commissioner

(a) If the MSU/SAU CEO disagrees with the DSHS Dangerousness Review Board's determination, then the CEO will refer the matter to the commissioner for resolution. The referral must be in writing and include the CEO's reason(s) for disagreeing with the determination and documentation supporting the reason(s). Transfer of the individual from the MSU/SAU is stayed pending resolution.

(b) The commissioner will resolve the disagreement by deciding whether or not the individual is manifestly dangerous. The commissioner will inform the MSU/SAU CEO of the decision within 21 days after receipt of the referral.

(c) If the individual, LAR, or treatment team member disagrees with the DSHS Dangerousness Review Board's determination, then he/she may request that the MSU/SAU CEO refer the matter to the commissioner for resolution. The request must be in writing and received by the CEO within five days after receipt of the written report as described in § 415.305(j) of this title (relating to Procedures and Requirements for All Review Boards). The request must include the reason(s) for disagreeing with the determination and documentation supporting the reason(s). Upon receipt, the CEO will review the request and decide whether to refer the matter to the commissioner in accordance with subsection (a) of this section.

§ 415.312. Transferring an Individual from the MSU/SAU

(a) An individual committed to the MSU/SAU pursuant to the Texas Code of Criminal Procedure, Article 46B or 46C, who has been determined not manifestly dangerous by the DSHS Dangerousness Review Board or the commissioner at the initial hearing (described in § 415.310(1)(A)(i) of this title (relating to Procedures and Requirements Specific to the DSHS Dangerousness Review Board)) must be transferred from the MSU/SAU within 60 days following his/her arrival at the MSU/SAU.

(b) In addition to the timeframe for transfer described in subsection (a) of this section, an individual must be transferred from the MSU/SAU within 14 days after being determined not manifestly dangerous by the DSHS Dangerousness Review Board or the commissioner.

(c) As soon as possible after an individual has been determined not manifestly dangerous by the DSHS Dangerousness Review Board or the commissioner, the MSU/SAU staff will notify the committing court of the pending transfer.

(d) Prior to the individual's transfer from the MSU/SAU, the MSU/SAU CEO will ensure that the hearing documentation described in § 415.310(4)(A) of this title (relating to Procedures and Requirements Specific to the DSHS Dangerousness Review Board) becomes a part of the individual's medical record.

(e) The MSU/SAU is responsible for the individual's transportation from the MSU/SAU to the receiving facility.

(f) Upon completion of the transfer, the receiving facility must contact the committing court to establish communication between the receiving facility and the court (e.g., inform court of new contact concerning the individual).

(g) The receiving facility CEO may not convene the facility review board to conduct a hearing to determine whether the individual is manifestly dangerous unless the CEO has reason to believe that there has been sufficient change in the individual's condition to indicate that the individual may be manifestly dangerous.

(h) A continuing care plan for an individual who has received treatment at the MSU/SAU must include an assessment of risk for manifest dangerousness.

§ 415.313. Competency of Review Board Members

(a) Using a DSHS-approved orientation and training program:

(1) the chair of each review board is responsible for providing initial orientation to each mental health professional appointed in the pool from which the chair selects review board members; and

(2) the MSU/SAU CEO and the chair of the DSHS Dangerousness Review Board are responsible for conducting annual training for all mental health professionals appointed in all pools.

(b) Each mental health professional appointed in a pool is responsible for:

(1) maintaining a current professional license;

(2) preparing for and attending each review board hearing for which the professional is impaneled;

(3) immediately informing the chair of the review board of any disqualifying factor as described in § 415.305(d) of this title (relating to Procedures and Requirements for All Review Boards);

(4) attending initial orientation and annual training;

(5) being knowledgeable about current clinical and scientific information relevant to the assessment, management, and treatment of risk for manifest dangerousness and determination of manifest dangerousness; and

(6) complying with this subchapter.

(c) On an annual basis, each facility CEO will evaluate the performance of the mental health professionals employed at the facility who are appointed to a pool. In order to remain in a pool, a professional must achieve a rating of at least competent in his/her performance of the work behaviors described in subsection (b) of this section.

(d) The commissioner may waive for emergent or special circumstances, as minimally necessary to assure the efficient operation of a review board, the responsibility for a mental health professional appointed to a pool to annual training. There is no waiver of the requirement to attend initial orientation.

HISTORY: The provisions of this § 415.313 adopted to be effective July 17, 2002, 27 TexReg 6297; amended to be effective July 19, 2011, 36 TexReg 4567

§ 415.314. Notice of Hearing Forms

The following forms are referenced in this subchapter.

(1) Notice of Hearing by Facility Review Board; and
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(2) Notice of Hearing by DSHS Dangerousness Review Board.

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§ 415.315. References

Reference is made to the following statutes:

(1) Texas Health and Safety Code, § 533.035(a) and § 574.022; and

(2) Texas Code of Criminal Procedure, Articles 46B and 46C.

HISTORY: The provisions of this § 415.315 adopted to be effective July 17, 2002, 27 TexReg 6297; amended to be effective July 19, 2011, 36 TexReg 4567

CHAPTER 416.

Mental Health Community-Based Services

Section

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Subchapter A.

Mental Health Rehabilitative Services

§ 416.1. Purpose

The purpose of this subchapter is to describe the requirements for providing mental health (MH) rehabilitative services that includes the following:

(1) crisis intervention services;

(2) medication training and support services;

(3) psychosocial rehabilitative services;

(4) skills training and development services; and

(5) day programs for acute needs.

HISTORY: The provisions of this § 416.1 adopted to be effective January 22, 2014, 39 TexReg 299

§ 416.2. Application

This subchapter applies to providers of MH rehabilitative services funded through Medicaid, or a general revenue contract with the department.

HISTORY: The provisions of this § 416.2 adopted to be effective January 22, 2014, 39 TexReg 299

§ 416.3. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Adolescent—An individual who is at least 13 years of age, but younger than 18 years of age.

(2) Adult—An individual who is 18 years of age or older.

(3) APRN or Advanced practice registered nurse—A staff member who is a registered nurse approved by the Texas Board of Nursing as a clinical nurse specialist in psychiatric/mental health or nurse practitioner in psychiatric/mental health, in accordance with Texas Occupations Code, Chapter 301. The term is synonymous with “advanced nurse practitioner.”

(4) Authorization period—The duration for which the provider has obtained authorization in accordance with § 416.6(a) of this title (relating to Service Authorization and Recovery Plan).

(5) Business day—Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code, § 662.021.

(6) CFP or Certified family partner—A person who:

(A) is 18 years of age or older;

(B) has received: (i) a high school diploma; or (ii) a high school equivalency certificate issued in accordance with the laws applicable to the issuing agency;

(C) has at least one year of lived experience raising a child or adolescent with an emotional or mental health issues as a parent or LAR;

(D) has at least one year of experience navigating a child-service system (e.g., mental health, juvenile justice, social security, or special education) as a parent or LAR; and

(E) has successfully completed the certified family partner (CFP) training and passed the certification examination recognized by the department.

(7) CFR—The Code of Federal Regulations.

(8) Child—An individual who is at least three years of age, but younger than 13 years of age.

(9) Crisis—A situation in which:

(A) an individual presents an immediate danger to self or others;

(B) an individual’s mental or physical health is at risk of serious deterioration; or

(C) an individual believes that he or she presents an immediate danger to self or others or that his or her mental or physical health is at risk of serious deterioration.

(10) CSSP or community services specialist—A staff member who, as of August 30, 2004:

(A) received: (i) a high school diploma; or (ii) a high school equivalency certificate issued in accordance with the law of the issuing state;

(B) has had three continuous years of documented full-time experience in the provision of MH rehabilitative services; and

(C) has demonstrated competency in the provision and documentation of MH rehabilitative services in accordance with this subchapter and the MH Rehabilitative Services Billing Guidelines.

(11) CSU or crisis stabilization unit—A crisis stabilization unit licensed under the Texas Health and Safety Code, Chapter 577; and Chapter 134 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units).

(12) Day—Calendar day, unless otherwise specified.

(13) Department—The Department of State Health Services.

(14) Direct clinical supervision—An LPHA’s or QMHP’s interaction with a staff member who delivers MH rehabilitative services to ensure that MH rehabilitative services are clinically appropriate and in compliance with this subchapter by:

(A) conducting a documented meeting with the staff member at regularly scheduled intervals; and

(B) conducting documented observations of the staff member providing MH rehabilitative services at a frequency determined by the supervisor based on the staff member’s skill level.

(15) Face-to-face—A contact with an individual that occurs when the individual is in the physical presence of the staff member who is delivering the service. Face-to-face does not include contacts made through the use of electronic media.

(16) Group—A face-to-face service delivery modality involving at least one staff member and:

(A) two to eight adults; or

(B) two to six children or adolescents and may include their LARs or primary caregivers, which do not count toward the group size limit.

(17) Health risk factors—Circumstances that contribute to the premature death and disabling chronic diseases such as heart disease, diabetes and cancers. They include, but are not limited to, substance abuse or addiction, high blood pressure, tobacco use, high blood glucose, use of and side effects of some neuroleptic medications, physical inactivity, overweight and obesity, and unsafe sex.

(18) IMD or institution for mental diseases—Based on 42 CFR § 435.1009, a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of individuals with serious mental illness, including medical attention, nursing care, and related services.

(19) Individual—A person seeking or receiving MH rehabilitative services.

(20) In vivo—The individual’s natural environment (e.g., the individual’s residence, work place, or school).

(21) LAR or legally authorized representative—A person authorized by law to act on behalf of an adult, child, or adolescent with regard to a matter described in this subchapter, including, but not limited to, a parent, guardian, or managing conservator.

(22) LMFT or Licensed marriage and family therapist—An individual who is licensed as a licensed marriage and family therapist by the Texas State Board of Examiners of Marriage and Family Therapists in accordance with Texas Occupations Code, Chapter 502.

(23) Licensed medical staff member—A staff member who is:

(A) a physician (MD) or (DO);

(B) a physician assistant (PA);

(C) an APRN;

(D) a registered nurse (RN);

(E) an LVN; or

(F) a pharmacist.

(24) LPC or Licensed professional counselor—A person who is licensed as a licensed professional counselor by the Texas State Board of Examiners of Professional Counselors in accordance with Texas Occupations Code, Chapter 503.

(25) LOC or level of care—A designation given to the department’s standard sets of mental health services, based on the uniform assessment and utilization

management guidelines referenced in §416.17 of this title (relating to Guidelines), which specify the type, amount, and duration of MH rehabilitative services to be provided to an individual.

(26) LPHA or licensed practitioner of the healing arts—This term shall have the meaning set forth in the §412.303 of this title (relating to Definitions).

(27) LVN or licensed vocational nurse—A staff member who is licensed as a vocational nurse by the Texas Board of Nursing in accordance with Texas Occupations Code, Chapter 301.

(28) Mental health (MH) rehabilitative services—Services that:

(A) are individualized, age-appropriate training and instructional guidance that restore an individual's functional deficits due to serious mental illness or SED;

(B) are designed to improve or maintain the individual's ability to remain in the community as a fully integrated and functioning member of that community; and

(C) consist of the following services: (i) crisis intervention services; (ii) medication training and support services; (iii) psychosocial rehabilitative services; (iv) skills training and development services; and (v) day programs for acute needs.

(29) Medicaid provider—A Medicaid-enrolled provider with which the department has a Medicaid provider agreement to provide MH rehabilitative services under the State's Medicaid Program.

(30) Medical necessity or medically necessary—A clinical determination made by an LPHA that services:

(A) are reasonable and necessary for the treatment of a serious mental illness; or to improve, maintain, or prevent deterioration of functioning resulting from such a disorder;

(B) are provided in accordance with accepted standards of practice in behavioral health care;

(C) are furnished in the most appropriate and least restrictive setting in which services can be safely provided;

(D) are at the most appropriate level or amount of service that can be safely provided; and

(E) could not have been omitted without adversely affecting the individual's mental and/or physical health or the quality of care rendered.

(31) Mental health disorder—Health conditions involving changes in thinking, mood, and/or behaviors that are associated with distress or impaired functioning. When mental health disorders are more severe, they are called serious mental illnesses, which includes anxiety disorder, attention-deficit/hyperactivity disorder, depressive and other mood disorders, eating disorders, schizophrenia, and others.

(32) Nursing services—Services provided or delegated by an RN acting within the scope of his or her practice, as described in Texas Occupations Code, Chapter 301.

(33) On site—At a location operated by a provider or a person or entity under arrangement with the provider.

(34) PA or Physician assistant—A staff member who is licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners in accordance with Texas Occupations Code, Chapter 204.

(35) Peer provider—A staff member who:

(A) has received: (i) a high school diploma; or (ii) a high school equivalency certificate issued in accordance with the law of the issuing state; and

(B) has at least one cumulative year of receiving mental health services for a disorder that is treated in the target population for Texas.

(36) Pharmacist—A staff member who is licensed as a pharmacist by the Texas State Board of Pharmacy in accordance with Texas Occupations Code, Chapter 558.

(37) Physician—A staff member who is:

(A) licensed as a physician by the Texas Medical Boards in accordance with Texas Occupations Code, Chapter 155 (Medical Doctor or Doctor of Osteopathy); or

(B) authorized to perform medical acts under an institutional permit at a Texas postgraduate training program approved by the Accreditation Council on Graduate Medical Education, the American Osteopathic Association, or the Texas Medical Board.

(38) Primary caregiver—A person 18 years of age or older who has actual care, control, and possession of a child or adolescent.

(39) Problem-solving—The use of specific steps and strategies to analyze and evaluate a problematic situation in order to determine a course of action to resolve the problematic situation.

(40) Provider—An entity with which the department has a contractual agreement to provide MH Rehabilitative Services, including a Medicaid provider.

(41) Psychologist—A staff member who is licensed as a psychologist by the Texas State Board of Examiners of Psychologists in accordance with Texas Occupations Code, Chapter 501.

(42) QMHP-CS or qualified mental health professional-community services—A staff member who meets the definition of a QMHP-CS set forth in §412.303 of this title (relating to Definitions).

(43) Recovery—A process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

(44) Recovery plan or treatment plan—A written plan developed with the individual and, as required, the LAR and a QMHP-CS that specifies the individual's recovery goals, objectives, and strategies/interventions in conjunction with the uniform assessment that guides the recovery process and fosters resiliency as further described in §412.322(e) of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization).

(45) Resilience—The ability to cope with and recover from adversity and stress.

(46) RN or registered nurse—A staff member who is licensed as a registered nurse by the Texas Board of Nursing in accordance with Texas Occupations Code, Chapter 301.

(47) SED or Serious emotional disturbance—A diagnosed mental health disorder that substantially disrupts a child's or adolescent's ability to function socially, academically, and emotionally.

(48) Serious mental illness—An illness, disease, disorder, or condition (other than a sole diagnosis of epilepsy, dementia, substance use disorder, or intellectual or developmental disability) that:

(A) substantially impairs an individual's thought, perception of reality, emotional process, development, or judgment; or

(B) grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.

(49) Staff member—Personnel of a provider including a full-time or part-time employee, contractor, intern, or volunteer.

(50) Therapeutic team—A group of staff members who work together in a coordinated manner for the purpose of providing comprehensive mental health services to an individual.

(51) Uniform assessment—An assessment adopted by the department that is used for recommending an approved level of care (LOC).

(52) Utilization management guidelines—Guidelines developed by the department that suggest the type, amount, and duration of mental health services for each LOC.

HISTORY: The provisions of this § 416.3 adopted to be effective January 22, 2014, 39 TexReg 299

§ 416.4. General Requirements for Providers of MH Rehabilitative Services

(a) Compliance with MH community standards. In addition to complying with this subchapter, a provider must also comply with Chapter 412, Subchapter G of this title (relating to Mental Health Community Services Standards) in the provision of MH rehabilitative services, as described in § 412.304(a)(4) and (b) of this title (relating to Responsibility for Compliance).

(b) Staff supervision and oversight. a provider must develop policies and procedures in accordance with this subchapter for the supervision and oversight of staff members who provide MH rehabilitative services. Staff members who provide supervision must have experience in providing rehabilitative services and training in supervising rehabilitative services. The MH rehabilitative services provided by a:

(1) CFP must be directly supervised by a staff member who is credentialed as a QMHP-CS at minimum and who must have at least one year experience in the department-approved recovery and resilience protocol;

(2) peer provider must be under the direct clinical supervision of an LPHA;

(3) CSSP must be clinically supervised by a QMHP-CS;

(4) QMHP-CS must be clinically supervised by at least another QMHP-CS; and

(5) QMHP-CS supervisor of another QMHP-CS must be clinically supervised by an LPHA.

(c) Subcontract for providing services.

(1) A provider may choose to have any MH rehabilitative service provided by a person or entity through a subcontract.

(2) A provider must ensure that, if MH rehabilitative services are provided through a subcontract, then the subcontractor complies with all applicable federal and state laws, rules, and regulations, and any provider manuals and policy clarification letters promulgated by the department.

(d) Prohibitions against discrimination and retaliation.

(1) A provider may not discriminate against or deny services to an individual based on race, color, national origin, religion, sex, sexual orientation, age, disability, co-occurring disorder, or political affiliation.

(2) A provider must ensure that an individual's refusal of any service offered by the provider does not preclude the individual from accessing a needed MH rehabilitative service.

HISTORY: The provisions of this § 416.4 adopted to be effective January 22, 2014, 39 TexReg 299

§ 416.5. Eligibility

An individual is eligible for MH rehabilitative services if:

(1) the individual:

(A) is a resident of the State of Texas;

(B) is an adult with a serious mental illness or a child or adolescent with a serious emotional disturbance (SED); and

(C) qualifies for an LOC; and

(2) a determination that such services are medically necessary has been made by an LPHA who is:

(A) an employee of the department;

(B) an employee of an entity designated to make such determinations on behalf of the department; or

(C) a contractor of an entity designated to make such determinations on behalf of the department, if the LPHA is not otherwise employed by or contracting with an entity providing MH rehabilitative services through a subcontract.

§ 416.6. Service Authorization and Recovery Plan

(a) Prerequisites to providing services. With the exception of crisis intervention services:

(1) the provider must obtain prior authorization from the department or its designee for the MH rehabilitative services to be provided in accordance with the uniform assessment, which is referenced in § 416.17 of this title (relating to Guidelines); and the utilization management guidelines, which are referenced in § 416.17 of this title; and

(2) an LPHA must determine whether the need for MH rehabilitative services meets the definition of medical necessity.

(b) Recovery planning.

(1) In collaboration with the individual or LAR, develop a recovery plan in accordance with § 412.322(e) of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization) that also includes a list of the type(s) of MH rehabilitative services authorized in accordance with subsection (a)(1) of this section.

(2) A provider must develop the recovery plan required by paragraph (1) of this subsection within 10 days after the authorization date.

(c) Documenting medical necessity for crisis intervention services.

(1) An LPHA must, within two business days after crisis intervention services are provided:

(A) determine whether the crisis intervention services met the definition of medical necessity; and

(B) if the crisis intervention services were determined to meet medical necessity, document the medical necessity for such services.

(2) A provider is not required to develop a recovery plan for providing crisis intervention services.

(d) Reauthorization of MH rehabilitative services.

(1) Prior to the expiration of the authorization period or depleting the amount of services authorized:

(A) the provider must make a determination of whether the individual continues to need MH rehabilitative services; and

(B) an LPHA must determine whether the continuing need for MH rehabilitative services meets the definition of medical necessity.

(2) If the determination is that the individual continues to need MH rehabilitative services and that such services are medically necessary, the provider must:

(A) request another authorization from the department or its designee for the same type and amount of MH rehabilitative service previously authorized; or

(B) submit a request to the department or its designee, with documented clinical reasons for such request, to change the type or amount of MH rehabilitative services previously authorized if: (i) the provider determines that the type or amount of MH rehabilitative services previously authorized is inappropriate to address the individual's needs; and (ii) the criteria described in the utilization management guidelines for changing the type or amount of MH rehabilitative services has been met.

(e) Recovery plan review.

(1) In collaboration with the individual or LAR or primary caregiver, the provider must, review the recovery plan to determine if the plan adequately assists the individual in achieving recovery through the identified goals, objectives, and needs:

(A) at intervals set forth in the utilization management guidelines;

(B) as clinically indicated; and

(C) at the request of the individual, LAR, or primary caregiver.

(2) At the time the recovery plan is reviewed, the provider must:

(A) solicit active participation of the individual and LAR or primary caregiver of a child or adolescent regarding the services received to date and whether the services received have led to improvement and/or if there are other services to address unmet needs; and

(B) document such input.

(f) Revisions to the recovery plan. If, after review of the recovery plan, the provider in collaboration with the individual or LAR determines that the recovery plan does not adequately address the needs of the individual, the provider must, as appropriate:

(1) revise the content of the recovery plan; or

(2) must document medical necessity if there is a change in an LOC; and

(3) request authorization for a change in the type or amount of the MH rehabilitative services authorized consistent with subsection (d)(2) of this section.

§ 416.7. Crisis Intervention Services

(a) Description. Crisis intervention services are interventions provided in response to a crisis in order to reduce or manage symptoms of serious mental illness or SED and to prevent admission of an individual to a more restrictive environment. Crisis intervention services consist of the following interventions:

(1) an assessment of dangerousness of the individual to self or others;

(2) the coordination of emergency care services in accordance with § 412.314 of this title (relating to Access to Mental Health Community Services);

(3) behavior skills training to assist the individual in reducing distress and managing symptoms;

(4) problem-solving;

(5) reality orientation to help the individual identify and manage his or symptoms of serious mental illness or SED; and

(6) providing instruction, structure, and emotional support to the individual in adapting to and coping with immediate stressors.

(b) Conditions.

(1) Crisis intervention services may be provided to:

(A) an adult; or

(B) a child or adolescent.

(2) Crisis intervention services must be provided one-to-one.

(3) Crisis intervention services may be provided:

(A) on site; or

(B) in vivo.

(4) Crisis intervention services must be provided by a QMHP-CS at a minimum.

(5) Crisis intervention services may not be provided to an individual who is currently admitted to a CSU.

(6) Crisis intervention services may be provided to an individual without first obtaining authorization from the department, or its designee, in accordance with § 416.6 of this title (relating to Service Authorization and Recovery Plan).

(7) Crisis intervention services may be provided without a recovery plan described in § 416.6 of this title.

HISTORY: The provisions of this § 416.7 adopted to be effective January 22, 2014, 39 TexReg 299

§ 416.8. Medication Training and Support Services

(a) Description. Medication training and support services consist of education and guidance about medications and their possible side effects. The department has reviewed and approved the use of the materials that are available on the department's internet site at: <http://www.dshs.state.tx.us/mhsa/patient-family-ed/> and other materials which have been formally reviewed and approved by the department, to assist an individual in:

(1) understanding the nature of an adult's serious mental illness or a child's or adolescent's SED;

(2) understanding the concepts of recovery and resilience within the context of the serious mental illness;

(3) understanding the role of the individual's prescribed medications in reducing symptoms and increasing or maintaining the individual's functioning;

(4) identifying and managing the individual's symptoms and potential side effects of the individual's medication;

(5) learning the contraindications of the individual's medication;

(6) understanding the overdose precautions of the individual's medication; and

(7) learning self-administration of the individual's medication.

(b) Conditions.

(1) Medication training and support services may be provided to:

(A) an eligible adult;

(B) an eligible child or adolescent; or

(C) the LAR or primary caregiver of an eligible adult, child, or adolescent.

(2) Medication training and support services provided to an adult may be provided:

(A) individually; or

(B) in a group.

(3) Medication training and support services provided to a child or adolescent may be provided:

(A) individually; or

(B) in a group.

(4) Medication training and support services provided to an LAR or primary caregiver may be provided:

(A) individually; or

(B) in a group, except that the adult, child or adolescent may also be present.

(5) Medication training and support services may be provided:

(A) on site; or

(B) in vivo.

(6) Medication training and support services provided to an adult or LAR must be provided by:

- (A) a QMHP-CS;
- (B) a CSSP;
- (C) a peer provider; or
- (D) a licensed medical staff member.

(7) Medication training and support services provided to a child, adolescent, LAR, or primary caregiver must be provided by:

- (A) a QMHP-CS;
- (B) a CSSP;
- (C) a CFP; or
- (D) a licensed medical staff member.

(8) Medication training and support services may not be provided to an individual who is currently admitted to a CSU.

(c) Frequency and duration. The provision of medication training and support services must be in accordance with the amount and duration for which the provider has obtained authorization in accordance with §416.6 of this title (relating to Service Authorization and Recovery Plan).

HISTORY: The provisions of this § 416.8 adopted to be effective January 22, 2014, 39 TexReg 299

§ 416.9. Psychosocial Rehabilitative Services

(a) Description. Psychosocial rehabilitative services are social, behavioral, and cognitive interventions provided by members of an individual's therapeutic team that build on strengths and focus on restoring the individual's ability to develop and maintain social relationships, occupational or educational achievement, and other independent living skills that are affected by or the result of a serious mental illness in adults. Psychosocial rehabilitative services may also address the impact of co-occurring disorders upon the individual's ability to reduce symptomology and increase daily functioning. Psychosocial rehabilitative services that include, but are not limited to, the following component services:

- (1) independent living services;
- (2) coordination services;
- (3) employment related services;
- (4) housing related services;
- (5) medication related services; and
- (6) crisis related services.

(b) Conditions.

- (1) Psychosocial rehabilitative services:
 - (A) may only be provided to an eligible adult;
 - (B) may be provided individually or in a group;
 - (C) may be provided on site or in vivo;
 - (D) must be provided by a member of the individual's therapeutic team; and
 - (E) may not be provided to an individual who is currently admitted to a CSU.

(2) The therapeutic team must be constituted and organized in a manner that ensures that:

- (A) the team includes a sufficient number of staff to adequately address the rehabilitative needs of individuals assigned to the team;
- (B) team members are appropriately credentialed to provide the full array of component services;
- (C) team members have regularly scheduled team meetings either in person or by teleconference; and
- (D) every member of the team is knowledgeable of the needs and of the services available to the specific individuals assigned to the team.

(3) Independent living services, coordination services, employment related services, and housing

related services, as described in subsection (c)(1) - (4) of this section, must be provided by:

- (A) a QMHP-CS;
- (B) a CSSP; or
- (C) a peer provider.

(4) Medication related services, as described in subsection (c)(5) of this section, must be provided by licensed medical personnel.

(5) Crisis related services, as described in subsection (c)(6) of this section, must be provided by a QMHP-CS.

(6) As part of providing the coordination services described in subsection (c)(2) of this section, a QMHP-CS must conduct the uniform assessment at intervals specified by the department to determine the type, amount, and duration of MH rehabilitative services.

(c) Components of psychosocial rehabilitative services. Psychosocial rehabilitative services include, but are not limited to, the following.

(1) Independent living services assist an individual in acquiring the most immediate, fundamental functional skills needed to enable the individual to reside in the community and avoid more restrictive levels of treatment or reducing behaviors or symptoms that prevent successful functioning in the individual's environment of choice. Such services include training in symptom management, personal hygiene, nutrition, food preparation, exercise, money management and community integration activities.

(2) Coordination services are training activities that assist an individual in improving his or her ability to gain and coordinate access to necessary care and services appropriate to the needs of the individual. Coordination services include, but are not limited to, instruction and guidance in such areas as:

(A) assessment—identifying strengths and areas of need across life domains;

(B) recovery planning—prioritizing needs and establishing life and treatment goals, selecting interventions, developing and revising recovery plans that include wellness, relapse prevention, and crisis plans;

(C) access—identifying potential service providers and support systems across all life domains (e.g., medical, social, educational, substance use), initiating contact with providers and support systems including advocacy groups;

(D) coordination—setting appointments, arranging transportation, facilitating communication between providers; and

(E) advocacy— (i) asserting treatment needs, requesting special accommodations, evaluating provider effectiveness and compliance with the agreed upon recovery plan; and (ii) requesting improvements and modifications to ensure maximum benefit from the services and supports.

(3) Employment related services provide supports and skills training that are not job-specific and focus on developing skills to reduce or manage the symptoms of serious mental illness that interfere with an individual's ability to make vocational choices or obtain or retain employment. Such services consist of:

(A) instruction in dress, grooming, socially and culturally appropriate behaviors, and etiquette necessary to obtain and retain employment;

(B) training in task focus, maintaining concentration, task completion, and planning and managing activities to achieve outcomes;

(C) instruction in obtaining appropriate clothing, arranging transportation, utilizing public transportation, accessing and utilizing available resources related to obtaining employment, and accessing employment-related programs and benefits (e.g., unemployment, workers' compensation, and Social Security);

(D) interventions or supports provided on or off the job site to reduce behaviors or symptoms of serious mental illness that interfere with job performance or that interfere with the development of skills that would enable the individual to obtain or retain employment; and

(E) interventions designed to develop natural supports on or off the job site to compensate for skill deficits that interfere with job performance.

(4) Housing related services develop an individual's strengths and abilities to manage the symptoms of the individual's serious mental illness that interfere with the individual's capacity to obtain or maintain tenure in independent integrated housing. Such services consist of:

(A) skills training related to: (i) home maintenance and cleanliness; (ii) problem-solving with the individual's landlord and neighbors, mortgage lender, or homeowners association; and (iii) maintaining appropriate interpersonal boundaries; and

(B) supportive contacts with the individual to reduce or manage the behaviors or symptoms related to the individual's serious mental illness that interfere with maintaining independent integrated housing.

(5) Medication related services provide training regarding an individual's medication adherence. Such services consist of training in:

(A) the importance of the individual taking the medications as prescribed;

(B) the self-administration of the individual's medication;

(C) determining the effectiveness of the individual's medications;

(D) identifying side-effects of the individual's medications; and

(E) contraindications for medications prescribed.

(6) Crisis related services respond to an individual in crisis in order to reduce symptoms of serious mental illness or SED and to prevent admission of the individual to a more restrictive environment.

(d) Frequency and duration. The provision of psychosocial rehabilitative services must be in accordance with the amount and duration for which the provider has obtained authorization in accordance with § 416.6 of this title (relating to Service Authorization and Recovery Plan).

HISTORY: The provisions of this § 416.9 adopted to be effective January 22, 2014, 39 TexReg 299

§ 416.10. Skills Training and Development Services

(a) Description.

(1) Skills training and development services is training provided to an eligible individual or the LAR or primary caregiver of an eligible adult, child, or adolescent. Such training:

(A) addresses serious mental illness or SED and symptom-related problems that interfere with the individual's functioning and living, working, and learning environment;

(B) provides opportunities for the individual to acquire and improve skills needed to function as

appropriately and independently as possible in the community; and

(C) facilitates the individual's community integration and increases his or her community tenure.

(2) Skills training and development services consist of teaching an individual the following skills:

(A) skills for managing daily responsibilities (e.g., paying bills, attending school, and performing chores);

(B) communication skills (e.g., effective communication and recognizing or change problematic communication styles);

(C) pro-social skills (e.g., replacing problematic behaviors with behaviors that are socially and culturally appropriate or developing interpersonal relationship skills necessary to function effectively with family, peer, teachers, or other people in the community);

(D) problem-solving skills;

(E) assertiveness skills (e.g., resisting peer pressure, replacing aggressive behaviors with assertive behaviors, and expressing one's own opinion in a manner that is socially appropriate);

(F) social skills and expanding the individual social support network, (e.g., selection of appropriate friends and healthy activities);

(G) stress reduction techniques (e.g., progressive muscle relaxation, deep breathing exercises, guided imagery, and selected visualization);

(H) anger management skills (e.g., identification of antecedents to anger, calming down, stopping and thinking before acting, handling criticism, avoiding and disengaging from explosive situations);

(I) skills to manage the symptoms of serious mental illness or SED and to recognize and modify unreasonable beliefs, thoughts and expectations;

(J) skills to identify and utilize community resources and informal supports;

(K) skills to identify and utilize acceptable leisure time activities (e.g., identifying pleasurable leisure time activities that will foster acceptable behavior); and

(L) independent living skills (e.g., money management, accessing and using transportation, grocery shopping, maintaining housing, maintaining a job, and decision making).

(3) Skills training and development services consist of:

(A) assisting the child or adolescent in learning the skills described in paragraph (2) of this subsection; and

(B) increasing the LAR's or primary caregiver's understanding of and ability to respond to the individual's needs identified in the uniform assessment or documented in the recovery plan.

(b) Conditions.

(1) Skills training and development services may be provided to:

(A) an eligible adult;

(B) an eligible child or adolescent; or

(C) the LAR or primary caregiver of an individual.

(2) Skills training and development services provided to an individual, LAR, or primary caregiver of a child or adolescent may be provided:

(A) individually; or

(B) in a group.

(3) Skills training and development services may be provided:

- (A) on site; or
- (B) in vivo.

(4) Skills training and development services provided to an individual must be provided according to curricula approved by the department.

(5) Skills training and development services provided to an adult or LAR must be provided by:

- (A) a QMHP-CS;
- (B) a CSSP; or
- (C) a peer provider.

(6) Skills training and development services provided to a child or adolescent, LAR, or primary caregiver must be provided by:

- (A) a QMHP-CS;
- (B) a CSSP; or
- (C) a CFP.

(7) Skills training and development services may not be provided to an individual who is currently admitted to a CSU.

(c) Frequency and Duration. The provision of skills training and development services must be in accordance with the amount and duration for which the provider has obtained authorization in accordance with §416.6 of this title (relating to Service Authorization and Recovery Plan).

HISTORY: The provisions of this § 416.10 adopted to be effective January 22, 2014, 39 TexReg 299

§416.11. Day Programs for Acute Needs

(a) Description. Day programs for acute needs provide short term, intensive treatment to an individual who requires multidisciplinary treatment in order to stabilize acute psychiatric symptoms or prevent admission to a more restrictive setting. Day programs for acute needs:

(1) are provided in a highly structured and safe environment with constant supervision;

(2) ensure an opportunity for frequent interaction between an individual and staff members;

(3) are services that are goal oriented and focus on:

- (A) reality orientation;
- (B) symptom reduction and management;
- (C) appropriate social behavior;
- (D) improving peer interactions;
- (E) improving stress tolerance;
- (F) the development of coping skills; and

(4) consist of the following component services:

- (A) psychiatric nursing services;
- (B) pharmacological instruction;
- (C) symptom management training; and
- (D) functional skills training.

(b) Conditions.

(1) Day programs for acute needs:

- (A) may only be provided to eligible adults;
- (B) may be provided in a setting with any number of individuals; and

(C) may be provided: (i) on site; or (ii) in a short-term, crisis-resolution oriented residential treatment setting that is not:

- (I) a general medical hospital;
- (II) a psychiatric hospital; or
- (III) an IMD.

(2) Except as provided by paragraphs (4) and (5) of this subsection, day programs for acute needs must be provided by:

- (A) a QMHP-CS;
- (B) a CSSP; or
- (C) a peer provider.

(3) Day programs for acute needs must, at all times:

(A) have a sufficient number of staff members to ensure safety and program adequacy; and

(B) at a minimum include: (i) one RN for every 16 individuals at the day program's location; (ii) one physician to be available by phone, with a response time not to exceed 15 minutes; (iii) two staff members who are QMHP-CSs, CSSPs, or peer providers at the day program's location; (iv) one additional QMHP-CS who is not assigned full-time to another day program to be physically available, with a response time not to exceed 30 minutes; and (v) additional QMHP-CSs, CSSPs, or peer providers at the day program's location sufficient to maintain a ratio of one staff member to every four individuals.

(4) Psychiatric nursing services, as described in subsection (c)(1) of this section, must be provided by an RN at the day program's location.

(5) Pharmacological instruction, as described in subsection (c)(2) of this section, must be provided by a licensed medical personnel.

(c) Components of day programs for acute needs.

(1) Psychiatric nursing services consist of:

- (A) a nursing assessment;
- (B) the coordination of medical activities (e.g., referrals to specialists and scheduling medical laboratory tests);
- (C) the administration of medication;
- (D) laboratory specimen collections and screenings (e.g., the Abnormal Involuntary Movement Scale);
- (E) emergency medical interventions as ordered by a physician; and
- (F) other nursing services.

(2) Pharmacological instruction is training to an individual that addresses medication issues related to the crisis precipitating the provision of day programs for acute needs. Such medication issues consist of:

- (A) the role of the individual's medications in stabilizing acute psychiatric symptoms or preventing admission to a more restrictive setting;
- (B) the identification of substances that reduce the effectiveness of the individual's medications;
- (C) appropriate interventions to reduce side effects of the medications; and
- (D) the self-administration of the individual's medication.

(3) Symptom management training assists an individual in recognizing and reducing her or his symptoms and includes training the individual on:

- (A) the identification of thoughts, feelings, or behaviors that indicate the onset of acute psychiatric symptoms;
- (B) developing coping strategies to address the symptoms;
- (C) ways to avoid symptomatic episodes;
- (D) identification of external circumstances that trigger the onset of the acute psychiatric symptoms; and
- (E) relapse prevention strategies.

(4) Functional skills training assists an individual in acquiring the skills needed to enable the individual to continue to reside in the community and avoid more restrictive levels of treatment and includes training the individual on:

- (A) personal hygiene;
- (B) nutrition;
- (C) food preparation;
- (D) money management;

(E) socially and culturally appropriate behavior; and

(F) accessing and participating in community activities.

(d) Frequency and duration. The provision of day programs for acute needs must be in accordance with the amount and duration for which the provider has obtained authorization in accordance with § 416.6 of this title (relating to Service Authorization and Recovery Plan).

HISTORY: The provisions of this § 416.11 adopted to be effective January 22, 2014, 39 TexReg 299

§ 416.12. Documentation Requirements

(a) MH rehabilitative services documentation. a rehabilitative services provider must document the following for all MH rehabilitative services:

- (1) the name of the individual to whom the service was provided;
- (2) the type of service provided;
- (3) the specific goal or objective addressed, modality, and method used to provide the service;
- (4) the date the service was provided;
- (5) the begin and end time of the service;
- (6) the location where the service was provided;
- (7) the signature of the staff member providing the service and a notation of their credential (e.g., a QMHP-CS, a pharmacist, a CSSP, a CFP, or a peer provider);
- (8) any pertinent event or behavior relating to the individual's treatment which occurs during the provision of the service;
- (9) any pertinent information required to be documented by the curricula, protocol, or practice approved by the department; and
- (10) the outcome or response, as applicable:
 - (A) for crisis intervention service, the outcome of the crisis;
 - (B) for psychosocial coordination services, the outcome of the services;
 - (C) for day programs for acute needs, the progress or lack of progress in stabilizing the individual's acute psychiatric symptoms; or
 - (D) for all other services, the individual's response, including the progress or lack of progress in achieving recovery plan goals and objectives.

(b) Crisis services documentation. In addition to the requirements described in subsection (a) of this section, when providing crisis services, a provider must document the information required by § 412.321(e) of this title (relating to Crisis Services).

(c) Medical necessity documentation. An LPHA must document that MH rehabilitative services are medically necessary when the services are authorized and reauthorized.

(d) Frequency of documentation.

(1) Day programs for acute needs. For day programs for acute needs, the documentation required by subsection (a)(1) - (9) and (10)(C) of this section must be made daily.

(2) Programs other than day programs for acute needs. For MH rehabilitative services other than day programs for acute needs, the documentation required by subsection (a)(1) - (9) and (10)(A), (B), and (D) of this section must be made after each face-to-face contact that occurs to provide the MH rehabilitative service.

(3) Medical necessity. An LPHA must document medical necessity in accordance with § 416.6 of this title (relating to Service Authorization and Recovery Plan).

(4) Retention. a provider must retain documentation in compliance with applicable federal and state laws, rules, and regulations.

§ 416.13. Staff Member Competency and Training

(a) General competency of staff members. In accordance with § 412.316 of this title (relating to Competency and Credentialing), a provider must ensure the competency of staff members prior to providing services.

(b) MH rehabilitative services training and competency of staff members. a provider must ensure that staff members providing MH rehabilitative services receive initial training and ensure the competency of a staff member who provides or supervises the provision MH rehabilitative services in the following areas:

- (1) the nature of serious mental illness and SED;
- (2) the concepts of recovery and resilience;
- (3) the department-approved curricula, protocol, or practice;
- (4) the rehabilitative practice techniques found in curricula, program practices, and protocols; and
- (5) the prevalence of health risk factors.

(c) Additional training related to children and adolescents. a staff member who routinely provides or supervises the provision of MH rehabilitative services to a child or adolescent must receive training and demonstrate competency as required by subsection (b) of this section and in the following areas:

- (1) the aspects of a child's or adolescent's growth and development (including physical, emotional, cognitive, educational and social) and the treatment needs of a child and adolescent; and
- (2) the department's approved skills training curricula, protocol, or practice guidelines.

(d) Except for the direct clinical supervision of a peer provider, which must be provided by an LPHA, the clinical supervision of the provision of MH rehabilitative services must be provided by a staff member who is, at minimum, a QMHP-CS.

(e) Approved curricula. If a staff member provides MH rehabilitative services through a department-approved curricula, protocol, or practice guideline, the staff member must be trained in the implementation of the curriculum, protocol, or practice guideline.

(f) Follow-up training. In addition to the training required in subsection (a) of this section, staff members may be required to receive additional training as determined by the department.

(g) Training documentation. a provider must document that a staff member has successfully completed the training and has demonstrated competencies in the areas described in subsection (a) of this section.

HISTORY: The provisions of this § 416.13 adopted to be effective January 22, 2014, 39 TexReg 299

§ 416.14. Medicaid Reimbursement

(a) Billable and non-billable activities.

(1) A Medicaid provider may only bill for medically necessary MH rehabilitative services that are provided face-to-face to:

- (A) a Medicaid-eligible individual;
- (B) the LAR of a Medicaid-eligible adult (on behalf of the adult); or
- (C) the LAR or primary caregiver of a Medicaid-eligible child or adolescent (on behalf of the child or adolescent).

(2) The cost of the following activities are included in the Medicaid MH rehabilitative services reimbursement rate(s) and may not be directly billed by the Medicaid provider:

(A) developing and revising the recovery plan and interventions that are appropriate to an individual's needs;

(B) staffing and team meetings to discuss the provision of MH rehabilitative services to a specific individual;

(C) monitoring and evaluating outcomes of interventions, including contacts with a person other than the individual;

(D) documenting the provision of MH rehabilitative services;

(E) a staff member traveling to and from a location to provide MH rehabilitative services;

(F) all services provided within a day program for acute needs that are delivered by a staff member, including services delivered in response to a crisis or an episode of acute psychiatric symptoms; and

(G) administering the uniform assessment to individuals who are receiving psychosocial rehabilitative services.

(b) Non-reimbursable activities.

(1) The department will not reimburse a Medicaid provider for any MH rehabilitative services provided to an individual who is:

(A) a resident of an intermediate care facility for persons with an intellectual or developmental disability as described in 42 CFR § 440.150;

(B) a resident in an IMD;

(C) an inmate of a public institution as defined in 42 CFR § 435.1009;

(D) a resident in a Medicaid-certified nursing facility unless the individual has been determined through a pre-admission screening and annual resident review assessment to be eligible for the specialized service of MH rehabilitative services;

(E) a patient in a general medical hospital; or

(F) not Medicaid-eligible.

(2) With the exception of crisis intervention services and psychosocial rehabilitative services that are being provided to resolve a crisis situation, the department will not reimburse a Medicaid provider for any combination of MH rehabilitative services delivered in excess of eight hours per individual per day. In addition, the department will not reimburse a Medicaid provider for more than:

(A) two hours per individual per day of medication training and support services;

(B) four hours per individual per day of psychosocial rehabilitative services when the psychosocial rehabilitative services are being provided in non-crisis situations;

(C) four hours per individual per day of skills training and development services; and

(D) six hours per individual per day of day programs for acute needs.

(3) The department will not reimburse a Medicaid provider for:

(A) an MH rehabilitative service that is not included in the individual's recovery plan (except for crisis intervention services documented in accordance with §416.6(b) of this title (relating to Service Authorization and Recovery Plan)) and psychosocial rehabilitative services provided in a crisis situation;

(B) an MH rehabilitative service that is not authorized in accordance with §416.6 of this title

(except for crisis intervention services documented in accordance with §416.6(b) of this title);

(C) an MH rehabilitative service provided in excess of the amount authorized in accordance with §416.6(a)(1) of this title;

(D) an MH rehabilitative service provided outside of the duration authorized in accordance with §416.6(b) of this title;

(E) a psychosocial rehabilitative service provided to an individual receiving MH case management services in accordance with Chapter 412, Subchapter I of this title (relating to MH Case Management);

(F) an MH rehabilitative service that is not documented in accordance with §416.12 of this title (relating to Documentation Requirements);

(G) an MH rehabilitative service provided to an individual who does not meet the eligibility criteria as described in §416.5 of this title (relating to Eligibility);

(H) an MH rehabilitative service provided to an individual who does not have a current uniform assessment (except for crisis intervention services documented in accordance with §416.6(b) of this title);

(I) an MH rehabilitative service provided to an individual who is not present, awake, and participating during such service;

(J) an MH rehabilitative service that is provided via electronic media;

(K) a crisis service provided to an individual who does not have a serious mental illness; and

(L) any other activity or service identified as non-reimbursable in the department's MH Rehabilitative Services Billing Guidelines, referenced in §416.17 of this title (relating to Guidelines).

(c) Services provided same time and same day.

(1) If a Medicaid provider provides more than one MH rehabilitative service to an individual at the same time and on the same day, the Medicaid provider may bill for only one of the services provided.

(2) A Medicaid provider may bill for a MH rehabilitative service provided to a child or adolescent's LAR or primary caregiver at the same time and on the same day the child or adolescent is receiving another MH rehabilitative service only if the staff member providing the service to the LAR or primary caregiver is different from the staff member providing the service to the child or adolescent.

(d) Services provided before a fair hearing. If the provision of a MH rehabilitative service is continued prior to a fair hearing decision being rendered, as required by 1 TAC § 357.7 (relating to Agency and Designee Responsibilities), the Medicaid provider may bill for such service.

HISTORY: The provisions of this § 416.14 adopted to be effective January 22, 2014, 39 TexReg 299

§ 416.15. Medicaid Provider Participation Requirements

(a) Qualifications. to become a Medicaid provider of MH rehabilitative services, an entity must:

(1) be established as a community mental health center in accordance with Texas Health and Safety Code, § 534.001, that:

(A) provides services comparable to MH rehabilitative services and the services described in the Texas Health and Safety Code, § 534.053(a)(1) - (7);

(B) is in compliance with Chapter 412, Subchapter G of this title (relating to Mental Health Community Services Standards);

(C) conducts criminal history clearances on all contractors delivering MH rehabilitative services and all employees and applicants of the Medicaid provider to whom an offer of employment is made and ensures that individuals do not come in contact with and are not provided services by an employee or contractor of the Medicaid provider (or employee or contractor of contractors delivering MH rehabilitative services under a contract with the Medicaid provider) who has a conviction for any of the criminal offenses listed in Texas Health and Safety Code, § 250.006, or for any criminal offense that the Medicaid provider has determined to be a contraindication to employment; and

(D) has a Medicaid provider agreement with the department to provide MH rehabilitative services; or

(2) be a corporation incorporated or registered to do business in the State of Texas that:

(A) has completed an application evidencing that it: (i) provides services comparable to MH rehabilitative services and the services described in the Texas Health and Safety Code, § 534.053(a)(1) - (7); (ii) is in compliance with Chapter 412, Subchapter G, of this title; (iii) has demonstrated a history of providing, as well as the capacity to continue to provide, services to individuals required to submit to mental health treatment:

(I) under the Texas Code of Criminal Procedure, Article 17.032 (relating to Release on Personal Bond of Certain Mentally Ill Defendants), or Article 42.12 § 11(d) (relating to Community Supervision); and

(II) under the Texas Health and Safety Code, Chapter 573 (relating to Emergency Detention) and Chapter 574 (relating to Court-Ordered Mental Health Services); and (iv) conducts criminal history clearances on all contractors delivering MH rehabilitative services and all employees and applicants of the corporation to whom an offer of employment is made and ensures that individuals do not come in contact with and are not provided services by an employee or contractor of the corporation (or employee or contractor of contractors delivering MH rehabilitative services under a contract with the corporation) who has a conviction for any of the criminal offenses listed in Texas Health and Safety Code, § 250.006, or for any criminal offense that the corporation has determined to be a contraindication to employment;

(B) has had its application information confirmed by an on-site visit by the department;

(C) has had its application approved by the department; and

(D) has signed a Medicaid provider agreement with the department to provide MH rehabilitative services.

(b) Compliance. a Medicaid provider must:

(1) comply with all applicable federal and state laws, rules, and regulations, and any Medicaid provider manuals and policy clarification letters promulgated by the department;

(2) document and bill for reimbursement of MH rehabilitative services in the manner and format prescribed by the department;

(3) allow the department access to all individuals and individuals' records;

(4) maintain capacity to provide those services that are described in Texas Health and Safety Code, § 534.053(a)(1) - (7); and

(5) maintain capacity to provide services to individuals required to submit to mental health treatment:

(A) under the Texas Code of Criminal Procedure, Article 17.032 (relating to Release on Personal Bond of Certain Mentally Ill Defendants), or Article 42.12 § 11(d) (relating to Community Supervision); and

(B) under the Texas Health and Safety Code, Chapter 573 (relating to Emergency Detention) and Chapter 574 (relating to Court-Ordered Mental Health Services).

HISTORY: The provisions of this § 416.15 adopted to be effective January 22, 2014, 39 TexReg 299

§ 416.16. Fair Hearings and Reviews

(a) Right of Medicaid-eligible individual to request a fair hearing. Any Medicaid-eligible individual whose request for eligibility for MH rehabilitative services is denied or is not acted upon with reasonable promptness, or whose MH rehabilitative services have been terminated, suspended, or reduced by the department is entitled to a fair hearing in accordance with 1 TAC Chapter 357, Subchapter a (relating to Uniform Fair Hearing Rules).

(b) Notice. The Medicaid provider must notify the department or its designee if the provider has reason to believe that an individual's MH rehabilitative services should be denied, reduced or terminated.

(c) Right of non-Medicaid eligible individual to request a review. Any individual who has not applied for or is not eligible for Medicaid whose request for eligibility for MH rehabilitative services is not acted upon with reasonable promptness, or whose MH rehabilitative services have been terminated, suspended, or reduced by a local mental health authority or its contractor is entitled to the right of review and notification in accordance with the department's rules concerning such matters for non-Medicaid-eligible individuals.

HISTORY: The provisions of this § 416.16 adopted to be effective January 22, 2014, 39 TexReg 299

§ 416.17. Guidelines

The following guidelines are referenced in this subchapter. For information about obtaining copies of the guidelines contact the Department of State Health Services, Mental Health Program Services Section, Mail Code 2018, P.O. Box 149347, Austin, Texas 78714-9347, (512) 467-5427 or access them electronically.

(1) The uniform assessment guidelines are available at: <http://www.dshs.state.tx.us/mhprograms/RDMAssess.shtm>.

(2) The utilization management guidelines for adults and children are available at: <http://www.dshs.state.tx.us/mhprograms/RDMClinGuide>.

(3) Patient and family education resources are available at <http://www.dshs.state.tx.us/mhsa/patient-family-ed/>.

(4) Medicaid MH Rehabilitative Services Billing Guidelines are available at: <http://www.dshs.state.tx.us/mhsa/rdm/billing/>.

Subchapter C.

Jail-Based Competency Restoration Program

§ 416.76. Purpose

The purpose of this subchapter is to provide standards for jail-based competency restoration services in pilot and county-based programs, as required by the Texas Code of Criminal Procedure, Chapter 46B, relating to Incompetency to Stand Trial. The programs include:

- (1) mental health services;
- (2) intellectual disability services;
- (3) co-occurring psychiatric and substance use disorder treatment services;
- (4) competency restoration education in the county jail for an individual found incompetent to stand trial; and
- (5) discharge planning services.

HISTORY: The provisions of this § 416.76 adopted to be effective August 6, 2018, 43 TexReg 5091

§ 416.77. Application

This subchapter applies to an LMHA, LBHA, an LMHA or LBHA subcontractor, a private provider, and a local unit of general purpose government or city unit of government or a subcontractor of the unit of government delivering jail-based competency restoration services authorized by the Texas Code of Criminal Procedure, Chapter 46B.

HISTORY: The provisions of this § 416.77 adopted to be effective August 6, 2018, 43 TexReg 5091

§ 416.78. Definitions

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise.

- (1) Competency restoration—The treatment and education process for restoring an individual's ability to consult with the individual's attorney with a reasonable degree of rational understanding and a rational and factual understanding of the court proceedings and charges against the individual.
- (2) Competency restoration training module (training module)—An HHSC-reviewed training module used by provider staff members to provide legal education to an individual receiving competency restoration services.
- (3) Court—A court of law presided over by a judge, judges, or a magistrate in civil and criminal cases.
- (4) HHSC—Texas Health and Human Services Commission or its designee.
- (5) ID—Intellectual disability. Consistent with Texas Health and Safety Code, § 591.003, significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originating before age 18.
- (6) Individual—A person receiving services under this subchapter.
- (7) Inpatient mental health facility—A mental health facility providing 24-hour residential and psychiatric services and is:
 - (A) a facility operated by HHSC;
 - (B) a private mental hospital licensed by HHSC;
 - (C) a community center, facility operated by or under contract with a community center or other entity HHSC designates to provide mental health services;

(D) a local mental health authority or a facility operated by or under contract with a local mental health authority;

(E) an identifiable part of a general hospital in which diagnosis, treatment, and care for an individual with mental illness is provided and is licensed by HHSC; or

(F) a hospital operated by a federal agency.

(8) IST—Incompetent to stand trial. a situation when an individual does not have:

(A) sufficient present ability to consult with the individual's lawyer with a reasonable degree of rational understanding; or

(B) a rational as well as factual understanding of the proceedings against the individual.

(9) JBCR—Jail-based competency restoration. Competency restoration conducted in a county jail setting provided in a designated space separate from the space used for the general population of the county jail.

(A) County-based program—A jail-based competency restoration program developed and implemented by a county or joint counties in accordance with the Texas Code of Criminal Procedure, Article 46B.091.

(B) Pilot program—A jail-based competency restoration pilot program implemented in accordance with the Texas Code of Criminal Procedure, Article 46B.090.

(10) LBHA—Local behavioral health authority. An entity designated as the local behavioral health authority by HHSC in accordance with Texas Health and Safety Code § 533.0356.

(11) LIDDA—Local intellectual and developmental disability authority. An entity designated as the local intellectual and developmental disability authority by HHSC in accordance with Texas Health and Safety Code, § 533A.035.

(12) LMHA—Local mental health authority. An entity designated as the local mental health authority by the executive commissioner of HHSC in accordance with Texas Health and Safety Code, § 533.035(a).

(13) Local unit of general purpose government—The government of a county, municipality, township, Indian tribe, or other unit of government (other than a state) which is a unit of general government as defined in 13 United States Code § 184.

(14) LPHA—Licensed practitioner of the healing arts. a person who is:

- (A) a physician;
- (B) a physician assistant;
- (C) an advanced practice registered nurse;
- (D) a licensed psychologist;
- (E) a licensed professional counselor;
- (F) a licensed clinical social worker; or
- (G) a licensed marriage and family therapist.

(15) Mental illness—An illness, disease, or condition (other than a sole diagnosis of epilepsy, dementia, substance use disorder, or ID) that:

(A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.

(16) Provider—An entity that contracts with HHSC or a county to provide JBCR program services.

(17) Provider staff member—An employee or person whom the provider contracts or subcontracts for the provision of JBCR program services. a provider staff

member includes specially trained security officers, all licensed and credentialed staff, and other persons directly contracted or subcontracted to provide JBCR services to an individual.

(18) QIDP—Qualified intellectual disability professional as defined in 42 CFR § 483.430(a).

(19) QMHP-CS—Qualified mental health professional-community services. As defined in Chapter 412, Subchapter G, of this title (relating to Mental Health Community Services Standards).

(20) Residential care facility—A state supported living center or the Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF-IID) component of the Rio Grande State Center.

(21) Serious injury—An injury determined by a physician to require medical treatment by a licensed medical professional (e.g., physician, dentist, physician's assistant, or advance practice nurse) or requires medical treatment in an emergency department or licensed hospital.

(22) Significantly sub-average general intellectual functioning—Consistent with Texas Health and Safety Code, § 591.003, measured intelligence on standardized general intelligence tests of two or more standard deviations (not including standard error of measurement adjustments) below the age-group mean for the test used.

(23) Specially trained jailer—A person appointed or employed as a county jailer assigned to work for the JBCR provider.

(24) State mental health facility—A state hospital or a state center with an inpatient psychiatric component.

(25) Subcontractor—A person or entity that contracts with the provider of JBCR program services.

(26) Texas Commission on Jail Standards—The regulatory agency for all county jails and privately operated municipal jails in the state, as established in the Texas Government Code, Chapter 511.

HISTORY: The provisions of this § 416.78 adopted to be effective August 6, 2018, 43 TexReg 5091

§ 416.79. Program Eligibility Requirements

(a) The JBCR pilot program must meet the standards set forth in the Texas Code of Criminal Procedure, Article 46B.090, and upon operation of program services, the provider of the JBCR pilot program must be:

(1) an LMHA:

(A) in good standing with HHSC; and

(B) that demonstrates a history of successful competency restoration outcomes; or

(2) a private provider or a local unit of general purpose government or city unit of government, or a subcontractor of the unit of government:

(A) certified by a nationwide nonprofit organization that accredits health care organizations and programs;

(B) that maintains the accreditation in subparagraph (A) of this paragraph while under contract with HHSC to provide competency restoration services under this subchapter;

(C) that demonstrates a history of successful JBCR program outcomes; and

(D) has previously provided JBCR services for one or more years.

(b) The county-based JBCR program must meet the standards set forth in the Texas Code of Criminal Procedure, Article 46B.091 and upon operation of program services, the provider of the county-based JBCR program must be:

(1) an LMHA or LBHA in good standing with HHSC; or

(2) a subcontractor of an LMHA or LBHA in good standing with HHSC.

(c) An LMHA or LBHA that contracts with a county to provide jail-based competency restoration services must comply with the rules found in Chapter 412, Subchapter B of this title (relating to Contracts Management for Local Authorities) and the contract management and oversight requirements of the Texas Comptroller of Public Accounts.

HISTORY: The provisions of this § 416.79 adopted to be effective August 6, 2018, 43 TexReg 5091

§ 416.80. Service Standards

(a) A JBCR pilot program must:

(1) use a multidisciplinary treatment team to provide clinical treatment:

(A) focused on the objective of restoring the individual to competency to stand trial; and

(B) similar to the clinical treatment provided as part of a competency restoration program at an inpatient mental health facility;

(2) employ or contract for the services of at least one psychiatrist;

(3) use QMHP-CSs or QIDPs to provide JBCR program services; and

(4) provide weekly competency restoration hours commensurate to the treatment hours provided as part of a competency restoration program at an inpatient mental health facility.

(b) A county-based JBCR program must:

(1) use a multidisciplinary treatment team:

(A) focused on the objective of restoring the individual to competency to stand trial; and

(B) similar to other competency restoration programs;

(2) employ or contract for the services of at least one psychiatrist;

(3) use QMHP-CSs or QIDPs to provide JBCR program services;

(4) provide weekly competency restoration hours commensurate to the treatment hours provided as part of a competency restoration program at an inpatient mental health facility;

(5) ensure coordination of general health care;

(6) provide mental health treatment, ID services, and substance use disorder treatment, as necessary, for competency restoration; and

(7) through contract, obligate a subcontractor to comply with this subchapter.

HISTORY: The provisions of this § 416.80 adopted to be effective August 6, 2018, 43 TexReg 5091

§ 416.81. Provider Staff Member Training

(a) A provider must recruit, train, and maintain qualified provider staff members with documented competency in accordance with Chapter 412, Subchapter G, Division 2 of this title (relating to Organizational Standards), specifically:

(1) § 412.314(e) of this title (relating to Access to Mental Health Community Services);

(2) § 412.315 of this title (relating to Medical Records System); and

(3) § 412.316 of this title (relating to Competency and Credentialing).

(b) Before providing services, a provider must train each provider staff member and ensure demonstrated competence in:

- (1) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);
- (2) 40 TAC Chapter 4, Subchapter C (relating to Rights of Individuals with an Intellectual Disability);
- (3) identifying, preventing, and reporting abuse, neglect, and exploitation in accordance with the Texas Commission on Jail Standards or the HHSC Office of the Ombudsman as set forth in applicable state laws and rules; and
- (4) using a protocol for preventing and managing aggressive behavior, including preventative de-escalation intervention strategies.

HISTORY: The provisions of this § 416.81 adopted to be effective August 6, 2018, 43 TexReg 5091

§ 416.82. Policies and Procedures

A provider must develop and implement written policies and procedures:

- (1) describing eligibility, intake and assessment, and treatment planning as described in § 416.86 of this subchapter (relating to Treatment Planning), and transition and discharge processes to include coordination and continuity of care planning with an LMHA, LBHA, or LIDDA, or an LMHA, LBHA, or LIDDA subcontractor;
- (2) describing how an individual is assessed for:
 - (A) suicidality and homicidality;
 - (B) the degree of suicidality and homicidality; and
 - (C) the development of an individualized suicide and homicide prevention plan;
- (3) outlining a provider staff member's ability to monitor and report to the court an individual's restoration to competency status and readiness for return to court as specified in the Texas Code of Criminal Procedure, Article 46B.079; and
- (4) addressing how a provider staff member ensures ongoing care, treatment, and overall therapeutic environment during evenings and weekends, including behavioral health crisis or physical health crisis consistent with § 412.321(a) and (e) of this title (relating to Crisis Services).

HISTORY: The provisions of this § 416.82 adopted to be effective August 6, 2018, 43 TexReg 5091

§ 416.83. Individual Eligibility

(a) To be eligible to participate in a JBCR program, the court must determine the individual as IST pursuant to the Texas Code of Criminal Procedure, Chapter 46B.

(b) An LMHA, LBHA, or an LMHA or LBHA subcontractor must:

- (1) screen an individual for outpatient competency restoration; and
- (2) determine an individual ineligible for those services before the individual is admitted into the JBCR program.

(c) If an outpatient competency restoration provider is not within the LMHA's or LBHA's local service area or contracted to provide outpatient competency restoration services for the area to participate in screening an individual for outpatient competency restoration services, the JBCR provider must admit the individual to the JBCR program, if eligible.

HISTORY: The provisions of this § 416.83 adopted to be effective August 6, 2018, 43 TexReg 5091

§ 416.84. Admission

(a) When a provider determines an individual is eligible for a JBCR program:

- (1) the provider must ensure the individual will receive competency restoration services no later than 72 hours after arriving at the JBCR program; or
- (2) the provider must inform the court that the JBCR program is at capacity, and immediately report the individual's name to HHSC for placement on the Clearinghouse, which HHSC uses to track the list of pending admissions of criminal code commitments for non-violent offenses.

(b) A provider must, when necessary, seek a court order for psychoactive medications in accordance with Texas Health and Safety Code, § 574.106 and the Texas Code of Criminal Procedure, Chapter 46B.

HISTORY: The provisions of this § 416.84 adopted to be effective August 6, 2018, 43 TexReg 5091

§ 416.85. Rights of Individuals Receiving JBCR Services

A provider of JBCR services must:

- (1) inform the individual receiving JBCR services of the individual's rights in accordance with Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services) or 40 TAC Chapter 4, Subchapter C (relating to Rights of Individuals with an Intellectual Disability), as applicable;
- (2) provide the individual with a copy of the rights handbook published for an individual receiving mental health services or an individual with an ID; and
- (3) explain to the individual receiving JBCR services how to initiate a complaint and how to contact:
 - (A) the HHS Office of the Ombudsman for complaints against the JBCR provider;
 - (B) the Texas Commission on Jail Standards for complaints against the county jail; and
 - (C) the Texas protection and advocacy system.

HISTORY: The provisions of this § 416.85 adopted to be effective August 6, 2018, 43 TexReg 5091

§ 416.86. Treatment Planning

Within five days after admission to the JBCR program, based on an individual's competency evaluation and provider assessment, the provider must develop the individual's treatment plan to include:

- (1) the individual's strengths, to assist the individual in:
 - (A) overcoming barriers to achieving a factual and rational understanding of legal proceedings; and
 - (B) consulting with the individual's lawyer with a reasonable degree of rational understanding;
- (2) the individual's trauma history;
- (3) physical health concerns or issues;
- (4) medication and medication management;
- (5) level of family and community support;
- (6) mental health concerns or issues;
- (7) ID concerns or issues; and
- (8) substance use disorder or co-occurring psychiatric and substance use disorder concerns or issues.

HISTORY: The provisions of this § 416.86 adopted to be effective August 6, 2018, 43 TexReg 5091

§ 416.87. Competency Restoration Education

(a) A provider must submit the competency restoration training module for HHSC review.

(b) Each individual must be educated in multiple learning formats, which may include:

- (1) discussion;
- (2) written text;
- (3) video; and
- (4) experiential methods such as role-playing or mock trial.

(c) A provider must ensure an individual with accommodation needs receives adapted materials and approaches as needed.

(d) Not later than the 14th day after the date on which an individual's competency restoration services begin, the provider must review the individual's progress towards attaining competency in accordance with the Texas Code of Criminal Procedure, Chapter 46B.

HISTORY: The provisions of this § 416.87 adopted to be effective August 6, 2018, 43 TexReg 5091

§ 416.88. Procedures for Determining Competency Status in a JBCR Program

(a) The psychiatrist for a JBCR pilot program, or psychiatrist or psychologist for a county-based JBCR program, must conduct at least two full psychiatric or psychological evaluations for each individual. The psychiatrist or psychologist must:

- (1) conduct the first evaluation no later than the 21st day after the date JBCR program services began;
- (2) conduct the second evaluation no later than the 55th day after the date JBCR program services began; and
- (3) subsequent to evaluations completed in paragraphs (1) and (2) of this subsection, promptly submit a separate report for each psychiatric or psychological evaluation to the court.

(b) At any time during the commitment for JBCR services consistent with the Texas Code of Criminal Procedure, Article 46B.091(h), but no later than the 60th day after the date JBCR services begin, the psychiatrist for a JBCR pilot program, or psychiatrist or psychologist for a county-based JBCR program, must determine if the individual is restored to competency, is unlikely to be restored to competency in the foreseeable future, or has not been restored to competency but will likely be restored in the foreseeable future. If the psychiatrist or psychologist determines the individual:

- (1) is restored to competency, the psychiatrist or psychologist must send a report to the court demonstrating this determination;
- (2) is unlikely to be restored to competency in the foreseeable future, the psychiatrist or psychologist must send a report to the court demonstrating this determination, and coordinate with provider staff members, the court, and the county jail to ensure the transfer or release of the individual pursuant to the court's action to:

(A) proceed under the Texas Code of Criminal Procedure, Chapter 46B, Subchapter E or Subchapter F; or

(B) release the defendant on bail under the Texas Code of Criminal Procedure, Chapter 17; or

(3) has not been restored to competency but will likely be restored in the foreseeable future, if the individual is charged with:

(A) a felony offense, the psychiatrist or psychologist must coordinate with provider staff members, the court, and the county jail to ensure the transfer of the individual to the first available mental health facility

or residential care facility for the remainder of the commitment period; or

(B) a misdemeanor offense, the psychiatrist or psychologist must coordinate with provider staff members, the court, and the county jail to ensure the transfer or release of the individual pursuant to the court's action to: (i) order a single extension under the Texas Code of Criminal Procedure, Article 46B.080 and transfer of the individual to the first available mental health facility or residential care facility; (ii) proceed in accordance with the Texas Code of Criminal Procedure, Chapter 46B, Subchapter E or Subchapter F; (iii) release the defendant on bail in accordance with the Texas Code of Criminal Procedure, Chapter 17; or (iv) dismiss the charges in accordance with the Texas Code of Criminal Procedure, Article 46B.010.

HISTORY: The provisions of this § 416.88 adopted to be effective August 6, 2018, 43 TexReg 5091

§ 416.89. Preparation for Discharge from a JBCR Program

(a) At any time an individual is restored to competency, the psychiatrist or psychologist must collaborate with provider staff members to coordinate the individual's continued services and supports after discharge from the JBCR program to:

- (1) the county jail;
- (2) the LMHA;
- (3) the LBHA;
- (4) the LIDDA; or
- (5) another mental health provider.

(b) If the individual is charged with a misdemeanor or felony and the individual is unlikely to be restored to competency in the foreseeable future, the psychiatrist or psychologist must collaborate with provider staff members to coordinate the individual's continued services and supports after discharge from the JBCR program to:

- (1) a mental health facility;
- (2) a residential care facility;
- (3) the LMHA;
- (4) the LBHA;
- (5) the LIDDA;
- (6) another mental health provider; or
- (7) the care of a responsible person.

(c) If an individual is not restored to competency by the 60th day, the psychiatrist or psychologist must, if the individual is charged with:

(1) a felony, coordinate with provider staff members to link the individual for continued services and supports post discharge from the JBCR program to:

- (A) a mental health facility; or
- (B) residential care facility; or

(2) a misdemeanor, coordinate with provider staff members to link the individual for continued services and supports post discharge from the JBCR program to:

- (A) the county jail,
- (B) a mental health facility;
- (C) a residential care facility;
- (D) the LMHA;
- (E) the LBHA;
- (F) the LIDDA; or
- (G) another mental health provider.

HISTORY: The provisions of this § 416.89 adopted to be effective August 6, 2018, 43 TexReg 5091

§ 416.90. Outcome Measures

A provider must collect and report data to HHSC on:

- (1) individual outcomes:
 - (A) the number of individuals on felony charges;
 - (B) the number of individuals on misdemeanor charges;
 - (C) the average number of days for an individual charged with a felony to be restored to competency;
 - (D) the average number of days for an individual charged with a misdemeanor to be restored to competency;
 - (E) the number of individuals charged with a misdemeanor and not restored to competency, for whom an extension was sought;
 - (F) the number of individuals restored to competency;
 - (G) the average length of time between determination of non-restorability and transfer to a state mental health facility or residential care facility;
 - (H) the percentage of individuals restored to competency in 60 days or less;
 - (I) the number of jail inmates found IST who were screened out of or deemed inappropriate for the program and the reason why; and
 - (J) the number of individuals not restored to competency and who were transferred to a state mental health facility or residential care facility; and

- (2) administrative outcomes:
 - (A) the costs associated with operating the JBCR pilot program or county-based JBCR program; and
 - (B) the number of: (i) reported and confirmed cases of abuse, neglect, and exploitation; (ii) reported and confirmed cases of rights violations; (iii) restraints and seclusions used; (iv) emergency medications used; (v) serious injuries; and (vi) deaths, in accordance with § 415.272 of this title (relating to Documenting, Reporting, and Analyzing Restraint or Seclusion).

HISTORY: The provisions of this § 416.90 adopted to be effective August 6, 2018, 43 TexReg 5091

§ 416.91. Compliance with Statutes, Rules, and Other Documents

- (a) In addition to any applicable federal or state law or rule, a provider must comply with:
 - (1) Texas Health and Safety Code, Chapter 574 (relating to Court-Ordered Mental Health Services);
 - (2) 25 TAC:
 - (A) Chapter 405, Subchapter K (relating to Deaths of Persons Served by TXMHMR Facilities or Community Mental Health and Mental Retardation Centers);
 - (B) Chapter 411, Subchapter N (relating to Standards for Services to Individuals with Co-occurring Psychiatric and Substance Use Disorders (COPSD));
 - (C) Chapter 414, Subchapter I (relating to Consent to Treatment with Psychoactive Medication—Mental Health Services);
 - (D) Chapter 414, Subchapter K (relating to Criminal History and Registry Clearances);
 - (E) Chapter 414, Subchapter L (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers);
 - (F) Chapter 415, Subchapter a (relating to Prescribing of Psychoactive Medication); and
 - (G) Chapter 415, Subchapter F (relating to Interventions in Mental Health Services); and
 - (3) 37 TAC Part 9 (relating to Texas Commission on Jail Standards).

- (b) Concerning confidentiality, a provider must comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and other applicable federal and state laws, including:
 - (1) 42 CFR Part 2 and Part 51, Subpart D;
 - (2) 45 CFR Parts 160 and 164, and § 1386.22;
 - (3) Texas Health and Safety Code, Chapter 81, Subchapter F;
 - (4) Texas Health and Safety Code, Chapter 241, Subchapter G;
 - (5) Texas Health and Safety Code, Chapters 181, 595, and 611;
 - (6) Texas Health and Safety Code, §§ 533.009, 533.035(a), 572.004, 576.005, 576.007, and 614.017;
 - (7) Texas Government Code, Chapters 552 and 559, and § 531.042;
 - (8) Texas Human Resources Code, Chapter 48;
 - (9) Texas Occupations Code, Chapter 159; and
 - (10) Texas Business and Commerce Code, § 521.053.

HISTORY: The provisions of this § 416.91 adopted to be effective August 6, 2018, 43 TexReg 5091

CHAPTER 417.

Agency and Facility Responsibilities

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*Subchapter A.**Standard Operating Procedures***§ 417.1. Purpose**

The purpose of this subchapter is to describe:

- (1) the standard operating policies and procedures for state mental health facilities and state mental retardation facilities (SMHMRFs);
- (2) requirements and rights of facilities; and
- (3) rights protections for individuals receiving services from a facility.

HISTORY: The provisions of this § 417.1 adopted to be effective October 6, 2002, 27 TexReg 9152

§ 417.2. Application

Except for §§ 417.39 - 417.46, concerning trust funds, that apply only to state hospitals, the subchapter applies to state hospitals, state schools, state centers, Central Office, and any entity that may become part of the Texas Department of Mental Health and Mental Retardation (TDMHMR).

HISTORY: The provisions of this § 417.2 adopted to be effective April 27, 2003, 28 TexReg 3347

§ 417.3. Compliance with Nondiscrimination Laws

Services, financial assistance, and other benefits of TDMHMR's programs and facility resources are provided in a manner that does not discriminate on the basis of race, gender, sexual orientation, age, color, national origin, disability, religion, or political affiliation in compliance with applicable state and federal law.

HISTORY: The provisions of this § 417.3 adopted to be effective October 6, 2002, 27 TexReg 9152

§ 417.4. Definitions

The following words and terms when used in this subchapter have the following meanings, unless the context clearly indicates otherwise.

(1) Budgeted amount—The amount of cash that may be disbursed to an individual at regular intervals, e.g., weekly or monthly for discretionary spending without obtaining a sales receipt for the expenditure.

(2) CEO—The chief executive officer of a state mental health facility or a state mental retardation facility.

(3) Commercial lease—A lease of real property to a private enterprise.

(4) Competitive bid—A competitive process for determining the award of a lease, more particularly described in Texas Health and Safety Code, § 533.084 and § 533.087.

(5) Department—The Texas Department of Mental Health and Mental Retardation (TDMHMR).

(6) Facility—A state mental health facility (SMHF) or a state mental retardation facility (SMRF) operated by the TDMHMR.

(7) Individual—A person receiving services from the Texas Department of Mental Health and Mental Retardation.

(8) LAR (legally authorized representative)—A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor individual, a guardian of an adult individual, or a personal representative of a deceased individual.

(9) Mental illness—An illness, disease, or condition (other than a sole diagnosis of epilepsy, senility, substance abuse or dependency, mental retardation, autism or pervasive developmental disorder) that:

(A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.

(10) Mental retardation—Subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period.

(11) Material safety data sheet—The document provided by a manufacturer that describes a material's or part's chemical properties along with guidelines for proper use, storage, and disposal.

(12) Non-commercial group—A group of people associated with an organization, e.g., civic, fraternal, religious, social, service, community, or public employee organization.

(13) Pooled account—A trust fund account containing the personal funds of more than one individual.

(14) Prevailing market rate—A reasonable estimate of the annual rent for a real property based upon its fair market value that reflects the real property's condition, location, and other salient factors.

(15) Public benefit lease—A lease of non-surplus real property between the department and a federal or state agency, a unit of local government, a not-for-profit organization, or an entity that provides services to individuals and/or employees. Such a lease is determined or defined by the board as providing a public benefit.

(16) Public employee organization—An organization that represents department staff in legislative, human resource, and related issues.

(17) Sales receipt—A written statement issued by the seller that includes:

- (A) the date it was created; and
- (B) the cost of the item or service.

(18) SMHF—A state mental health facility (e.g., state hospital).

(19) SMRF—A state mental retardation facility (e.g., state school or state center).

(20) Surplus property—Real property designated by the Texas Mental Health and Mental Retardation Board (board) as having minimal value to the present delivery system as described in the department's long-range plan.

(21) Trust fund account—An account at a financial institution in the facility's control that contains personal funds.

(22) Unauthorized departure that may have unusual consequences—The unauthorized departure of an individual that causes a reasonably prudent staff member who has knowledge of the person's condition to believe that harm or injury to the individual or to others may occur as a result of the unauthorized departure, e.g., the unauthorized departure of an individual who the treatment staff believes to be a danger to self or to others or the unauthorized departure of an individual who requires maintenance medication such as insulin.

(23) Unclaimed personal funds or property—Personal funds or property managed by the facility that has not been disbursed to the individual or LAR within 30 calendar days after the individual's discharge, e.g., if an individual dies and staff are unable to find the LAR or heir to the estate.

(24) Unidentified personal funds or property—Personal funds or property managed by the facility for which the facility cannot identify ownership.

HISTORY: The provisions of this § 417.4 adopted to be effective April 27, 2003, 28 TexReg 3347

§ 417.6. Assignment and Use of Pooled Vehicles

(a) Except as provided by subsection (b) of this section, state-owned vehicles under the TDMHMR's control are assigned to the facility's motor vehicle pool and made available for use as needed. Some of the vehicles in the motor vehicle pool may be organized in subpools and assigned to divisions or functions (e.g., building services, security, food services) within the facility. The subpooled vehicles are available only to staff in that division or who perform job duties related to that function.

(b) If a state-owned vehicle under the department's control is assigned to an employee, then the facility CEO or designee must document in writing that the assignment and use of the vehicle is critical to TDMHMR's mission. The written documentation must be maintained at the facility, sent to and maintained in the Central Office transportation office, and sent to the General Services Commission, Office of Vehicle Fleet Management.

HISTORY: The provisions of this § 417.6 adopted to be effective October 6, 2002, 27 TexReg 9152

§ 417.7. Inscription on State Vehicles

State vehicles used primarily for transporting individuals receiving services from TDMHMR are not required to have its inscription printed on the vehicle. The purpose served by this exemption is to provide confidentiality, safety, and normalization for individuals receiving services and to reduce the stigma associated with mental illness and mental retardation.

HISTORY: The provisions of this § 417.7 adopted to be effective October 6, 2002, 27 TexReg 9152

§ 417.9. Material Safety Data Sheets

The plant maintenance manager or designee must ensure that a contractor obtains a material safety data sheet before installing any material or replacement part at the facility. If according to the material safety data sheet the material or replacement part contains more than one percent asbestos and there is an alternative material or part available, the contractor is prohibited from installing the material or replacement part.

HISTORY: The provisions of this § 417.9 adopted to be effective October 6, 2002, 27 TexReg 9152

§ 417.14. Non-Commercial Groups

(a) Policy. The facility CEO may make facility resources available to the public at large whenever it can do so without compromising the department's primary mission.

(b) Requesting permission. The Facility/Premises Use Request form, which is in the TDMHMR Contracts Manual, must be completed and submitted to the facility CEO.

(c) Criteria for approving requests. The facility CEO may approve or disapprove the use of facility resources based on whether:

(1) the organization agrees in writing to abide by all rules and regulations established by the facility CEO regarding the use facility resources and that its meetings in no way interfere with or disrupt the delivery of services to the individuals mental illness or mental retardation;

(2) the event does not conflict with any of the facility's scheduled events, programs, or priorities;

(3) the event is consistent with the physical constraints of the resources to be used;

(4) the facility can provide the services for the time period requested; and

(5) the event does not conflict with the best interests of the facility or individuals.

(d) Facility resource use fee. Any non-commercial group may be charged a facility resource use fee according to the Facility Resource Use Fee Schedule, which is in the TDMHMR Contracts Manual.

(e) Revoking permission. Permission granted pursuant to such a request continues until revoked by the facility CEO. The non-commercial group must immediately notify the facility CEO of any change in the information stated in its written request for permission to use the facilities.

(f) Advertising. If language clearly reflects that the facility is not sponsoring or promoting the event is included in the copy, the facility's name may be used to advertise the location of the activities. The facility CEO may require that a proof of the advertising copy be submitted for approval and may require the a disclaimer, e.g., (facility name) is not a promoter or sponsor of this event. No inference of support can be drawn because of the event's location.

(g) Liability. Any non-commercial group or any member thereof using facility resources is liable for any destruction or damage to the resources. The department is not liable for any injury to any person or for the loss of or damage to the property of any person, organization, or group using facility resources.

(h) Required documentation. As described in the TDMHMR Contracts Manual and this subchapter, if the request is for an athletic or sporting event, a water-related activity, overnight use, or an event that is open to the public at large or attendance is expected to exceed 25 or more

people, then the requestor by no later than 72 hours prior to the event must:

- (1) execute a license and use agreement;
- (2) execute a waiver and indemnity agreement; and
- (3) obtain general liability insurance in an amount sufficient to cover TDMHMR's potential liability (as established on the Facility/Premises Use Request form), with the Texas Department of Mental Health and Mental Retarded and/or its successors listed as an additional insured; and
- (4) submit the use and indemnity agreements and proof of insurance to the facility CEO.

HISTORY: The provisions of this § 417.14 adopted to be effective October 6, 2002, 27 TexReg 9152

§ 417.15. Family Members and Guests of an Individual Receiving Services

If a facility has on-site overnight accommodations that are made available to family members or guests of an individual receiving services, a facility resource use fee may be charged. The facility use fee schedule is in the TDMHMR Fiscal Manual. If the family member or guest is unable to pay the entire use fee, the facility CEO may waive any portion or all of the fee based on the family member's or guest's ability to pay.

HISTORY: The provisions of this § 417.15 adopted to be effective October 6, 2002, 27 TexReg 9152

§ 417.23. Unauthorized Departures That May Have Unusual Consequences

The CEO or designee shall immediately if possible, but in no case more than one hour later make a missing person report to the appropriate law enforcement agency upon discovering an unauthorized departure that may have unusual consequences for an individual who:

- (1) is unable to ensure his or her personal safety and/or is considered to be a danger to self or others; and
- (2) is receiving court-ordered inpatient or residential services or is voluntarily receiving mental retardation residential services.

HISTORY: The provisions of this § 417.23 adopted to be effective April 27, 2003, 28 TexReg 3347

§ 417.27. Depositing Department Funds

The CEO or designee is responsible for ensuring that:

- (1) all funds received are deposited with the state treasurer or in an account that is insured under state or federal law.
- (2) the balance of such account does not exceed the insured limit of the financial institution; and
- (3) all funds that must be deposited in the State Treasury are deposited within three business days of receipt.

HISTORY: The provisions of this § 417.27 adopted to be effective April 27, 2003, 28 TexReg 3347

§ 417.28. Investing Department Funds

(a) The CEO or designee must ensure that funds which are not required for current use are invested with Texas financial institutions or the Central Office investment plan. Earnings on invested funds other than trust funds shall be added to the funds from which earnings are derived. The interest rate and the availability for withdrawal in case of emergency must be considered in making investment selections.

(1) Texas financial institutions. If the Texas financial institution is insured under state or federal law, the funds may be invested in certificates of deposit or savings accounts. If the investment amount exceeds the limits of state and federal insurance the investment source must pledge additional securities equal to the investment amount.

(2) Central Office investment program. Central Office offers a short term fund, current interest rate, investment plan for the benefit of all facilities. Funds may be transferred to Central Office, Financial Services in multiples of \$ 2,500 for immediate return upon request. Interest payments are remitted by Central Office, Financial Services at the end of each month.

(b) A register of investments, including individuals' personal funds must be maintained in the office of the CEO or designee, including:

- (1) name of financial institution;
- (2) a description of each investment;
- (3) the amount and date of the investment;
- (4) interest due dates;
- (5) interest paid dates;
- (6) maturity date; and
- (7) reinvestment information.

(c) The CEO or designee must use the register of investments to verify collection of income and principal.

HISTORY: The provisions of this § 417.28 adopted to be effective April 27, 2003, 28 TexReg 3347

§ 417.29. Benefit Funds: Use and Control

(a) Authority. As authorized by the Texas Health and Safety Code, § 551.004, the CEO must be the trustee of a special fund designated as the benefit fund. The CEO may expend the money in any such fund for the education or entertainment of individuals or for the actual expense of maintaining the fund at the financial institution.

(b) Source of funds. The source of benefit funds are:

- (1) private donations or gifts; and
- (2) interest earned from investment of benefit funds.

(c) Use of funds. Except for specific purpose funds, benefit funds may be used only for the purposes of education or entertainment of individuals and be of general benefit to the facility's population. However, this does not mean or imply that every individual must benefit from each expenditure from the benefit fund. Benefit funds must not be spent in a manner that shows partiality or preferential treatment of an individual or selected groups of individuals. Expenditures from the benefit fund must be supported by sales receipts to show the exact purpose and, if practical, to show the name of the individuals' benefiting from the expenditure.

(d) Allowable expenditures. Expenditures from the benefit funds may include items such as:

- (1) supplies for behavior therapy programs, which involve a token economy or point level system;
- (2) outings for individuals, including admission fees and meals for those staff who are required to accompany the individuals;
- (3) coffee for individuals;
- (4) religious items;
- (5) educational books and supplies;
- (6) salaries of temporary teachers, including athletic instructors and recreation assistants;
- (7) playground equipment, televisions, record players, and stereos, for use by individuals as a whole in the living areas; and

(8) grocery items purchased for classes in home economics.

(e) Unallowable expenditures. Expenditures that cannot be made from the benefit fund include:

- (1) travel of state employees;
- (2) operating supplies;
- (3) supplies for volunteer center training program;
- (4) nursery stock;
- (5) clothing for individuals;
- (6) cash issues to individuals with no personal funds.
- (7) purchase of canteen coupon books for individuals with no personal funds;
- (8) staff salary augmentation;
- (9) transportation for individuals' home visits; and
- (10) furniture and equipment normally purchased from state appropriated funds.

(f) Prohibition on use of funds. Unless prohibited by department policy or state or federal laws and regulations, funds that are donated for a specific purpose must be used for that purpose. If the purpose for the funds is prohibited, the donor is contacted and asked to specify a purpose that permits expenditure in compliance with department policy or state or federal law and regulations.

(g) Depositing funds. The CEO or designee must ensure that all benefit fund receipts are deposited in a financial institution insured by state or federal and all expenditures are made by check according to the TDMHMR Fiscal Manual .

(h) Administrative expenses. The actual expense of maintaining benefit funds may include expenditures to cover administrative errors which arise in the administration or disbursement of benefit funds and personal funds, provided the following restrictions are met:

- (1) the amount of benefit funds expended to cover any single loss does not exceed \$ 250;
- (2) in each instance of loss, prior approval for the use of benefit funds to cover the administrative error must be obtained from the CEO;
- (3) the circumstances surrounding each administrative error must be documented and attached in the supporting records;
- (4) for auditing purposes, the expenditure, if approved and made, must be charged to cash shortage;
- (5) benefit funds must not be used to cover losses that result from the gross negligence of any employee or employees;
- (6) the facility in which the administrative error occurred must take the action necessary to correct the error and/or prevent its recurrence, including, but not limited to, counseling staff on the correct procedure for the administration and disbursement of benefit funds and personal funds; and
- (7) employees responsible for administrative errors in the administration or disbursement of benefit funds and personal funds may be subject to disciplinary action.

HISTORY: The provisions of this § 417.29 adopted to be effective April 27, 2003, 28 TexReg 3347

§ 417.33. Mail for Staff Residing On Campus

(a) Staff mail. Except as provided by subsection (b) of this section, all mail addressed to staff is delivered unopened to the addressee. Routine, indiscriminate opening of an employee's mail is prohibited. Unless living on grounds, staff must not have personal mail delivered to the facility.

(b) Authority to open mail. If the CEO determines that it is in the best interest of the facility to maintain fiscal control over monies belonging to the facility, an individual, or to control contraband, the CEO has the authority to open

any mail addressed to a staff member, office, or section of the facility (except personal mail addressed to staff or their families living on the grounds or mail marked "personal" or "confidential"). Mail addressed to an employee (except that indicated in subsection (a) of this section) can be opened only in the presence of the employee.

HISTORY: The provisions of this § 417.33 adopted to be effective April 27, 2003, 28 TexReg 3347

§ 417.34. Commercial Solicitation on Grounds

The CEO is responsible for developing and implementing local procedures regarding commercial solicitation on the grounds of the facility that include the requirement for staff to direct sales representatives to those staff who are responsible for ordering the types of products being offered, e.g., drug representatives are directed to the pharmacy director or the given the times, dates, and locations of the meetings of the executive formulary committee.

HISTORY: The provisions of this § 417.34 adopted to be effective April 27, 2003, 28 TexReg 3347

§ 417.38. Individual's Personal Property

(a) Local procedures. The CEO or designee is responsible for developing and implementing local procedures to ensure an individual's right to reasonable protection of personal property including clothing and mail from theft or loss consistent with Chapter 404, Subchapter E, concerning Rights of Persons Receiving Mental Health Services, and Chapter 405, Subchapter Y, concerning Client Rights—Mental Retardation Services or any other department rules that concern the rights of individuals.

(b) Personal property. The CEO or designee is responsible for developing and implementing written processes that protect each individual's personal property that include:

- (1) advising individuals and LARs that the facility is limited in its ability to protect any personal property that an individual keeps on the unit, however, if loss or theft of such property is reported staff must make every effort to find and return the missing property to the owner;
- (2) documenting the receipt of any personal property that is to be held under the facility's control;
- (3) physically inventorying personal property under the facility's control and documenting personal property received from individuals to ensure it is accounted for and if a discrepancy arises develop a process for documenting, investigating, and resolving the discrepancy;
- (4) documenting and honoring an individual's request for the return of any or all of his or her personal property previously under the facility's control.

(c) Returning personal property. If an individual is discharged from the facility, staff must upon discharge or as soon as possible thereafter document and return to the individual or LAR all of the individual's personal property under the facility's control.

(d) Individual's personal mail. Except as described in this section and department rules concerning the rights of individuals, an individual's personal mail must be delivered unopened to the addressee. If staff have reason to believe that mail addressed to an individual is an invoice and the facility is responsible for its payment, then the mail must be opened by the individual and witnessed by two staff. If the mail contains such an invoice, it is forwarded to accounts payable for processing, an explanation of the situation is given to the individual, and the situation is documented in the individual's record.

HISTORY: The provisions of this § 417.38 adopted to be effective April 27, 2003, 28 TexReg 3347

§ 417.39. Protecting an Individual's Personal Funds

(a) Rules concerning the personal funds of individuals receiving services from a state mental retardation facility (SMRF) are in Chapter 419, Subchapter E, concerning ICF/MR Program.

(b) The state mental health facility (SMHF) must implement §§ 417.39 - 417.46 of this title according to the generally accepted accounting principles of the American Institute of Certified Public Accountants.

(c) The CEO must develop and implement local procedures regarding personal funds that protect the financial interest of individuals and, at a minimum, require the SMHF to allow individuals to hold and manage their personal funds to the extent of their abilities.

HISTORY: The provisions of this § 417.39 adopted to be effective April 27, 2003, 28 TexReg 3347

§ 417.40. Notice Regarding Personal Funds

At the time of admission to the SMHF, and if changes to services or charges occur, staff must provide each individual or LAR with written notification containing the following information:

(1) a written explanation of § 417.41 of this title (relating to Determining Management of Personal Funds), which describes who may manage personal funds;

(2) a statement that the admitting physician determines whether the individual has the ability to manage his or her personal funds and if, an individual is unable to manage such funds, the funds are deposited in the trust fund account for no longer than seven calendar days when the treating physician reevaluates the admitting physician's determination;

(3) a statement that the individual, CEO, or LAR may request that the Social Security Administration appoint a representative payee to receive the individual's federal benefits in accordance with 20 CFR Part 416, Subpart F;

(4) a statement that, if the facility manages the individual's personal funds, staff must make available the individual's personal funds ledger upon the individual's or LAR's request but in no case longer than 30 calendar days; and

(5) a statement that at the request of the individual or LAR, or if the individual is discharged from the SMHF, the SMHF must whenever possible disburse the individual's personal funds to the individual or LAR upon discharge but in no event more than 30 calendar days after the request or discharge, if the SMHF manages the individual's personal funds.

(6) a statement that the facility is not responsible for personal funds mailed directly to individuals; and

(7) a statement that the SMHF maintains a trust fund to protect personal funds and such funds including cash and checks that are to be deposited in the trust fund must be mailed to the cashier's attention.

HISTORY: The provisions of this § 417.40 adopted to be effective April 27, 2003, 28 TexReg 3347

§ 417.41. Determining Management of Personal Funds

(a) Within seven business days after an individual is admitted to the SMHF, the treating physician must determine if the individual has the ability to manage his or her personal funds.

(b) If an individual does not have an LAR and is determined by the treating physician to have the ability to decide who manages his or her personal funds or if an individual has an LAR, the facility must allow the individual or LAR to choose one of the following to manage his or her personal funds and document such choice as determined by local procedures:

(1) the individual, if the individual is determined to have the ability to manage his or her personal funds;

(2) the individual's LAR;

(3) another person identified by the individual or LAR who has agreed in writing to manage the individual's personal funds; or

(4) the facility.

(c) If an individual is determined not to have the ability to decide who manages his or her personal funds and the individual has no LAR, the SMHF must manage the individual's personal funds in accordance with this subchapter.

(d) The treating physician must reassess an individual's understanding of financial management at the individual's or LAR's request.

§ 417.42. SMHF-Managed Personal Funds

(a) Accounting for personal funds. If the facility manages an individual's personal funds, the SMHF must comply with this section and ensure that:

(1) a complete accounting of personal funds entrusted to the SMHF is maintained;

(2) personal funds are not commingled with facility funds or the funds of any person other than another individual for whom the SMHF manages personal funds; and

(3) an individual's personal funds are only expended for that individual's use and benefit.

(b) Account requirements. The SMHF must manage personal funds in a pooled trust fund account.

(1) The trust fund account must be insured under federal or state law.

(2) The SMHF must retain all bank statements from financial institutions regarding trust fund accounts.

(3) Within 30 calendar days after receiving the bank statement, the facility must reconcile the bank statement with the general ledger as described in subsection (c) of this section and personal funds ledger as described in subsection (h)(5) of this section.

(4) Each business day, staff must reconcile:

(A) each individual's transactions with the trust fund control ledger; and

(B) the personal funds ledger with the trust fund control ledger.

(c) General ledger. The SMHF must maintain a general ledger that separately identifies each financial transaction, including:

(1) the name of the individual for whom the transaction was made;

(2) the date and amount of the transaction, including interest;

(3) the balance after the transaction; and

(4) identify the SMHF name in the account title and the type of account, e.g., Austin State Hospital, Trust Fund Account.

(d) Investment. Unless an exception is granted by the director, State Mental Health Facilities and written documentation of such is maintained at the facility, the SMHF must invest at least 75% of the average monthly balance of the total held in trust for the previous six months in an insured Texas financial institution.

(e) Interest. If personal funds accrue interest, the SMHF must prorate and distribute the interest earned to each participating individual at the end of the month.

(f) Depositing personal funds. The SMHF must deposit in the trust fund account all funds that it receives on behalf of an individual.

(g) Access to personal funds. The treating physician must determine the individual's ability to manage his or her personal funds and:

(1) if there is a need for a budgeted amount, set the amount, and document the amount in the individual's medical record; and

(2) if there is a need to restrict the individual's use of personal funds the treating physician must document the need for the restriction in the individual's medical record.

(h) Personal funds documentation. Staff must maintain a personal funds documentation for each individual that includes:

(1) the name of the individual;

(2) the name of the individual's LAR and representative payee, as applicable;

(3) the date of the individual's admission to the SMHF;

(4) the individual's budgeted amount;

(5) a personal funds ledger that includes the date and amount of each transaction and the balance after each transaction; and

(6) any contribution acknowledgment as described in § 417.46 of this title (relating to Contributions).

(i) Documenting expenditures and deposits.

(1) Expenditures.

(A) Staff must retain a sales receipt for each expenditure made on behalf of an individual.

(i) If a sales receipt documents an expenditure for more than one individual, the SMHF must indicate on the sales receipt the amount allocated to each individual.

(ii) If a sales receipt does not include the specific item or service purchased or the name of the seller, staff must attach such documentation.

(B) Staff must explain each expenditure to the individual and request that the individual sign the receipt. If staff determine that the individual does not understand the explanation, the individual does not sign the receipt, or the individual's signature is illegible, a witness to the expenditure must sign the receipt. The witness cannot be responsible for managing personal funds or responsible for supervising persons performing such duties.

(2) Deposits. Except for deposits made electronically, staff must retain a deposit slip issued by the financial institution for each deposit.

§ 417.43. Requests for Personal Funds from Trust Fund Accounts

If staff receive a request, from an individual or other person except staff to expend an individual's personal funds without written evidence supporting the disbursement, a written request specifying the amount and purpose of the expenditure is signed by the requestor, the facility may release such funds to the requestor if the funds recipient acknowledges receiving the funds in writing.

HISTORY: The provisions of this § 417.43 adopted to be effective April 27, 2003, 28 TexReg 3347

§ 417.44. Returning Individual's Personal Funds on Discharge

If an individual is discharged from the facility, staff must upon discharge or in no case more than 30 calendar days after the discharge:

(1) reconcile the personal funds ledger to the trust fund control ledger and the trust fund control ledger to the general ledger;

(2) transfer all personal funds managed by the facility:

(A) to the facility receiving the individual, if the individual is discharged to another facility; or

(B) to the individual or LAR, if the individual is not discharged to another SMHF;

(C) the copy of a check serves as documentation for the distribution of personal funds.

(3) provide to the admitting SMHF, individual, or LAR the individual's current personal funds documentation.

HISTORY: The provisions of this § 417.44 adopted to be effective April 27, 2003, 28 TexReg 3347

§ 417.45. Unclaimed Personal Funds and Property

(a) If a person makes a request for an individual's unclaimed personal funds or property that:

(1) exceeds \$ 500 and provides written authorization from the probate court to receive such funds or property, staff release the funds or property.

(2) is \$ 500 or less and the CEO or designee is reasonably certain that the person is the lawful heir and that there is no concern for a future dispute over the disbursed funds or property, facility staff release the funds or property.

(b) If no request for the unclaimed funds or property is received, staff must make a good faith effort to locate the individual to whom the funds or property belong or the LAR. If the individual or LAR:

(1) is located or a request for the personal funds or property is received, staff must transfer the funds or property to the individual or LAR; or

(2) is not located, staff must maintain the personal funds in a bank account as described in § 417.42(b) of this title (relating to SMHF—Managed Personal Funds) or maintain the property in a secure location.

(A) The SMHF must hold the unclaimed personal funds or property for three years.

(B) At the end of three years if no request for the funds or property is received, the SMHF must transfer to State Comptroller's Office the unclaimed funds or property according to the Holder Information Report instructions published by the State Comptroller's Office.

HISTORY: The provisions of this § 417.45 adopted to be effective April 27, 2003, 28 TexReg 3347

§ 417.46. Contributions

If the individual or LAR makes a contribution to the SMHF using personal funds, the SMHF and the contributor must sign and date an acknowledgement that the SMHF's services are not predicated on a contribution and the contribution is voluntary. The acknowledgement must be made a part of the individual's personal funds documentation. There are additional requirements for accepting contributions in Chapter 417, Subchapter G, concerning community relations.

§ 417.47. Training Requirements for State Mental Health Facilities

(a) All State Hospital Employees. As required by Texas Health and Safety Code, § 552.052(b), before performing the employee's duties without direct supervision, all state mental health facility (SMHF) staff members shall receive competency training and instruction on general duties.

(b) Direct Care Employees. Before an employee who provides direct delivery of services to a patient begins to perform direct care duties without direct supervision, a SMHF staff member shall receive training and instruction, in addition to the training outlined in subsection (a) of this section, on implementation of the interdisciplinary treatment program for each patient, a person admitted to a state hospital under the management and control of the department, for whom they will provide care.

(c) Specialized Training. Direct care employees shall receive additional training and instructional information in accordance with the specialized needs of the population being served, including services on units for individuals with intellectual disabilities, medical impairments, or geriatric patients.

(d) All SMHF staff members shall receive annual refresher training on the topics outlined in subsection (a) of this section throughout the staff member's employment or association with the SMHF, unless the department determines in good faith and with good reason a particular employee's performance will not be adversely affected in the absence of such refresher training.

(e) Direct Care Employees whose duties require delivery of services to a patient shall receive annual refresher training on the topics outlined in subsections (a) and (b) of this section throughout the staff member's employment or association with the SMHF, unless the department determines in good faith and with good reason a particular employee's performance will not be adversely affected in the absence of such refresher training.

(f) Direct Care Employees whose duties require delivery of services on units for individuals with intellectual disabilities, medical impairments, or geriatric patients shall receive annual refresher training on the topics outlined in subsections (a), (b), and (c) of this section, throughout the staff member's employment or association with the SMHF, unless the department determines in good faith and with good reason a particular employee's performance will not be adversely affected in the absence of such refresher training.

HISTORY: The provisions of this § 417.47 adopted to be effective April 3, 2014, 39 TexReg 2292

§ 417.49. References

Reference is made to the:

- (1) Texas Health and Safety Code, § 533.84 and § 533.87;
- (2) 20 CFR Part 16, Subpart F;
- (3) Holder Information Report , Texas State Comptroller's Office;
- (4) TDMHMR Contracts Manual ; and
- (5) TDMHMR Fiscal Manual .

HISTORY: The provisions of this § 417.49 adopted to be effective April 27, 2003, 28 TexReg 3347

§ 417.50. Distribution

(a) The subchapter is distributed to the board; commissioner; medical director; deputy commissioners for community programs and finance and administration; directors,

State Mental Health and Mental Retardation Facilities; Central Office program staff; and facility CEOs.

(b) The facility CEO is responsible for disseminating this subchapter to appropriate staff.

HISTORY: The provisions of this § 417.50 adopted to be effective October 6, 2002, 27 TexReg 9152

Subchapter C.

Charges in Services in TDMHMR Facilities

§ 417.101. Purpose

Pursuant to the Texas Health and Safety Code, Chapter 552, Subchapter B, and Chapter 593, Subchapter D, the purpose of this subchapter is to describe:

- (1) the assessment of fees for clients' support, maintenance, and treatment at facilities of the Texas Department of Mental Health and Mental Retardation;
- (2) the process to appeal an assessed fee(s); and
- (3) the process to file a notice of lien.

HISTORY: The provisions of this § 417.101 adopted to be effective February 17, 2000, 25 TexReg 1109

§ 417.102. Application

This subchapter applies to all facilities of the Texas Department of Mental Health and Mental Retardation that provide inpatient or residential services.

HISTORY: The provisions of this § 417.102 adopted to be effective February 17, 2000, 25 TexReg 1109

§ 417.103. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

- (1) Adult—A person who is not a minor.
- (2) Appellant—The person appealing a fee(s).
- (3) Charges—The total amount of all fees.
- (4) Client—Any person who is admitted to a facility and who is provided support, maintenance, and treatment as an inpatient or resident (i.e., a person to whom a bed is assigned by the facility).
- (5) Current maximum rate—The rate, established by the department, that reflects the average daily cost of support, maintenance, and treatment per client for each facility. (A copy of the current maximum rates for all facilities may be obtained by contacting TDMHMR, Revenue Management, P.O. Box 12668, Austin, Texas 78701-2668.)
- (6) Department—The Texas Department of Mental Health and Mental Retardation (TDMHMR).
- (7) Facility—Any state hospital, state school, state operated community services, or state center operated by the department.
- (8) Family member—
 - (A) Unmarried client age 18 or older—the client and his/her dependents.
 - (B) Married client of any age—the client, his/her spouse, and their dependents.
- (9) Fee—A specific amount of money assessed, based on a single source of funds, that is owed monthly to a facility for a client's support, maintenance, and treatment.
- (10) Hearing officer—An impartial attorney assigned by the department to conduct the hearing for an appeal of a fee(s).

(11) Minor—A person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

(12) Party—The appellant or the department.

(13) Person responsible for payment—The client, the client’s spouse, the client’s parent, or other person legally responsible for paying the charges for the client’s support, maintenance, and treatment, either individually, in a representative capacity, or other legal capacity.

(14) Reimbursement manager—The department employee in charge of the reimbursement office at a facility.

(15) SMT—Support, maintenance, and treatment.

HISTORY: The provisions of this § 417.103 adopted to be effective February 17, 2000, 25 TexReg 1109

§ 417.104. Fee Assessment and Notification of Charges

(a) General provisions. The fee(s) for a client’s SMT is assessed in accordance with this section.

(1) Charges will not exceed the facility’s current maximum rate.

(2) Failure of the person responsible for payment to provide financial information upon request or to assign third-party benefits may result in charges equal to the facility’s current maximum rate.

(3) A guardian’s personal finances and assets are not considered in assessing fee(s).

(b) Necessary financial information. Upon a client’s admission to a facility, or shortly afterward, the reimbursement manager shall provide the client and/or person responsible for payment with a property and financial statement form, referenced as Exhibit A in § 417.108(1) of this title (relating to Exhibits), appropriate to the type of services provided to the client.

(c) Assessing fee(s) for minor clients.

(1) The following sources of funds are property from which the state may be reimbursed for a minor client’s SMT and are considered separately in assessing a fee:

- (A) third-party coverage of the minor client;
- (B) the minor client’s benefits from governmental and non-governmental agencies and institutions;
- (C) child support ordered in a divorce proceeding and other personal income of the minor;
- (D) real and/or personal property in the minor client’s guardianship estate or owned by the minor client; and
- (E) the income of the minor client’s parents as authorized by the Texas Health and Safety Code, § 552.017, § 593.075, and § 593.076, in accordance with the Taxable Income of Parents formula, referenced as Exhibit B in § 417.108(2) of this title (relating to Exhibits).

(2) Pursuant to Texas Health and Safety Code, § 593.077, a judgment in a divorce proceeding that provides for child support payments (as referenced in paragraph (1)(C) of this subsection) does not limit the fee that may be assessed (except that it may not exceed the current maximum rate), nor does the judgment exempt either parent from liability for the charges.

(d) Assessing fee(s) for adult clients in mental health facilities. The following sources of funds are considered separately in assessing a fee:

- (1) third-party coverage of the adult client;
- (2) the adult client’s benefits from governmental and non-governmental agencies and institutions;

(3) real and/or personal property in the adult client’s guardianship estate or owned by the adult client or spouse; and

(4) monthly gross income of the adult client (excluding income from the source described in paragraph (2) of this subsection) and income of the spouse, in accordance with the Adult Clients in Mental Health Facilities formula, referenced as Exhibit C in § 417.108(3) of this title (relating to Exhibits).

(e) Assessing fee(s) for adult clients in mental retardation facilities. The following sources of funds are considered separately in assessing a fee:

- (1) third-party coverage of the adult client;
- (2) the adult client’s benefits from governmental and non-governmental agencies and institutions;
- (3) real and/or personal property in the adult client’s guardianship estate or owned by the adult client or spouse;
- (4) the adult client’s monthly net work earnings in accordance with the Adult Clients in Mental Retardation Facilities formula, referenced as Exhibit D in § 417.108(4) of this title (relating to Exhibits); and
- (5) income of the adult client (excluding income from the sources described in paragraphs (2) and (4) of this subsection) and income of the spouse.

(f) Trusts. The provisions of the Texas Health and Safety Code, § 552.018 and § 593.081, apply to the fee(s) assessment for a client who is a beneficiary of a trust or trusts.

(g) Notification of charges. After a fee(s) has been assessed, the reimbursement manager or designee shall provide written notification of charges to the person responsible for payment that includes:

- (1) the date of the notification of charges;
- (2) the name of the client receiving SMT from the facility;
- (3) the fee(s) and the source(s) of funds used to assess the fee(s);
- (4) the effective date(s) of the fee(s);
- (5) the facility’s current maximum rate;
- (6) a statement that the person is responsible for notifying the facility’s reimbursement manager if there is a change in any of the sources of funds the department uses to assess a fee or a change in family status that would affect any assessed fee;
- (7) information on possible payments from a third-party payor; and
- (8) a statement that the person has the right to appeal under the following conditions if he or she disagrees with the fee(s).

(A) If the person has submitted complete financial information, then the person must notify the reimbursement manager of his or her intent to appeal the fee(s). The person must initiate the appeal, in accordance with § 417.106(c) of this title (relating to Appeal Process), within 60 calendar days of the date of the notification of charges.

(B) If the person has not submitted complete financial information, then the person must contact the reimbursement manager and provide complete financial information within 15 working days of the date of the notification of charges or the person forfeits the right to appeal. If the person provides complete financial information within 15 working days of the date of the notification of charges, then the person must initiate the appeal, in accordance with § 417.106(c) of this title (relating to Appeal Process), within 60 calendar days of the date of the notification of charges.

(h) Complete financial information received within 15 working days of the date of the notification of charges. If the reimbursement manager receives complete financial information from the person responsible for payment within 15 working days of the date of the notification of charges as required in subsection (g)(8)(B) of this section, then the reimbursement manager or designee shall, within ten working days:

- (1) review the financial information;
- (2) revise the fee(s) if appropriate; and
- (3) inform in writing the person responsible for payment:

(A) of the fee(s) amount;

(B) that the person has a right to appeal if he or she disagrees with the fee(s); and

(C) that an appeal must be initiated, in accordance with §417.106(c) of this title (relating to Appeal Process), within 60 calendar days of the date of the notification of charges (referenced in subsection (g) of this section).

(i) Fee revision. The department shall determine if a fee revision is warranted each time the department receives information indicating:

(1) a change in any of the sources of funds the department uses to assess a fee; and

(2) a change in family status that would affect any assessed fee.

HISTORY: The provisions of this § 417.104 adopted to be effective February 17, 2000, 25 TexReg 1109

§417.105. Accruing Charges

(a) Except when charging is prohibited by law or contract and subject to the provisions in this section, charges continue to accrue:

(1) for the entire period the client receives SMT at the facility;

(2) for the entire period of the client's absence from the facility, if the client remains under the care, custody, and control of facility personnel;

(3) for the entire period the client is absent from the facility for admission to an inpatient medical facility and charges for the medical services at the inpatient medical facility are not paid by a third-party payor; and

(4) for the first three days of the client's absence from the facility, other than an absence described in paragraphs (2) and (3) of this subsection, from which the client plans to return.

(b) The following are considered a full day at the facility:

(1) the day of the client's admission to the facility;

(2) the day of the client's death at the facility; and

(3) the day the client returns to the facility from an absence.

(c) The following are considered a full day away from the facility:

(1) the day of the client's discharge from the facility;

(2) the day of the client's transfer from the facility; and

(3) the day of the client's departure from the facility for an absence.

HISTORY: The provisions of this § 417.105 adopted to be effective February 17, 2000, 25 TexReg 1109

§417.106. Appeal Process

(a) Right to appeal. If the person responsible for payment has provided complete financial information and the

person disagrees with any fee(s) assessed by the department, then the person is entitled to appeal such fee(s).

(b) Obtaining forms to initiate an appeal. In order to appeal a fee(s), the person responsible for payment must notify the reimbursement manager at the facility providing SMT to the client of his or her intent to appeal the fee(s). Upon such notification, the reimbursement manager shall ensure that the person has provided complete financial information before sending the person a copy of this subchapter and a Request for Appeal form (referenced as Exhibit E in §417.108(5) of this title (relating to Exhibits)).

(c) Initiating the appeal. The person responsible for payment initiates an appeal by completing, signing, and sending the Request for Appeal form (referenced in subsection (b) of this section or §417.107(a)(4) of this title (relating to Filing Notice of Lien)) to: Hearings Office, TDMHMR, P.O. Box 12668, Austin, Texas 78711-2668. The Hearings Office staff shall contact the facility reimbursement manager to confirm that the person responsible for payment has provided complete financial information before scheduling a hearing.

(d) Representation.

(1) The appellant may represent himself or herself or use legal counsel, a relative, a friend, or other spokesperson.

(2) The department is represented by a department attorney.

(e) Type of hearing.

(1) The appellant may choose to:

(A) appear by telephone conference or have his or her representative appear by telephone conference at the hearing;

(B) appear in person or have his or her representative appear in person at the hearing in Austin; or

(C) have a document hearing in which the hearing officer makes a decision based solely upon documentation filed by the parties with neither party appearing.

(2) If the appellant chooses to appear by telephone or in person at the hearing, then the designated department attorney may choose to:

(A) appear by telephone conference at the hearing; or

(B) appear in person at the hearing in Austin.

(f) Scheduling the hearing. The hearing officer shall schedule the hearing to be held not later than the 40th day after the date the Request for Appeal form is received by the hearings office. The hearing officer shall consider any request for reasonable accommodations related to a disability of the appellant or the appellant's representative.

(1) If the appellant chooses to appear, then the hearing officer shall schedule a date, time, and location (and phone number if a party will be appearing by telephone conference) for the hearing. At least 20 calendar days before the hearing, the hearing officer shall notify the parties, in accordance with subsection (g) of this section, of the scheduled date, time, and location (and phone number) of the hearing.

(2) If the appellant chooses to have a document hearing, then at least 20 calendar days before the document hearing, the hearing officer shall notify the parties, in accordance with subsection (g) of this section, of the date that all documentation must be filed with the hearings office and copies submitted to the other party or the other party's representative.

(g) Notification of parties.

(1) The appellant is notified by certified mail.

(2) The designated department attorney is notified by intra-agency mail, fax, or electronic mail.

(h) Privileges. No party is required to disclose communications between an attorney and the attorney's client, an accountant and the accountant's client, a husband and wife, a clergy-person and a person seeking spiritual advice, or the name of an informant, or other information protected from being divulged by substantive federal or state law.

(i) Ex parte communication. With the exception of communications regarding procedural matters, the hearing officer may not communicate with a party, directly or indirectly, on any issue of fact or law, unless both parties are present or the communication is in writing and a copy is delivered to both parties.

(j) Withdrawing. The appellant may withdraw the appeal or the department may withdraw the fee(s) being appealed at any time prior to the hearing. Upon withdrawal of either party, no hearing is held. The hearing officer will issue an order of dismissal and notify the parties of such dismissal in accordance with subsection (g) of this section.

(k) Settlement. At any time before the hearing, parties may enter into a settlement disposing of the contested issue(s). A settlement agreement must be in writing, signed by the parties or their representatives, and filed with the hearings office. Upon receipt of the settlement agreement, the hearing officer will issue an order of dismissal and notify the parties of such dismissal in accordance with subsection (g) of this section.

(l) Filing documents.

(1) Hearing at which the parties will appear in person or by telephone.

(A) If a party intends to introduce documents at the hearing, then the party shall file such documents with the hearings office and submit a copy of the documents to the other party or the other party's representative at least three days before the hearing. Failure to submit copies of documents to the other party will result in a continuance if requested by the party who did not receive the documents.

(B) At the hearing, the hearing officer may request either or both parties to file additional documents for consideration in making a decision. The hearing officer shall indicate in writing the date by which the additional documents must be received by the hearings office.

(2) Document hearing. If a party intends for the hearing officer to consider his or her documents at a document hearing, then the party shall file such documents with the hearings office and submit a copy of the documents to the other party or the other party's representative by the date identified by the hearing officer as described in subsection (f)(2) of this section. Failure to submit copies of documents to the other party will result in a continuance if requested by the party who did not receive the documents.

(m) Continuance. Each party is entitled to one continuance. The hearing officer may grant additional continuances on the request of either party provided the party shows good cause for requesting the continuance. A request for a continuance may be written or oral, and may be made before or during a hearing. If a hearing is continued, the hearing officer shall schedule the hearing to be continued on a day that is not later than the 45th day after the hearing was originally scheduled. The hearing officer must notify the parties, in accordance with subsection (g) of this section,

of the continued hearing date within five working days of granting a continuance.

(n) Telephone conference.

(1) Telephone conference equipment used for a hearing must be capable of allowing the parties and the hearing officer to hear and speak to each other at all times during the hearing.

(2) If a party elected to appear by telephone, then on the date and time of the hearing, the hearing officer shall initiate telephone contact with the party using the telephone number provided by the party.

(o) Failure to appear. If the appellant fails to appear at the hearing, the hearing officer shall adjourn the hearing. If the appellant notifies the hearing officer within three working days after the hearing date and provides evidence of good cause for failing to appear and requests a continuance, the hearing officer shall grant a continuance. If the hearing officer has not been notified by the fourth working day after the hearing date, then the hearing officer shall close the record and consider all of the documents previously filed by both parties and prepare a decision based on such previously filed documents.

(p) Evidence.

(1) Documents. Documents filed as evidence with the hearings office are admissible without further proof or authentication.

(2) Testimony. All testimony offered at the hearing is admissible.

(q) Procedural rights. Each party has the right to:

- (1) establish all pertinent facts and circumstances;
- (2) present an argument without undue interference;
- (3) question or refute any evidence; and
- (4) make an audio recording of the hearing proceedings.

(r) Audio recording of hearing proceedings. If the hearing is not a document hearing, then the hearing officer shall make an audio tape recording of the hearing proceedings. The appellant may request and receive a copy of the audio tape at minimal charge.

(s) Record. The record of the hearing closes when the hearing is adjourned or at the end of the business day on the date that all documents are required to be filed. The record consists of:

(1) all documents submitted to the hearings office, together with the ruling on admissibility made by the hearing officer; and

(2) the audio recording of the hearing proceedings made by the hearing officer (as required in subsection (r) of this section), if the hearing was not a document hearing.

(t) Decision. Not later than the 10th day after the hearing record has closed, the hearing officer shall issue a decision. Hearing decisions must be based exclusively on evidence in the record. The decision shall be in writing, signed and dated by the hearing officer, and state:

(1) the names of the parties and their representatives (if any), and whether they appeared in person or by telephone, if the hearing was not a document hearing;

(2) the evidence in the record;

(3) findings of fact and conclusions of law, separately stated;

(4) whether the appealed fee(s) has been sustained, reduced, or increased; and

(5) the fee(s) amount.

(u) Effective date. A decision issued under this section is effective on the date it is signed by the hearing officer.

(v) Notice of decision. After the hearing officer signs the decision, the hearings office shall send a copy of the hearing officer's decision to the parties in accordance with subsection (g) of this section.

(w) Finality. The decision of the hearing officer is final. For the purpose of correcting a clerical error, the hearing officer retains jurisdiction for 20 calendar days after the date the decision is signed.

§ 417.107. Filing Notice of Lien

(a) If the department intends to file a written notice of lien pursuant to the Texas Health and Safety Code, § 533.004, then 30 calendar days prior to filing the written notice of the lien with the county clerk, the department shall notify by certified mail the person responsible for payment of the department's intent to file a lien. The notice to the person responsible for payment shall include:

- (1) a statement of the unpaid charges;
- (2) a copy of the statutory procedures related to filing a lien (Texas Health and Safety Code, § 533.004);
- (3) a copy of § 417.106 of this title (relating to Appeal Process);
- (4) a Request for Appeal form (referenced as Exhibit E in § 417.108(5) of this title (relating to Exhibits)) and a statement that in order to stay the filing of the lien, the completed Request for Appeal form must be received by the hearings office within 30 calendar days after the date the notification of the department's intent to file a lien was mailed; and
- (5) the name and phone number of the department staff sending the notification.

(b) If the person does not request an appeal within 30 calendar days after the date the notification of the department's intent to file a lien was mailed, then the department may proceed to file the written notice of lien.

(c) If the person requests an appeal and the hearing officer's decision:

- (1) sustains the appealed fee(s), then the department may proceed to file the written notice of lien anytime after 30 calendar days of the date the notification of the department's intent to file a lien was mailed;
- (2) reduces the appealed fee(s) to less than the assessed amount but more than zero, then the person must pay the reduced amount or the department may proceed to file the written notice of lien anytime after 30 calendar days of the date the notification of the department's intent to file a lien was mailed;
- (3) reduces the appealed fee(s) to zero, then the department must withdraw its notice of intent to file a lien in writing; or
- (4) increases the appealed fee(s), then the person must pay the increased amount or the department may proceed to file the written notice of lien anytime after 30 calendar days of the date the notification of the department's intent to file a lien was mailed.

§ 417.108. Exhibits

The following exhibits are referenced in this subchapter:

- (1) Exhibit A—Property and Financial Statement form (PFS-1) for mental health services and Property and Financial Statement form (PFS-2) or Form 1200-PFS for mental retardation services;
- (2) Exhibit B—Taxable Income of Parents formula;
Click here to view figure
- (3) Exhibit C—Adult Clients in Mental Health Facilities formula;

Click here to view figure

(4) Exhibit D—Adult Clients in Mental Retardation Facilities formula; and

Click here to view figure

(5) Exhibit E—Request for Appeal form.

§ 417.109. References

Reference is made to the following state statutes.

- (1) Texas Health and Safety Code, § 533.004, § 551.003, § 552.017, § 552.018, §§ 593.075-593.077, and § 593.081;
- (2) Texas Trust Code, Texas Property Code, § 111.001, et seq.;
- (3) Texas Probate Code; and
- (4) Texas Property Code, Chapter 142.

HISTORY: The provisions of this § 417.109 adopted to be effective February 17, 2000, 25 TexReg 1109

§ 417.110. Distribution

This subchapter shall be distributed to:

- (1) members of the Texas Mental Health and Mental Retardation Board;
- (2) executive, management, and program staff of Central Office;
- (3) superintendents and directors of all TDMHMR facilities;
- (4) advocacy organizations; and
- (5) upon request, to any client, a client's parent or spouse, person responsible for payment, or any interested individual.

HISTORY: The provisions of this § 417.110 adopted to be effective February 17, 2000, 25 TexReg 1109

Subchapter G.

Volunteer and Community Engagement

§ 417.301. Purpose

The purpose of this subchapter is to establish standards for volunteer programs associated with facilities and for donations made by private individuals to facilities and persons served.

§ 417.302. Application

This subchapter applies to an individual or group volunteering at or donating to a facility, other than an individual employed by the department. Employees who wish to volunteer with a facility should consult department policy and guidelines.

HISTORY: The provisions of this § 417.302 adopted to be effective February 6, 2019, 44 TexReg 478

§ 417.303. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

- (1) 501(c)(3) organization—An organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code.
- (2) Community relations director—The employee responsible for coordinating community relations functions, volunteer programs, fund-raising, and donations at a facility.
- (3) Department—The Department of State Health Services.

(4) Donation—A contribution of anything of value (for example, funds or in-kind goods and services) freely given to a facility, an individual served, or a private organization. The term does not include funding under a federal, state, private, or non-profit organization grant for which a facility has submitted a formal written application and is subject to an agreement between the recipient and the donor relating to the use of the grant.

(5) Employee—An individual who is legally employed or contracted to perform work for the department.

(6) Facility—A public health facility operated by the Department of State Health Services.

(7) Person served—A person receiving services from a facility.

(8) Private donor—A person or private organization that makes a donation to a facility directly or through a volunteer services council.

(9) Volunteer and Community Relations Unit—Facility employees responsible for promoting individual and community awareness, volunteerism, community collaborations, and partnerships.

(10) Volunteer Services Council (VSC)—A 501(c)(3) volunteer organization formed to generate resources for the benefit of a facility and persons served.

§ 417.305. Limitations on Private Donations

(a) A facility may not accept a donation from a person who is a party to a contested case before the department or the Texas Health and Human Services Commission until the 30th day after the date the decision in the case becomes final. “Contested case” has the meaning assigned by Texas Government Code, § 2001.003.

(b) A private donor must not use an employee of the department or department property except under a contract with the department or with approval of the head of the facility.

§ 417.306. Volunteer Services Council

(a) A VSC may generate resources to enhance the lives of the persons served at a facility.

(b) The community relations director and volunteer and community relations unit may work with the VSC to enhance fund-raising activities.

(c) The head of the facility and community relations director are nonvoting members of the VSC board and executive committee.

(d) The community relations unit may process and issue receipts for donations to the VSC.

(e) No employee may sign a VSC check or use a VSC debit or credit card.

(f) The volunteer and community relations unit may maintain a VSC petty cash fund of up to \$ 300.00 to be used for the benefit of persons served by a facility.

(1) The community relations director may make expenditures of up to \$ 300.00 from the petty cash fund on behalf of the VSC for the benefit of persons served.

(2) The community relations director must appoint a primary and alternate custodian for the VSC petty cash fund.

(3) The primary custodian of the petty cash fund is responsible for maintaining receipts and accurate documentation of all funds disbursed and for furnishing this documentation to the treasurer of the VSC.

(4) An officer of the VSC, or an employee outside of the community relations unit, must reconcile the petty cash fund at least once every two months.

(g) A facility may provide items of support for the VSC, such as:

- (1) office space;
- (2) fund-raising assistance;
- (3) clerical and administrative services;
- (4) assistance in the coordination of activities; or
- (5) other items or services requested by the VSC

upon approval by the head of the facility.

(h) Funds generated by a VSC may only be used for:

- (1) the needs of persons served by the facility;
- (2) the enhancement of existing facility operations;
- (3) recognition and education projects;
- (4) new initiatives to improve the quality of life for persons served by the facility; and
- (5) other expenses specifically authorized by the VSC board of directors.

(i) The VSC must not use funds or reference the facility’s name or branding for:

- (1) recognition events, receptions, or gifts for a legislator;
- (2) political contributions, political advertisements, or lobbying efforts;
- (3) alcoholic beverages, unless used at an off-campus fund-raising event;
- (4) loans, including travel advances;
- (5) operating programs, or contracting for programs on behalf of the facility;
- (6) cash awards or salary supplementation for employees; and
- (7) other purposes determined by the department to be unethical, unlawful, or inappropriate.

(j) All funds and goods donated to the VSC remain the property of the VSC until the facility accepts them.

(k) The department has the right to review and approve all VSC donations of real property and any permanent improvements to existing real property that may be donated to the facility by the VSC.

Subchapter K.

Abuse, Neglect, and Exploitation in TDMHMR Facilities

§ 417.501. Purpose

The purpose of this subchapter is to prescribe procedures:

- (1) for effective reporting of allegations of abuse, neglect, and exploitation;
- (2) for ensuring the safety and protection of persons served involved in allegations;
- (3) for facilitating Texas Department of Protective and Regulatory Services investigations of allegations;
- (4) for facilitating peer review of allegations involving clinical practice;
- (5) for notifying appropriate licensing authorities and other individuals regarding issues relating to an allegation;
- (6) for contesting the Adult Protective Services (APS) review of a finding of an investigation;
- (7) for ensuring proper disciplinary action is taken; and
- (8) for training staff in identifying, reporting, and preventing abuse, neglect, and exploitation.

HISTORY: The provisions of this § 417.501 adopted to be effective April 23, 2003, 28 TexReg 3354

§ 417.502. Application

(a) This subchapter apply to all facilities of the Texas Department of Mental Health and Mental Retardation and their agents.

(b) All facilities are responsible for amending their contracts to ensure contractors' compliance as specified in § 417.513 of this title (relating to Contractors).

(c) This subchapter does not apply to:

(1) psychiatric hospitals licensed by the Texas Department of Health (TDH) under Chapter 577 of the Texas Health and Safety Code; or

(2) state-funded community hospitals, which are inpatient mental health facilities licensed by the Texas Department of Health under the Texas Health and Safety Code, Chapter 242, or operated by a university health system and exempted from licensure, that provides TDMHMR-funded inpatient mental health services pursuant to a contract between TDMHMR and a local authority.

HISTORY: The provisions of this § 417.502 adopted to be effective April 23, 2003, 28 TexReg 3354

§ 417.503. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Adult Protective Services (APS) investigator—An employee of the Texas Department of Protective and Regulatory Services (TDPRS) with expertise and demonstrated competence in conducting investigations.

(2) Advanced practice nurse (APN)—A registered nurse approved by the Board of Nurse Examiners for the State of Texas to practice as an advanced practice nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with advanced nurse practitioner.

(3) Agent—Any individual not employed by the facility but working under the auspices of the facility, (e.g., a volunteer, a student).

(4) Allegation—A report by an individual suspecting or having knowledge that a person served has been or is in a state of abuse, neglect, or exploitation as defined in this subchapter.

(5) Child—A person served under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed pursuant to the Texas Family Code, Chapter 31.

(6) Clinical practice—Relates to the demonstration of professional competence in nursing, dental, pharmacy, or medical practice as described, respectively, in the Nursing Practice Act, Vocational Nurse Act, Dental Practice Act, Pharmacy Practice Act, or Medical Practice Act.

(7) Confirmed—Term used to describe an allegation which is determined to be supported by the preponderance of evidence.

(8) Contractor—Any organization, entity, or individual who contracts with a facility to provide mental health and mental retardation services. The term includes a local independent school district with which a facility has a memorandum of understanding (MOU) for educational services.

(9) Designee—A staff member immediately available who is temporarily or permanently appointed to assume designated responsibilities of the head of the facility.

(10) Facility—A state hospital, state school, state center, or other entity providing mental retardation or mental health services that is operated by the Texas Department of Mental Health and Mental Retardation.

(11) Guardian—An individual appointed and qualified as a guardian of the person under the Probate Code, Chapter 13.

(12) Head of the facility—The superintendent or executive director of a facility, or designee. (If the superintendent or executive director is the alleged perpetrator, then the designee assumes all responsibilities of the head of the facility described in this subchapter.)

(13) Incitement—To spur to action or instigate into activity; implies responsibility for initiating another's actions.

(14) Inconclusive—Term used to describe an allegation leading to no conclusion or definite result due to lack of witnesses or other relevant evidence.

(15) Medical intervention—Treatment by a licensed medical doctor, osteopath, podiatrist, dentist, physician's assistant, or advanced practice nurse (APN). For the purposes of this subchapter, the term does not include first aid, an examination, diagnostics (e.g., x-ray, blood test), or the prescribing of oral or topical medication.

(16) Non-serious physical injury—Any injury requiring minor first aid and determined not to be serious by a registered nurse, advanced practice nurse (APN), or physician.

(17) Office of Consumer Services and Rights Protection - Ombudsman—The office located at the Texas Department of Mental Health and Mental Retardation's Central Office.

(18) Peer review—A review of clinical and/or medical practice(s) by peer physicians; a review of clinical and/or dental practice(s) by peer dentists; a review of clinical and/or pharmacy practice(s) by peer pharmacists; or a review of clinical and/or nursing practice(s) by peer nurses.

(19) Perpetrator—A person who has committed an act of abuse, neglect, or exploitation.

(20) Perpetrator unknown—Term used to describe instances in which abuse, neglect, or exploitation is evident but positive identification of the responsible person(s) cannot be made, and in which self-injury has been eliminated as the cause.

(21) Person served—Any person registered or assigned in the Client Assignment and Registration (CARE) system who is receiving services from a facility or contractor.

(22) Preponderance of evidence—The greater weight of evidence, or evidence which is more credible and convincing to the mind.

(23) PMAB or Prevention and Management of Aggressive Behavior—TDMHMR's proprietary risk management program that uses the least intrusive, most effective options to reduce the risk of injury for persons served and for staff from acts or potential acts of aggression.

(24) Primary contact—In cases in which the alleged victim is an adult with mental retardation who is unable to authorize the disclosure of protected health information and who does not have a guardian, the individual designated as the alleged victim's correspondent who receives all other information about the alleged victim (e.g., spouse, parent).

(25) Reporter—The individual who reports an allegation of abuse, neglect, or exploitation.

(26) Retaliatory action—Any action intended to inflict emotional or physical harm or inconvenience on a person that is taken because the person has reported abuse, neglect, or exploitation. This includes, but is not limited to, harassment, disciplinary measures, discrimination, reprimand, threat, and criticism.

(27) Review authority—An individual or panel of individuals who, at the discretion and request of the head of the facility, reviews selected cases of abuse, neglect, or exploitation, including those that are confirmed, unconfirmed, unfounded, or inconclusive. The review authority may include a member of the facility's public responsibility committee.

(28) Serious physical injury—Any injury requiring medical intervention or hospitalization or any injury determined to be serious by a physician or advanced practice nurse (APN).

(29) TDMHMR—The Texas Department of Mental Health and Mental Retardation.

(30) TDPRS—The Texas Department of Protective and Regulatory Services.

(31) Unconfirmed—Term used to describe an allegation in which a preponderance of evidence exists to prove that abuse, neglect, or exploitation did not occur.

(32) Unfounded—Term used to describe an allegation that is spurious or patently without factual basis.

§ 417.504. Prohibition and Definitions of Abuse, Neglect, and Exploitation

(a) Abuse, neglect, and exploitation of any person served is prohibited.

(b) Consistent with Chapter 711 of Title 40 (concerning Investigations in TDMHMR Facilities and Related Programs), the terms "abuse," "neglect," and "exploitation" are defined as follows when the alleged perpetrator is an employee, agent, contractor, or is unknown.

(1) Abuse is:

(A) physical abuse, which is:

(i) an act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused physical injury or death to a person served;

(ii) an act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in a physical injury to a person served; or

(iii) the use of chemical or bodily restraints on a person served not in compliance with federal and state laws and regulations, including:

(I) Chapter 405, Subchapter F of this title (concerning Voluntary and Involuntary Behavioral Interventions in Mental Health Programs); and

(II) Chapter 405, Subchapter H of this title (concerning Behavior Management—Facilities Serving Persons with Mental Retardation);

(B) sexual abuse, which is any sexual activity involving an employee, agent, or contractor and a person served, including but not limited to:

- (i) kissing a person served with sexual intent;
- (ii) hugging a person served with sexual intent;
- (iii) stroking a person served with sexual intent;
- (iv) fondling a person served with sexual intent;
- (v) engaging in with a person served:

(I) sexual conduct as defined in the Texas Penal Code, § 43.01; or

(II) any activity that is obscene as defined in the Texas Penal Code, § 43.21;

(vi) requesting, soliciting, or compelling a person served to engage in:

(I) sexual conduct as defined in the Texas Penal Code, § 43.01; or

(II) any activity that is obscene as defined in the Texas Penal Code, § 43.21;

(vii) in the presence of a person served:

(I) engaging in or displaying any activity that is obscene, as defined in the Texas Penal Code § 43.21; or

(II) requesting, soliciting, or compelling another person to engage in any activity that is obscene, as defined in the Texas Penal Code § 43.21;

(viii) committing sexual exploitation, as defined in the Texas Civil Practice and Remedies Code, § 81.001, against a person served, a copy of the Texas Civil Practice and Remedies Code, § 81.001, is referenced as Exhibit a in §417.516 of this title (relating to Exhibits);

(ix) committing sexual assault as defined in the Texas Penal Code § 22.011, against a person served;

(x) committing aggravated sexual assault as defined in the Texas Penal Code, § 22.021, against a person served; and

(xi) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, videotaping, or depicting of a person served if the employee, agent, or contractor knew or should have known that the resulting photograph, film, videotape, or depiction of the person served is obscene as defined in the Texas Penal Code, § 43.21, or is pornographic; and

(C) verbal/emotional abuse, which is any act or use of verbal or other communication, including gestures, to curse, vilify, or degrade a person served or threaten a person served with physical or emotional harm, that results in observable distress or harm to the person served or be of such a serious nature that a reasonable person would consider it harmful or causing distress.

(2) Neglect is a negligent act or omission by any individual responsible for providing services to a person served, which caused or may have caused physical or emotional injury or death to a person served or which placed a person served at risk of physical or emotional injury or death. Neglect includes, but is not limited to, the failure to:

(A) establish or carry out an appropriate individual program plan or treatment plan for a person served if such failure results in a specific incident or allegation involving a person served;

(B) provide adequate nutrition, clothing, or health care to a specific person served; or

(C) provide a safe environment for a specific person served, including the failure to maintain adequate numbers of appropriately trained staff if such failure results in a specific incident or allegation involving a person served.

(3) Exploitation is the illegal or improper act or process of using a person served or the resources of a person served for monetary or personal benefit, profit, or gain.

(c) Abuse, neglect, or exploitation does not include:

(1) the proper use of restraints and seclusion, including PMAB, and the approved application of behavior modification techniques as described in:

(A) Chapter 405, Subchapter F of this title, relating to Voluntary and Involuntary Behavioral Interventions in Mental Health Programs;

(B) Chapter 404, Subchapter E of this title, relating to Rights of Persons Receiving Mental Health Services; and

(C) Chapter 405, Subchapter H of this title, relating to Behavior Management—Facilities Serving Persons With Mental Retardation;

(2) other actions taken in accordance with TDMHMR rules;

(3) such actions as an employee/agent/ contractor may reasonably believe to be immediately necessary to avoid imminent harm to self, persons served, or other individuals if such actions are limited only to those actions reasonably believed to be necessary under the existing circumstances. Such actions do not include acts of unnecessary force or the inappropriate use of restraints or seclusion, including PMAB; or

(4) general complaints (e.g., regarding rights violations; theft of property; the daily administrative operations of a facility). (Within 24 hours of receipt of such a complaint, the APS investigator refers the complaint to the head of the facility using the Adult Protective Services Referral Form, who ensures the complaint is investigated administratively by the head of the facility, the facility rights officer, or other appropriate parties.)

HISTORY: The provisions of this § 417.504 adopted to be effective April 23, 2003, 28 TexReg 3354; amended to be effective February 4, 2004, 29 TexReg 999

§ 417.505. Reporting Responsibilities of All TDMHMR Employees, Agents, and Contractors: Reports to Texas Department of Protective and Regulatory Services (TDPRS)

(a) Reporting suspected abuse, neglect, or exploitation.

(1) Each employee/agent/contractor who suspects or has knowledge that a person served is being abused, neglected, or exploited shall make a verbal report to TDPRS immediately, if possible, but in no case more than one hour after suspicion or after learning of the incident, by calling 1-800-647-7418.

(2) Each employee/agent/contractor who suspects or has knowledge that a person served has been abused, neglected, or exploited, including prior to admission, during an absence, or while in residence at the facility, shall make a verbal report to TDPRS immediately, if possible, but in no case more than one hour after suspicion or after learning of the incident, by calling 1-800-647-7418.

(3) If the person making the allegation is not an employee/agent/contractor (e.g., a person served, a guest), staff shall assist the person in making the report, if necessary.

(b) Any pregnancy of a person served, provided there is medical verification that there is reasonable expectation that conception could have occurred while the person was a resident of the facility or contractor, or any diagnosis of a sexually transmitted disease in a person served which could have occurred while the person was a resident of the facility or contractor, shall be reported in accordance with this subchapter as possible abuse or neglect.

(c) If an aggressive action by a person served, including non-consensual sexual activity between persons served, occurs as a result of possible neglect, then the action is reported as neglect in accordance with this subchapter.

(d) Failure to make reports as required by this section within the allotted time period without sufficient justification is considered a violation of this section and makes the employee/agent subject to disciplinary action and possible criminal prosecution. An employee/agent found to have made a false statement of fact during an investigation is also subject to disciplinary action.

(e) In addition to reporting to TDPRS, employees shall take appropriate steps to secure evidence related to an allegation, if any, consistent with "Guidelines for Securing Evidence," referenced as Exhibit B in § 417.516 of this title (relating to Exhibits).

§ 417.507. Prohibition Against Retaliatory Action

(a) Retaliatory action. Any employee/agent or any individual affiliated with an employee/agent is prohibited from engaging in retaliatory action against a person served, a family member of a person served, the guardian of a person served, the primary contact of a person served, or an employee/agent who in good faith reports an allegation.

(1) Any person who believes he or she is being subjected to retaliatory action upon reporting an allegation, or who believes an allegation has been ignored, should immediately contact the head of the facility. The person may also contact:

(A) the Office of Consumer Services and Rights Protection - Ombudsman at the dedicated toll-free number for facilities at 1-800-252-8154; or

(B) the Office of the Attorney General at 512/463-2185 (Consumer Protection Division) which, under the Whistleblower Act, Texas Civil Statutes, Article 6252-16a, may prosecute a supervisor who suspends or terminates a public employee for reporting a violation of law to law enforcement authorities.

(2) Retaliatory action against a person served which might be considered abuse, neglect, or exploitation is reported to TDPRS in accordance with this subchapter.

(b) Disciplinary action. Any employee/agent found to have engaged in retaliatory action is subject to disciplinary action.

HISTORY: The provisions of this § 417.507 adopted to be effective April 23, 2003, 28 TexReg 3354

§ 417.508. Responsibilities of the Head of the Facility

(a) All allegations are investigated in accordance with Chapter 711 of Title 40 (concerning Investigations in TDMHMR Facilities and Related Programs).

(b) Immediately upon notification of an allegation by the APS investigator, the head of the facility takes measures to ensure the safety of the alleged victim(s), including the following actions:

(1) As necessary, the head of the facility ensures immediate and on-going medical attention is provided to the alleged victim and any other person served involved in the incident (e.g., examination for and treatment of injuries, screening and treatment for sexually transmitted diseases). The examination and treatment of abuse/neglect-related injuries is documented on the client injury assessment, with a copy submitted to the APS investigator. All issues relating to clinical practice are referred to the medical/clinical director for consultation.

(2) The head of the facility ensures the protection of the alleged victim. Action taken to ensure the protection of the alleged victim must be appropriate within the context of the allegation and may include:

(A) reassigning the employee/agent to a non-direct care area in accordance with the Human Resources Operating Instruction 407-12;

(B) allowing the employee/agent to remain in his or her current position pending investigation;

(C) granting the employee emergency leave in accordance with the Human Resources Operating Instruction 407-12; or

(D) suspending the agent pending investigation.

(3) As necessary, the head of the facility ensures psychological attention is provided to the alleged victim and any other person served who may have witnessed or been affected by the incident. The psychological attention shall be provided in a timely manner while preserving the integrity of the investigation.

(4) If the alleged perpetrator is known but is not an employee/agent (e.g., family member, friend, guest), the head of the facility imposes a restriction on the alleged perpetrator's access to the alleged victim pending investigation. The restriction should be documented in the record of the alleged victim.

(5) Immediately, but in no case later than 24 hours after notification of an allegation, the head of the facility notifies the following individuals of the allegation:

(A) the alleged victim (if appropriate); and

(B) the alleged victim's guardian or primary contact (as defined), or parent if the alleged victim is a child.

(c) The head of the facility designates a contact staff person to coordinate with the APS investigator to ensure private interview space, private telephones, and employees/agents are available to the APS investigator. The head of the facility shall require employees/agents to cooperate with APS investigators so that the investigators are afforded immediate access to all records and evidence and provided keys as are necessary to conduct an investigation in a timely manner. The head of the facility shall assist in whatever way possible to make employees/agents who are relevant to the investigation available in an expeditious manner. Employees/agents who fail to cooperate with an investigation are subject to disciplinary action.

(d) Reports regarding alleged "sexual exploitation" committed by a "mental health services provider" (as defined in the Texas Civil Practice and Remedies Code, § 81.001) are made by the head of the facility to the prosecuting attorney in the county in which the alleged sexual exploitation occurred and any state licensing board that has responsibility for the mental health services provider's licensing in accordance with the Texas Civil Practice and Remedies Code, § 81.006. A copy of the Texas Civil Practice and Remedies Code, § 81.001 and § 81.006, is referenced as Exhibit A in § 517.516 of this title (relating to Exhibits).

(e) At facilities that operate an intermediate care facility for the mentally retarded (ICF/MR), the head of the facility must report those allegations that are considered reportable incidents to the Texas Department of Human Services (TDHS), ICF/MR/RC Department in accordance with the memorandum of understanding, referenced as Exhibit C in § 417.516 of this title (relating to Exhibits), between TDMHMR, TDHS, and Texas Department of Protective and Regulatory Services.

§ 417.509. Peer Review

(a) If the allegation involves the actions of a physician, dentist, pharmacist, registered nurse, or licensed vocational nurse, then a determination of whether the allegation involves the clinical practice, as defined in § 417.503 of this title (relating to Definitions), of the physician, dentist, pharmacist, registered nurse, or licensed vocational nurse is made by the head of the facility, the APS investigator, and the facility medical dental nursing pharmacy director, as appropriate to the discipline involved.

(1) If the allegation does not involve clinical practice the APS investigator pursues an investigation.

(2) If the allegation does involve clinical practice the APS investigator refers the allegation to the head

of the facility, who immediately refers the allegation to the facility medical dental nursing pharmacy director, as appropriate to the discipline involved, for review for possible peer review as follows:

(A) for allegations involving physicians, pharmacists, and dentists, Investigative Medical Peer Review Operating Instruction 417-19; and

(B) for allegations involving registered nurses and licensed vocational nurses, Investigative Nursing Peer Review Operating Instruction 408-1.

(3) If the allegation involves clinical practice and non-clinical issues, then the allegation is referred to peer review in accordance with paragraph (2) of this subsection and is investigated by the APS investigator.

(4) If a determination of whether the allegation involves clinical practice cannot be made, then:

(A) the allegation is referred to peer review in accordance with paragraph (2) of this subsection and is investigated by the APS investigator; or

(B) the regional APS program administrator and the head of the facility jointly agree to use a previously mutually agreed-upon physician/dental/nursing/pharmacy consultant, as appropriate to the discipline involved, to make the final determination within 24 hours. The facility is responsible for the costs of the consultant's services.

(b) If the allegation involves the facility medical dental nursing pharmacy director, the head of the facility refers the allegation to the TDMHMR medical dental nursing pharmacy director, as appropriate to the discipline involved, for review for possible peer review in accordance with subsection (a)(2)(A) or (B) of this section. If the allegation involves the TDMHMR pharmacy director, then the head of the facility refers the allegation to the TDMHMR medical director for review for possible peer review in accordance with subsection (a)(2)(A) of this section.

(c) All allegations involving physicians, pharmacists, nurses (RN or LVN), and dentists, regardless of type or clinical/non-clinical practice, are reported by the head of the facility to the TDMHMR medical nursing dental pharmacy director, as appropriate to the discipline, within five working days of the allegation. The report may be brief, but will include:

(1) the date of the alleged incident;

(2) name of the alleged victim and alleged perpetrator;

(3) a brief description of the incident; and

(4) a brief description of the investigation planned.

(d) The TDMHMR medical dental nursing pharmacy director, as appropriate to the discipline involved, ensures that reports of allegations of abuse and neglect are made, if required by law, to the licensing authority for the discipline under review, i.e., the Texas Board of Medical Examiners for physicians, the State Board of Dental Examiners for dentists, the Texas State Board of Pharmacy, the Board of Nurse Examiners for the State of Texas for registered nurses, or the Board of Vocational Nurse Examiners for licensed vocational nurses.

(e) Upon receipt of an allegation involving physician misconduct or malpractice, the TDMHMR medical director reports the allegation to the Texas Board of Medical Examiners in accordance with § 533.006 of the Texas Health and Safety Code and the memorandum of understanding, referenced as Exhibit D in § 417.516 of this title (relating to Exhibits), between TDMHMR, TDPHS, and the Texas Board of Medical Examiners.

(f) When an allegation is determined to involve the clinical practice of a physician, nurse (RN or LVN), pharmacist, or dentist, then the head of the facility ensures that the al-

leged victim, guardian, or primary contact, or parent (if the alleged victim is a child) are informed that the allegation has been referred for peer review.

HISTORY: The provisions of this § 417.509 adopted to be effective April 23, 2003, 28 TexReg 3354

§ 417.510. Completion of the Investigation

(a) The APS investigator sends a copy of the investigative report to the head of the facility in accordance with Chapter 711, Subchapter G of Title 40 (concerning Release of Report and Findings). The investigative report includes:

- (1) a statement of the allegation(s);
- (2) a summary of the investigation;
- (3) an analysis of the evidence, including:
 - (A) factual information related to what occurred;
 - (B) how the evidence was weighed; and
 - (C) what testimony was considered credible;
- (4) a finding that the allegation is confirmed, unconfirmed, inconclusive, or unfounded;
- (5) recommendations resulting from the investigation;
- (6) the name of the perpetrator or alleged perpetrator or the designation of "perpetrator unknown";
- (7) a recommended classification for each allegation as described in §417.512(a) of this title (relating to Classifications and Disciplinary Actions);
- (8) the exam and treatment of abuse/neglect-related injuries documented on the client injury assessment;
- (9) photographs relevant to the investigation, including photographs showing the existence of injuries or the non-existence of injuries, when appropriate;
- (10) all witness statements and supporting documents; and
- (11) a signed and dated Client Abuse and Neglect Report (AN-1-A) form, referenced as Exhibit E in §417.516 of this title (relating to Exhibits), reflecting the information contained in paragraphs (4), (6), and (7) of this section.

(b) Upon receiving the investigative report from the APS investigator, the head of the facility may submit the report and concerns articulated by the APS investigator to a review authority for review.

- (1) The review authority may interview witnesses in the course of its review.
- (2) If the review authority is reviewing a case determined by the APS investigator to be unfounded, it may consult with the APS investigator if appropriate. If the review authority determines that there is good cause to reopen the investigation (e.g., new evidence or information that was not previously available during the investigation), the head of the facility may contact the local APS supervisor to request that the case be reopened.
- (3) The review authority submits a report of its review to the head of the facility.
- (c) The head of the facility:
 - (1) reviews the APS investigator's report;
 - (2) reviews the review authority's report, if applicable; and
 - (3) interviews witnesses, if necessary.

(d) The rights of employees who appear before the review authority or the head of the facility are outlined in "Procedures in Facility Abuse, Neglect, and Exploitation Investigations and Thurston Rebuttal Proceedings," referenced as Exhibit F in §417.516 of this title (relating to Exhibits).

(e) The head of the facility may not change a confirmed finding. However, if the head of the facility disagrees with the APS investigator's finding of unconfirmed, inconclusive, or unfounded, the head of the facility may elect to change the finding to confirmed. If the head of the facility elects to change the finding to confirmed, then the confirmed finding cannot be appealed to TDPRS.

(f) If the head of the facility believes that the methodology used in conducting the investigation was flawed (e.g., failure to collect or consider evidence, such as witnesses' statement, progress notes, test results), the head of the facility may request a review in accordance with Chapter 711, Subchapter K of Title 40 (concerning Requesting a Review of Finding if You Are the Administrator or Contractor CEO).

(g) If the head the facility disagrees with:

- (1) the APS investigator's finding, the head of the facility may contest the finding by requesting a review in accordance with Chapter 711, Subchapter K of Title 40 (concerning Requesting a Review of Finding if You Are the Administrator or Contractor CEO).
- (2) the APS review as described in §711.1007 of Title 40 (relating to How is the Review of a Finding Conducted?), the head of the facility may contest the review by apprising the TDMHMR director of state mental health facilities or state mental retardation facilities, as appropriate. If the TDMHMR director also disagrees with the APS review, the TDMHMR director may request a decision by the TDMHMR commissioner and the TDPRS executive director. The decision of the TDMHMR commissioner and the TDPRS executive director may not be contested.

(h) The final finding is the last uncontested finding, which may be:

- (1) the APS investigator's finding in accordance with subsection (a)(4) of this section;
- (2) the head of the facility's confirmed finding in accordance with subsection (e) of this section;
- (3) the APS finding in accordance with subsection (g) (1) of this section; or
- (4) the TDMHMR commissioner and the TDPRS executive director's decision in accordance with subsection (g)(2) of this section.

(i) Within 30 calendar days of receipt of the investigative report or the final finding, the head of the facility is responsible for completing the Client Abuse and Neglect Report (AN-1-A) form, referenced as Exhibit E in §417.516 of this title (relating to Exhibits), and ensuring the information is entered into the Client Abuse and Neglect Reporting System (CANRS).

(j) The APS investigator notifies the reporter in accordance with §711.609 of Title 40 (relating to How and When is the Reporter Notified of the Finding?).

(k) The head of the facility ensures that the (alleged) victim or guardian or parent if the (alleged) victim is a child is promptly notified of:

- (1) the final finding and if any previous findings were contested;
- (2) the method of appealing the final finding as described in Chapter 711, Subchapter M of Title 40 (concerning Requesting an Appeal if You Are the Reporter, Alleged Victim, Legal Guardian, or With Advocacy, Incorporated), if the final finding was not made by the head of the facility as provided by subsection (e) of this section; and
- (3) the right to receive a copy of the investigative report in accordance with §417.511(b) of this title

(relating to Confidentiality of Investigative Process and Report) upon request.

(l) The head of the facility ensures that the primary contact is promptly notified of the final finding.

(m) The head of the facility informs the perpetrator or alleged perpetrator of the final finding.

(n) If the (alleged) perpetrator and (alleged) victim will again be in close proximity following an investigation, the head of the facility is responsible for ensuring appropriate reconciliation efforts are considered, offered, and provided in accordance with "Therapeutic Reconciliation," referenced as Exhibit G in § 417.516 of this title (relating to Exhibits).

(o) The head of the facility shall establish a mechanism for evaluating any recommendations concerning problematic patterns or trends identified during the investigation by the APS investigator and the review authority, if applicable.

§ 417.511. Confidentiality of Investigative Process and Report

(a) The reports, records, and working papers used by or developed in the investigative process, and the resulting investigative report, are confidential and may be disclosed only as allowed by law or Chapter 711 of Title 40 (concerning Investigations in TDMHMR Facilities and Related Programs).

(b) Upon request, the head of the facility will provide a copy of the investigative report to the (alleged) victim or guardian with the identities of other persons served and any information determined confidential by law concealed. The head of the facility may charge a reasonable fee for providing a copy of the investigative report.

(c) Advocacy, Inc. is entitled to access the records of the (alleged) victim in accordance with 42 USC § 10805(a)(4) (Protection and Advocacy for Mentally Ill Individuals) or 42 USC § 15043(a)(2)(I) (Protection and Advocacy of Individual Rights).

§ 417.512. Classifications and Disciplinary Actions

(a) The APS investigator recommends a classification for each allegation as follows:

- (1) Class I Abuse, if the allegation involves:
 - (A) physical abuse which caused or may have caused serious physical injury; or
 - (B) sexual abuse.
- (2) Class II Abuse, if the allegation involves:
 - (A) physical abuse which caused or may have caused non-serious physical injury; or
 - (B) exploitation.
- (3) Class III Abuse, if the allegation involves verbal/emotional abuse.
- (4) Neglect, if the allegation involves neglect.

(b) Under no circumstances may the head of the facility change a recommended classification to a lower classification (e.g., Class I to Class II). However, the head of the facility may change a recommended classification to a higher classification (e.g., Class II to Class I) in accordance with the evidence and subsection (a) of this section.

(c) The head of the facility is responsible for taking prompt and proper disciplinary action when an allegation involving an employee/agent is confirmed.

- (1) Disciplinary action against an employee is based on criteria including, but not limited to:
- (A) the seriousness of the abuse, neglect, and/or exploitation;
 - (B) the circumstances surrounding the incident;
 - (C) the employee's work record; and

(D) repeat violations and the length of time between violations.

(2) When an allegation has been confirmed the head of the facility takes the following disciplinary action.

- (A) Class I Abuse. The employee/agent is dismissed.
- (B) Class II Abuse.

(i) The employee is placed on suspension for up to 10 days, demoted, or dismissed. If the employee is exempt under the provisions of the Fair Labor Standards Act (FLSA), the suspension shall be in compliance with relevant provisions of the FLSA and current TDMHMR personnel policies.

- (ii) The agent is dismissed.
- (C) Class III Abuse or Neglect.

(i) The employee receives a written reprimand which becomes a part of the employee's personnel file, or the employee is placed on suspension for up to 10 days, demoted, or dismissed. If the employee is exempt under the provisions of the FLSA the suspension shall be in compliance with relevant provisions of the FLSA and current TDMHMR personnel policies.

- (ii) The agent is dismissed.

(d) When disciplinary action is taken against an employee based on confirmed abuse or neglect, the head of a facility notifies the employee in writing of the disciplinary action taken and any right to a grievance hearing the employee may have under TDMHMR's internal policies and procedures relating to employee grievances. If the employee files a grievance in response to disciplinary action resulting from confirmed abuse or neglect, the head of the facility, upon the employee's written request, provides the employee with a copy of or access to the investigative report. Before receiving or inspecting the report, the employee is required to complete a document acknowledging that the report's content must be kept confidential. Additional documentary evidence, if any, may be accessed by the employee in accordance with procedures outlined in the Human Resources Operating Instruction 407-12, § 18 (relating to Employee Grievances).

(e) When disciplinary action is taken against an agent as a result of confirmed abuse or neglect, the head of a facility notifies the agent in writing of the disciplinary action taken.

(f) The head of the facility ensures the victim, guardian, or primary contact, or parent if the victim is a child is promptly notified of:

- (1) the disciplinary action taken against the employee/agent;
- (2) the employee's right to request a grievance hearing to dispute the disciplinary action; and
- (3) an offer to inform the victim, guardian, primary contact, or parent if the employee files a grievance if such information is requested.

(g) If Advocacy, Inc. informs the head of the facility that it represents the victim of confirmed Class I abuse, the head of the facility will notify Advocacy, Inc. if the dismissed employee requests a grievance hearing.

(h) If requested by the head of the facility, the APS investigator who conducted the investigation shall provide consultation and testimony at the grievance hearing.

(i) The head of the facility provides the APS director with a copy of hearings officers' decisions of employee grievances that involve TDPRS investigations.

§ 417.513. Contractors

The head of the facility is responsible for requiring that all of the facility's contractors comply with this subchapter

with the exception of § 417.512 of this title (relating to Classifications and Disciplinary Actions) and § 417.514 of this title (relating to TDMHMR Administrative Responsibilities). The head of the facility shall ensure that each contractor is provided a copy of TDPRS's rules governing investigations in TDMHMR facilities and related programs, 40 TAC Chapter 711. Each contract shall describe the procedural responsibilities of the facility and the contractor regarding at least the following:

- (1) the reporting of allegations of abuse, neglect, and exploitation;
- (2) the safety and protection of persons served involved in allegations;
- (3) the facilitation of proper investigations/peer reviews and the preservation of the integrity of investigations/peer reviews;
- (4) the notification of appropriate licensing authorities and other individuals regarding issues relating to allegations;
- (5) taking proper disciplinary action or other appropriate action; and
- (6) staff training in identifying, reporting, and preventing abuse, neglect, and exploitation.

§ 417.514. TDMHMR Administrative Responsibilities

TDMHMR will implement systems to ensure that:

- (1) former employees with confirmed Class I Abuse and former employees who were dismissed because of confirmed abuse or neglect and whose dismissal is upheld at a grievance hearing or who fail to request a grievance hearing are not eligible for reemployment at any facility; and
- (2) former employees with confirmed abuse, neglect, or exploitation regardless of classification are not eligible for reemployment at any TDMHMR-operated ICF/MR facility.

§ 417.515. Staff Training in Identifying, Reporting, and Preventing Abuse, Neglect, and Exploitation

(a) This subchapter shall be thoroughly and periodically explained to all employees/agents of each facility as follows:

- (1) All new employees/agents who will provide direct services to persons served and all new employees/agents who will routinely perform job duties in proximity to persons served shall receive training on the contents of this subchapter prior to performing their duties and annually thereafter. The training will include:
 - (A) an explanation and examples of the acts and signs of possible abuse, neglect, and exploitation;
 - (B) the effects of abuse, neglect, and exploitation;
 - (C) an explanation that abuse, neglect, and exploitation of persons served is prohibited;
 - (D) the disciplinary consequences for:
 - (i) committing abuse, neglect, and exploitation; and
 - (ii) failure to cooperate with an investigation;
 - (E) the procedures for reporting allegations of abuse, neglect, and exploitation;
 - (F) a definition of retaliatory action, an explanation that retaliatory action is prohibited, and an explanation of the consequences of retaliatory action;
 - (G) practices and attitudes that support the prevention of abuse, neglect, and exploitation; and
 - (H) PMAB.
- (2) All new employees/agents who will not provide direct services to persons served and who will not

routinely perform any job duty in proximity to persons served shall receive training on the contents of this subchapter within two months of employment or placement and every two years thereafter. The training will include:

- (A) an explanation and examples of the acts and signs of possible abuse, neglect, and exploitation;
 - (B) the effects of abuse, neglect, and exploitation;
 - (C) an explanation that abuse, neglect, and exploitation of persons served is prohibited;
 - (D) the disciplinary consequences for:
 - (i) committing abuse, neglect, and exploitation; and
 - (ii) failure to cooperate with an investigation;
 - (E) the procedures for reporting allegations of abuse, neglect, and exploitation; and
 - (F) a definition of retaliatory action, an explanation that retaliatory action is prohibited, and an explanation of the consequences of retaliatory action.
- (3) Physicians shall receive additional training on how to identify signs and symptoms of abuse, neglect, and exploitation.

(4) All new employees who will provide direct services to persons served shall receive training on the procedures for securing evidence in accordance with "Guidelines for Securing Evidence," referenced as Exhibit B in § 417.516 of this title (relating to Exhibits) prior to performing their duties and annually thereafter.

(5) Within 90 days after the effective date of this subchapter, the head of the facility shall inform all current employees/agents/contractors of changes to policies and procedures as a result of this subchapter.

(b) All supervisory personnel have a continuing responsibility to keep employees/agents informed of current rules and policies governing abuse, neglect, and exploitation and to ensure that employees/agents receive training in accordance with this section.

(c) Instructional materials, audiovisual, and/or other training aids concerning this subchapter are developed and available through the TDMHMR System Human Resource Development, Central Office.

(d) Records of all training content and activities related to course titles shall be kept by each facility. Records shall also be kept on each employee/agent receiving training in compliance with this section, which include:

- (1) the employee/agent's name and signature;
- (2) the course title;
- (3) the result of any assessment;
- (4) the date of the training; and
- (5) the name of the person facilitating, monitoring, or conducting the training.

§ 417.516. Exhibits

The following exhibits referenced in this subchapter are available from the Texas Department of Mental Health and Mental Retardation, Office of Policy Development, P.O. Box 12668, Austin, TX 78711-2668.

- (1) Exhibit A—Texas Civil Practice and Remedies Code, § 81.001 and § 81.006;
- (2) Exhibit B—"Guidelines for Securing Evidence";
- (3) Exhibit C—Memorandum of Understanding between TDMHMR, TDHS, and TDPRS concerning Reportable Incidents in State Schools, State Centers, State Operated Community-based MHMR Services, and Community MHMR Centers with Intermediate Care Facilities for the Mentally Retarded (ICF/MR);
- (4) Exhibit D—Memorandum of Understanding between TDPRS, Texas Board of Medical Examiners,

and TDMHMR concerning Mandatory Reporting of Physician Misconduct or Malpractice;

(5) Exhibit E—Client Abuse and Neglect Report (AN-1-A) form;

(6) Exhibit F—“Procedures in Facility Abuse, Neglect, and Exploitation Investigations and Thurston Rebuttal Proceedings”; and

(7) Exhibit G—“Therapeutic Reconciliation.”

§ 417.517. References

Reference is made to the following statutes, rules, and TDMHMR operating instructions:

(1) Texas Health and Safety Code, Chapters 242, 481, and 577;

(2) Probate Code, Chapter 13;

(3) Whistleblower Act, Texas Civil Statutes, Article 6252-16a;

(4) Texas Penal Code, §§ 22.011, 22.021, 43.01, and 43.21;

(5) Texas Family Code, Chapter 31;

(6) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(7) Chapter 405, Subchapter F of this title (relating to Voluntary and Involuntary Behavioral Interventions in Mental Health Programs);

(8) Chapter 405, Subchapter H of this title (relating to Behavior Management—Facilities Serving Persons With Mental Retardation);

(9) Chapter 711 of Title 40 (concerning Investigations in TDMHMR Facilities and Related Programs).

(10) Human Resources Operating Instruction 407-12;

(11) Investigative Medical Peer Review Operating Instruction, 417-19;

(12) Investigative Nursing Peer Review Operating Instruction, 408-1;

(13) Texas Civil Practice and Remedies Code, § 81.006; and

(14) 42 USC § 10805(a)(4) and § 15043(a)(2)(I).

HISTORY: The provisions of this § 417.517 adopted to be effective April 23, 2003, 28 TexReg 3354

§ 417.518. Distribution

(a) This subchapter will be distributed to:

(1) members of the Texas Mental Health and Mental Retardation Board;

(2) members of the Board of the Texas Department of Protective and Regulatory Services;

(3) Central Office executive, management, and program staff;

(4) the head of each facility;

(5) advocacy organizations;

(6) the Texas Board of Medical Examiners;

(7) the State Board of Dental Examiners;

(8) the Board of Nurse Examiners for the State of Texas;

(9) the Board of Vocational Nurse Examiners; and

(10) the Texas State Board of Pharmacy.

(b) The head of each facility is responsible for duplicating and disseminating copies of this subchapter to:

(1) appropriate staff;

(2) contractors and agents; and

(3) any person served, employee, or other individual desiring a copy.

(c) The head of each facility is responsible for prominently displaying copies of this subchapter at nursing stations and on bulletin boards within each facility.

HISTORY: The provisions of this § 417.518 adopted to be effective April 23, 2003, 28 TexReg 3354

CHAPTER 419.

**Mental Health Services—
Medicaid State Operating Agency
Responsibilities**

Section

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§ 419.2. Definitions

§ 419.3. Eligibility Criteria

§ 419.4. Co-payments

§ 419.5. Individual Plan of Care (IPC)

§ 419.6. Transition Planning

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§ 419.371. Purpose and Application

§ 419.373. Definitions

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§ 419.377. Discharge Criteria

§ 419.379. Distribution

Subchapter A.

Youth Empowerment Services (YES)

§ 419.1. Purpose and Application

(a) Purpose. The purpose of this subchapter is to implement a pilot program, under the waiver provisions of the federal Social Security Act, § 1915(c), that prevents or reduces institutionalization of children and adolescents with severe emotional disturbance (SED), enables more flexibility in providing intensive community-based services for children and adolescents with SED, and provides support for their families by improving access to services.

(b) Application. The subchapter applies to:

(1) persons and entities that have a Medicaid provider agreement to provide the waiver program services, as described in this subchapter;

(2) local mental health authorities (LMHAs), which have administrative responsibilities under the waiver program; and

(3) children and adolescents who are applicants for or recipients of services under the waiver program.

HISTORY: The provisions of this § 419.1 adopted to be effective November 19, 2009, 34 TexReg 8038

§ 419.2. Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Adolescent—An individual who is at least 13 years of age, but younger than 19 years of age.

(2) Assessment—A set of standardized assessment measures used by the department to determine level of need as set forth in the approved waiver.

(3) Child—An individual who is at least three years of age, but younger than 13 years of age.

(4) Department—Department of State Health Services.

(5) LAR or legally authorized representative—A person authorized by law to act on behalf of a child or adolescent with regard to a matter described in this subchapter, including, but not limited to, a parent, guardian, or managing conservator.

(6) LMHA or local mental health authority—An entity designated as the local mental health authority by the department in accordance with the Health and Safety Code, § 533.035(a).

(7) LPHA or licensed practitioner of the healing arts—A person who is:

- (A) a physician;
- (B) a licensed professional counselor;
- (C) a licensed clinical social worker;
- (D) a licensed psychologist;
- (E) an advanced practice nurse; or
- (F) a licensed marriage and family therapist.

(8) Provider—Any person or legal entity that has an agreement with the department and the single state Medicaid agency to provide the waiver program services, as described in the approved waiver.

(9) SED or severe emotional disturbance—A child or adolescent with a serious functional impairment or acute severe psychiatric symptomatology as identified by the assessment.

(10) Waiver program—A Medicaid program that provides waiver program services to a limited number of eligible children or adolescents, in accordance with the provisions of the waiver approved under the federal Social Security Act, § 1915(c).

(11) Waiver program services—Medicaid community-based services provided under the approved waiver program.

HISTORY: The provisions of this § 419.2 adopted to be effective November 19, 2009, 34 TexReg 8038

§ 419.3. Eligibility Criteria

(a) To participate in the waiver program, the child or adolescent must meet the following eligibility criteria:

- (1) be eligible for Medicaid, under a Medicaid Eligibility Group included in the approved waiver;
- (2) live in a county included in the waiver program;
- (3) be reasonably expected to qualify for inpatient care under the Texas Medicaid inpatient psychiatric admission guidelines, as defined in the approved waiver, in the absence of waiver services;
- (4) reside:
 - (A) in a non-institutional setting with the child's or adolescent's LAR; or
 - (B) in the child's or adolescent's own home or apartment, if legally emancipated; and
- (5) choose, or have the LAR choose, the waiver program services as an alternative to care in an inpatient psychiatric facility, in accordance with the provisions of the approved waiver.

(b) The participating child or adolescent must be determined to meet the eligibility criteria in subsection (a) of this section on an annual basis to continue in the waiver program.

(c) The department reserves the right to limit, in each county, the number of eligible children or adolescents that may participate in the waiver program, in accordance with the provisions of the approved waiver.

§ 419.4. Co-payments

The receipt of certain waiver program services may be dependent upon the child's or adolescent's and/or LAR's ability to make a co-payment.

HISTORY: The provisions of this § 419.4 adopted to be effective November 19, 2009, 34 TexReg 8038

§ 419.5. Individual Plan of Care (IPC)

(a) Each child and adolescent determined eligible to participate in the waiver program is assigned a mental health case manager, subject to the rules in Chapter 412, Subchapter I, of this title (relating to Mental Health Case Management Services). The mental health case manager must coordinate with the child or adolescent, LAR, waiver service providers and LMHA to develop an IPC that is based upon the assessment.

(b) The initial IPC must be reviewed by an LPHA at the LMHA that serves the geographic area of the participant's residence before forwarding to the department for approval. The IPC must be approved by the department before a provider can begin delivering waiver program services. To be approved, the IPC must:

- (1) promote the child's or adolescent's inclusion into the community;
- (2) protect the child's or adolescent's health and welfare in the community;
- (3) supplement, rather than replace, the child's or adolescent's natural and other non-waiver program support systems and resources;
- (4) be designed to prevent or reduce the likelihood of the child's or adolescent's admission to an inpatient psychiatric facility; and
- (5) be the most appropriate type and amount of services to meet the child's or adolescent's needs.

(c) The IPC must be reviewed by an LPHA at the LMHA and submitted to the department for approval as part of the annual eligibility determination required under § 419.3 of this title (relating to Eligibility Criteria). Any recommended changes to the IPC outside the annual review process must be approved by the department.

(d) To demonstrate that the waiver program services specified in the IPC meet the requirements described in subsection (b) of this section, the LMHA must submit the following to the department:

- (1) an assessment of the child or adolescent that identifies and supports the waiver program services included in the IPC; and
- (2) documentation that natural and other non-waiver program support systems and resources are unavailable or are insufficient to meet the goals specified in the IPC.

(e) The department may conduct utilization review of an IPC and supporting documentation at any time to determine if the services specified in the IPC meet the requirements described in subsection (b) of this section. If the department determines that one or more of the services specified in the IPC do not meet the requirements described in subsection (b) of this section, the department may deny, reduce, or terminate the service, modify the IPC, and send written notification to the child or adolescent, LAR, and the provider.

(f) In addition to the utilization review conducted in accordance with subsection (e) of this section, the department may conduct utilization review of the provider and the provision of waiver program services at any time.

(g) The cost of implementing the IPC must be within the cost ceiling identified by the department and the single state Medicaid agency. For children and adolescents with service needs that exceed the cost ceiling, the department has a process to ensure that their needs are met, which includes examining third-party resources or possible transition to other waiver programs or inpatient services.

HISTORY: The provisions of this § 419.5 adopted to be effective November 19, 2009, 34 TexReg 8038

§ 419.6. Transition Planning

(a) The LMHA is required to develop a transition plan for an adolescent who will become 19 years of age while receiving services under the waiver program. The transition plan must be developed at least six months prior to the month the adolescent becomes 19 years of age to ensure that the adolescent is appropriately transitioned to adult services.

(b) The transition plan, required under subsection (a) of this section, must be developed in consultation with the adolescent and, if appropriate, the LAR, as well as future providers, allowing adequate time for a smooth transition of the adolescent into adult services. The transition plan must include:

(1) a summary of the mental health community services and treatment received while in the waiver program;

(2) the adolescent's current assessment, e.g., diagnosis, medications, level of functioning, and unmet needs;

(3) information from the adolescent and the LAR, if appropriate, regarding the adolescent's strengths, preferences for mental health community services, and responsiveness to past interventions; and

(4) an IPC that:

(A) indicates the mental health and other community services the adolescent will receive at the point of becoming 19 years of age; and

(B) ensures the adolescent will be provided a smooth transition to adult services.

HISTORY: The provisions of this § 419.6 adopted to be effective November 19, 2009, 34 TexReg 8038

§ 419.7. Inquiry List

(a) Inquiry List. a list, maintained by each LMHA, of children and adolescents as defined by § 419.2 of this title (relating to Definitions) who are interested in receiving YES Waiver program services and who reside in the LMHAs service area.

(1) Only a child or adolescent or the child or adolescents LAR may place a child or adolescents name on the inquiry list.

(2) The LMHA must assign the child or adolescent a registration date on the inquiry list that is based on the chronological date and time the phone call or voice message requesting YES Waiver program services was received.

(b) Maintenance of Inquiry List. The LMHA must maintain an up-to-date inquiry list.

(1) The LMHA must remove a child or adolescents name from the inquiry list if it is documented that:

(A) the child or adolescent or LAR has requested verbally or in writing that the child or adolescents name be removed from the inquiry list;

(B) the child or adolescent or LAR has declined verbally or in writing YES Waiver program services;

(C) the child or adolescent or LAR has not responded to the LMHAs notification of a waiver vacancy within 30 calendar days of the LMHAs notification of the vacancy;

(D) the child or adolescent has moved out of Texas;

or

(E) the child or adolescent is deceased.

(2) If a child or adolescents name is removed from an inquiry list in accordance with paragraph (1) of

this subsection, and if the child or adolescent, LAR, or LMHA requests that the child or adolescents name be reinstated on the inquiry list, the child or adolescent, LAR, or LMHA may request that the department review the circumstances under which the child or adolescents name was removed from the LMHAs inquiry list. At its discretion the department may:

(A) reinstate the child or adolescents name on the inquiry list according to the original date the child or adolescent or LAR requested the child or adolescents name be added in accordance with subsection (a) of this section; or

(B) add the child or adolescents name to the inquiry list according to the date the child or adolescent or LAR requested that the department review the circumstances under which the child or adolescents name was removed.

(c) Denial of enrollment. The department shall remove a child or adolescents name from an LMHAs inquiry list if the department has denied the child or adolescents enrollment in the YES Waiver program and the child or adolescent or LAR has had an opportunity to exercise the child or adolescents right to appeal the decision in accordance with § 419.8 of this title (relating to Right to Fair Hearing) and did not appeal the decision, or appealed the decision and did not prevail.

(d) Reserve capacity. There are a percentage of vacancies in the YES Waiver program that are reserved for children or adolescents who are at imminent risk of being relinquished to state custody.

(1) If a child or adolescent whose name has been added to the LMHAs inquiry list must wait to be enrolled, then the LMHA must screen the child or adolescent for imminent risk of relinquishment.

(2) If the LMHA determines that the child or adolescent may be at imminent risk of relinquishment, the LMHA must complete the YES Waiver Reserve Capacity Screening Form and submit to the department for review.

(3) If the department determines that the child or adolescent is at imminent risk of relinquishment, the department must authorize the LMHA to complete the enrollment process within three business days.

(4) If a child or adolescent is denied reserve capacity, then the LMHA must assign the child or adolescent a registration date on the inquiry list that is based on the chronological date and time the phone call or voice message requesting YES Waiver program services was received in accordance with subsection (a)(2) of this section.

HISTORY: The provisions of this § 419.7 adopted to be effective October 16, 2016, 41 TexReg 8069

§ 419.8. Right to Fair Hearing

The LMHA or the department must notify the child or adolescent, and LAR, of the right to a fair hearing, conducted in accordance with the rules in 1 Texas Administrative Code, Chapter 357, Subchapter a (relating to Uniform Fair Hearing Rules), under the following circumstances:

(1) a child or adolescent is denied participation in the waiver program, unless the reason for the denial is the program participation limit referred to in § 419.3(c) of this title (relating to Eligibility Criteria);

(2) a child or adolescent is denied continued participation in the waiver program; or

(3) waiver program services for a child or adolescent are denied, reduced, suspended, or terminated.

HISTORY: The provisions of this § 419.8 adopted to be effective November 19, 2009, 34 TexReg 8038

Subchapter J.

Institutions in Mental Diseases

§ 419.371. Purpose and Application

The purpose of this subchapter is to describe the criteria used to determine whether a provider is eligible to receive Medicaid reimbursement for inpatient hospital services to people aged 65 and older in an institution for mental diseases (IMD) and to describe the methods by which patient and provider eligibility are established and reimbursement for covered services is accomplished. This subchapter applies to all IMD providers.

HISTORY: The provisions of this § 419.371 adopted to be effective December 20, 1998, 23 TexReg 12683; amended to be effective July 3, 2007, 32 TexReg 4010

§ 419.373. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Department—The Department of State Health Services or its designee.

(2) HHSC—The Health and Human Services Commission or its designee.

(3) Inpatient hospital services—Services provided under the supervision of a physician in an IMD that meets the requirements for psychiatric hospitals in 42 CFR § 482.60(b), (c), and (d) and meets utilization review requirements in 42 CFR § 482.30(a), (b), (d), and (e) unless the utilization review requirements have been waived pursuant to § 1903(i)(4) of the Social Security Act and 42 CFR Part 456, Subpart H.

(4) Institution for mental diseases (IMD)—A hospital of more than 16 beds that is primarily engaged in providing psychiatric diagnosis, treatment, and care of individuals with mental diseases, including medical care, nursing care, and related services.

(5) IMD provider—An IMD that has an agreement with the department to provide IMD services.

(6) IMD services—Inpatient hospital services provided by an IMD provider for the care and treatment (including room and board) of individuals with mental diseases including, but not limited to:

- (A) initiation, titration, or change in medication;
- (B) monitoring and assessing by qualified mental health professionals;
- (C) suicide precautions;
- (D) redirection of inappropriate behaviors and/or reinforcement of appropriate behaviors;
- (E) group and individual therapies;
- (F) structured skills training activities; and
- (G) nursing services.

(7) Mental diseases—Diseases listed as mental disorders in the latest editions of the International Classification of Diseases and the Diagnostic and Statistical Manual of Mental Disorders, with the exception of mental retardation and chemical dependency disorders.

(8) Qualified mental health professional—A person acting within the scope of his or her training and licensure or certification, who is a:

- (A) licensed social worker, as defined by the Social Work Practice Act, Occupations Code, § 505.002(6);

(B) licensed professional counselor, as defined by the Licensed Professional Counselor Act, Occupations Code, § 503.002(4);

(C) physician, as defined by the Medical Practice Act, Occupations Code, § 151.002(12), or a person employed by any agency of the United States having a license to practice medicine in any state of the United States;

(D) licensed nurse as provided for and defined in the Nursing Practice Act, Occupations Code, Chapter 301; or

(E) psychologist, as defined by the Psychologists' Licensing Act, Occupations Code, § 501.002(5).

§ 419.374. Eligible Population

(a) IMD provider reimbursement is limited to IMD services provided to individuals:

- (1) who are age 65 years or older;
- (2) who have one or more mental disease;
- (3) who have no acceptable alternate placement as determined by the individual's treatment team;
- (4) who are eligible for participation in the Texas Medicaid program;
- (5) who are not eligible for medical compensation from other payment sources;
- (6) who have been certified by a licensed physician to need inpatient hospitalization for the care and treatment of a mental disease;
- (7) who meet all other federal, state, and local regulations applicable to admission to a mental hospital; and

(8) for whom the department has authorized IMD services based on medical necessity, as follows:

(A) Requests for initial authorization for IMD services must be submitted to the department within seven calendar days after the first day for which Medicaid reimbursement for the provision of IMD services will be requested.

(B) Requests for authorization of continued stay must be submitted no later than seven calendar days prior to the end date of the initial and all subsequent authorizations. Initial and continued stay authorizations are valid for up to 31 calendar days.

(b) Any Medicaid eligible individual whose request for eligibility for IMD services is denied or is not acted upon with reasonable promptness, or whose IMD services have been terminated, suspended, or reduced by the department is entitled to a fair hearing, conducted in accordance with rules for fair hearings described in Title 1, Texas Administrative Code, Chapter 357, Subchapter a (relating to Medicaid Fair Hearings). a request for a fair hearing must be submitted to the department and received within 90 days from the date the notice of denial of eligibility for IMD services or notice of termination, suspension, or reduction of IMD services is mailed.

HISTORY: The provisions of this § 419.374 adopted to be effective December 20, 1998, 23 TexReg 12683; amended to be effective July 3, 2007, 32 TexReg 4010

§ 419.375. IMD Provider Eligibility for Reimbursement

(a) To be eligible for reimbursement for IMD services, an IMD provider must:

- (1) submit an approved application for enrollment through means established by the department, to include evidence that the provider:

- (A) meets the Medicare conditions of participation referenced in 42 CFR § 482.60(b);

(B) is accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO);

(C) if applicable, licensed as a mental hospital under the Texas Health and Safety Code, Chapter 577; and

(D) has a consistent historical pattern of accepting persons involuntarily committed for inpatient mental health treatment as evidenced by having provided mental health services to a minimum of 20 persons, 65 years of age or older, involuntarily committed for inpatient mental health treatment under the Texas Health and Safety Code, Chapters 573 and 574, during the two-year period immediately preceding the date of application for participation.

(2) have in effect a written provider agreement with the department which:

(A) describes respective responsibilities of the provider and the department, including arrangements to ensure:

- (i) joint planning efforts;
- (ii) development of alternative methods of care;
- (iii) access by the department and HHSC to the institution, its patients, and patients' records when necessary to carry out the agencies' responsibilities;
- (iv) recording, reporting, and exchanging medical and social information about the patients; and
- (v) other procedures that may be required to achieve the purposes of the agreement;

(B) assures the capacity of the provider to admit, readmit from alternate care, and treat both eligible persons voluntarily seeking services under the Texas Health and Safety Code, Chapter 572, and persons involuntarily committed for inpatient mental health treatment under the Texas Health and Safety Code, Chapters 573 and 574;

(C) assures that the provider is meeting the requirements specified in 42 CFR § 440.140(a) pertaining to providers of inpatient hospital services to persons age 65 or older in institutions for mental diseases;

(D) assures that the provider is in compliance with those provisions of the Texas Administrative Code, Title 25, Part I, that relate to patient care and treatment in inpatient mental health facilities;

(E) assures that the provider is serving a patient population in which more than 50% currently require institutionalization because of a mental disease; and

(F) assures that the provider will submit cost reports and audit data in a manner authorized by the department.

(b) An IMD provider's eligibility for reimbursement must be renewed periodically at a time designated by the department, but not to exceed two years.

(c) Evidence of compliance with subsection (a) of this section is validated through reviews by the department, which occur at intervals decided upon by the department. For each Medicaid patient, the department additionally reviews:

(1) the adequacy of services available to meet the patient's current health needs and promote the patient's maximum physical, mental, and psychosocial well-being; and

(2) the necessity or desirability of the patient's continued placement in the IMD, including an examination of barriers to serving the patient in a less restrictive setting and the efforts of the IMD to achieve a less restrictive placement for the patient.

(d) If the IMD provider fails to provide evidence of compliance with subsection (c) of this section, then the provider may be required to take corrective action based on the findings contained in the department's report. If corrective action is required, the IMD provider must submit a corrective action plan to the department for approval. Failure to implement the corrective action plan constitutes a contract violation and the IMD provider may be subjected to any sanctions provided for in the contract, including termination.

§ 419.376. IMD Provider Reimbursement and Termination

(a) Reimbursement for IMD services provided to eligible individuals begins on the date established by written notice from the department and is contingent upon validation of evidence of IMD provider eligibility as described in § 419.375(c) of this title (relating to IMD Provider Eligibility for Reimbursement).

(b) An IMD provider's agreement with the department is subject to termination with written notice on the date that any of the following occurs:

- (1) loss of Medicare and/or JCAHO certification;
- (2) if applicable, loss of licensure as a psychiatric hospital;
- (3) failure to meet requirements specified in 42 CFR § 440.140(a) pertaining to providers of inpatient hospital services in institutions for mental diseases;
- (4) demonstrated noncompliance with those provisions of the Texas Administrative Code, Title 25, Part I, that relate to patient care and treatment in inpatient mental health facilities, or with state laws governing admission and treatment of persons with mental illness;
- (5) breach of the written provider agreement described in § 419.375(a)(2) of this title (relating to IMD Provider Eligibility for Reimbursement);
- (6) termination of participation as a Medicaid provider by HHSC; or
- (7) evidence of noncompliance with the rules in this subchapter or a corrective action plan that is based on findings made by the department in a review described in § 419.375(c) of this title.

(c) Failure to submit an acceptable cost report in the required time frame constitutes a contract violation and may result in sanctions provided for in the contract, including a hold of vendor payments.

(d) Termination of the IMD provider agreement is an adverse action for which the IMD provider is entitled to a contested case hearing as described in Texas Administrative Code, Title 1, Chapter 357, Subchapter I (relating to Formal Appeals).

(e) IMD providers that receive Medicaid reimbursement for IMD services are governed by Texas Administrative Code, Title 1, Chapter 371 (relating to Medicaid and other Health and Human Services Fraud and Abuse Program Integrity).

HISTORY: The provisions of this § 419.376 adopted to be effective December 20, 1998, 23 TexReg 12683; amended to be effective July 3, 2007, 32 TexReg 4010

§ 419.377. Discharge Criteria

IMD providers must be in compliance with the following rules, as applicable, regarding discharge of individuals receiving IMD services:

(1) Chapter 412, Subchapter D of this title (relating to Mental Health Services—Admission, Continuity and Discharge; and

(2) Chapter 411, Subchapter J of this title (relating to Standards of Care and Treatment in Psychiatric Hospitals).

HISTORY: The provisions of this § 419.377 adopted to be effective December 20, 1998, 23 TexReg 12683; amended to be effective July 3, 2007, 32 TexReg 4010

§ 419.379. Distribution

This subchapter shall be distributed to:

(1) executive management, and program staff of Central Office;

(2) chief executive officers of all IMD providers; and

(3) advocacy organizations.

HISTORY: The provisions of this § 419.379 adopted to be effective December 20, 1998, 23 TexReg 12683; amended to be effective July 3, 2007, 32 TexReg 4010

CHAPTER 441.

General Provisions

Subchapter A.

Definitions

Section

§ 441.101. Definitions

§ 441.101. Definitions

The following words and terms, when used in 40 TAC chs. 141, 142, 144, 147, 148, 150, and 153 of this title shall have the following meanings, unless the context clearly indicates otherwise:

(1) Abuse—An intentional, knowing, or reckless act or omission by provider personnel, a counselor, applicant for counselor licensure, or counselor intern that causes or may cause death, emotional harm or physical injury to a participant or client. Abuse includes without limitation the following:

(A) any sexual activity between provider personnel, a counselor, applicant for counselor licensure, or counselor intern and a participant or client;

(B) corporal punishment;

(C) nutritional deprivation or sleep deprivation;

(D) efforts to cause fear;

(E) the use of any form of communication to threaten, curse, shame, or degrade a participant or client;

(F) restraint that does not conform with chapter 148 of this title (relating to Standard of Care);

(G) coercive or restrictive actions taken in response to a participant or client's request for discharge or refusal of medication or treatment that are illegal or not justified by the participant or client's condition; and

(H) any other act or omission classified as abuse by Texas law, including but not limited to, TEX. FAMILY CODE ANN. § 261.001 (Vernon 1996) and TEX. HUM. RES. CODE ANN. § 48.002 (Vernon Supp. 2004).

(2) Administrative Discharge—A discharge report processed by the Commission for a client whose last admission date and/or last billing end date exceeds 50 days.

(3) Administrative Follow-up—A report processed by the Commission if 90 days for non-detoxification clients or 40 days for detoxification clients have elapsed from the client's last discharge date and the client has not been readmitted to the same provider within 60 days (non-detoxification clients) or ten days (detoxification clients).

(4) Administrative Hearing—An appeals hearing conducted by the State Office of Administrative Hearings (SOAH).

(5) Administrative Law Judge (ALJ)—An individual appointed by the chief administrative law judge of SOAH under TEX. GOV'T CODE ANN. § 2003.041 (Vernon 2004) to preside over a contested case proceeding.

(6) Administrative Procedure Act (APA)—TEX. GOV'T CODE ANN. ch. 2001 (Vernon 2000 & Supp. 2004), as amended.

(7) Adolescent—An individual 13 through 17 years of age whose disabilities of minority have not been removed by marriage or judicial decree.

(8) Adult—An individual 18 years of age or older, or an individual under the age of 18 whose disabilities of minority have been removed by marriage or judicial decree.

(9) Agency—TCADA.

(10) Alternative Activities—A strategy that gives participants and their families the opportunity to take part in educational, cultural, recreational, skill-building, and work-oriented substance-free activities. Activities under this strategy are designed to encourage and foster bonding with peers, family and community.

(11) Applicant—A person who has submitted an application for an initial license to provide chemical dependency counseling or treatment, renewal of a license, or certification or approval for provision of an offender education program. For funding purposes, an applicant is a person who has submitted a proposal or application to provide substance abuse services in response to a solicitation issued by the Commission.

(12) Assessment—An ongoing process through which the counselor collaborates with the client and others to gather and interpret information necessary for developing and revising a treatment plan and evaluating client progress toward achievement of goals identified in the treatment plan, resulting in comprehensive identification of the client's strengths, weaknesses, and problems/needs.

(13) ATOD—Alcohol, tobacco and other drugs collectively.

(14) Authorized Representative—An attorney authorized to practice law in the State of Texas or, if authorized by applicable law, a person designated in writing by a party to represent the party.

(15) Behavioral Health Integrated Provider System (BHIPS)—The Commission's Internet-based computer system for contracted service providers that offers contractors the tools to meet State and Federal requirements for reporting, including capturing required client and billing data.

(16) Block Grant—Substance Abuse Prevention and Treatment Block Grant, 42 U.S.C. 300x-21, et seq.

(17) Brief Interventions—Practices designed to initiate a resolution of a problem and motivate an individual to begin to do something about his or her substance abuse. Brief interventions are described in "Brief Interventions and Brief Therapies for Substance Abuse" (Treatment Improvement Protocol 34), published by the United States Department of Health and Human

Services Center for Substance Abuse Treatment (CSAT). Brief interventions are short counseling sessions that can be as short as five minutes or long as an hour for “at risk” or “harmful” users that are not chemically dependent. These interventions are for the purpose of goal setting within safe limits, giving self-care instruction and referral to other sources that are appropriate. For those clients that are dependent or for whom the position along the stage of change spectrum of alcohol or drug problems is uncertain, the brief intervention is a negotiation process to seek further assessment and referral to an appropriate level of care. The brief intervention is summarized by the acronym FRAMES: feedback, responsibility, advice, menu of strategies, empathy and self-efficacy.

(18) Brief Therapy—A systematic, focused process that relies on client engagement, and rapid implementation of change strategies. Brief therapies are described in “Brief Interventions and Brief Therapies for Substance Abuse” (Treatment Improvement Protocol 34), published by CSAT.

(19) Business Day—A weekday on which State offices are open.

(20) Center for Substance Abuse Prevention (CSAP) Prevention Strategies—

(A) Community-Based Process—A strategy designed to enhance the ability of the community to provide effective prevention, intervention, and treatment services for ATOD problems and HIV infection through community mobilization and empowerment. Activities include multi-agency coordination and collaboration, networking, and development of written agreements among community organizations.

(B) Environmental and Social Policy—A strategy designed to establish or change written and unwritten community standards, codes, and attitudes, thereby influencing incidence and prevalence of substance abuse in the general population. It includes activities that center on legal and regulatory initiatives and those that relate to the service and action-oriented initiatives.

(C) Information Dissemination—A strategy that provides awareness and knowledge of ATOD problems and/or HIV infection and their harmful effects on individuals, families, and communities. It also gives the general population information about available programs and services. Information dissemination is characterized by one-way communication from the source to the audience, with limited contact between the two. Information is disseminated through written communications and/or in-person community presentations.

(D) Prevention Education and Skills Training—A curriculum-based strategy designed to develop decision-making, problem solving, and other life skills. It also provides accurate information about the harmful effects of ATOD use, abuse and addiction pertinent to the needs of the target population. The basis of activities under this strategy is interaction between the educator/facilitator and the participants. These activities are aimed to increase protective factors, foster resiliency, decrease risk factors and affect critical life and social skills relative to substance abuse and/or HIV risk of the participant and/or family members.

(E) Problem Identification and Referral—A strategy that provides services designed to ensure

access to appropriate levels and types of services needed by youth or adult participants.

(F) Alternative Activities—A strategy that gives participants and their families the opportunity to take part in educational, cultural, recreational, skill-building, and work-oriented substance-free activities. Activities under this strategy are designed to encourage and foster bonding with peers, family and community.

(21) Chemical Dependency—In addition to the statutory provisions defining chemical dependency as abuse of, dependence on, or addiction to alcohol or a controlled substance (as defined by TEX. HEALTH & SAFETY CODE ANN. ch. 481 (Vernon 2001) and related statutory provisions in TEX. HEALTH & SAFETY CODE ANN. chs. 461 and 464 (Vernon 2001 & Supp. 2004), the Commission also defines chemical dependency as substance-related disorders as that term is used in the most recent published edition of the Diagnostic and Statistical Manual of Mental Disorders (See DSM).

(22) Chemical Dependency Counseling—See Practice of Chemical Dependency Counseling.

(23) Chemical Dependency Counselor—See Licensed Chemical Dependency Counselor (LCDC).

(24) Chemical Dependency Counselor Intern—A person registered with the Commission who is pursuing a course of training in chemical dependency counseling at a registered clinical training institution.

(25) Chemical Dependency Treatment—A planned, structured, and organized chemical dependency program designed to initiate and promote a person’s chemical-free status or to maintain the person free of illegal drugs. It includes, but is not limited to, the application of planned procedures to identify and change patterns of behavior related to or resulting from substance-related disorders that are maladaptive, destructive, or injurious to health, or to restore appropriate levels of physical, psychological, or social functioning.

(26) Child—For purposes of reporting abuse and neglect, a child is an individual under the age of 18 whose disabilities of minority have not been removed by marriage or judicial decree. For all other purposes in these rules, child shall mean an individual under the age of 13.

(27) Child Abuse and Neglect—Any act or omission that constitutes abuse or neglect of a child under the age of 18 by a person responsible for a child’s care, custody, or welfare as defined in the TEX. FAM. CODE ANN. § 261.001 (Vernon 1996).

(28) Client—An individual who receives or has received services, including admission authorization or assessment or referral, from a chemical dependency treatment provider, counselor, counselor intern, or applicant for licensure as a counselor, or from an organization where the counselor, intern or applicant is working on a paid or voluntary basis.

(29) Client Data Systems (CDS) Forms—CDS forms consist of the admission/transfer admission report, discharge report, and follow-up report.

(30) Clinical Evaluation—A systematic approach to screening and assessment.

(31) Clinical Training Institution (CTI)—An individual or legal entity registered with the Commission to supervise a counselor intern.

(32) Cognizant Agency—The Federal or State agency responsible for reviewing, negotiating, and approving an organization’s indirect cost rate. TCADA has not been designated as a cognizant agency.

(33) Commission—Texas Commission on Alcohol and Drug Abuse and its branches, divisions, departments, and employees.

(34) Consenter—The individual legally responsible for giving informed consent for a client. Unless otherwise provided by law, a legally competent adult is his or her own consenter and the consenter for an adolescent or child is the parent, guardian, or conservator. Texas law allows a person 16 or 17 years of age to consent to his or her own treatment.

(35) Contested Case—A proceeding, including but not restricted to licensing, in which the legal rights, duties, or privileges of a party are to be determined by the Commission after an opportunity for adjudicative hearing.

(36) Contractor—Person funded by the Commission to provide substance abuse services unless otherwise specified.

(37) Cost Reimbursement—A payment mechanism used for prevention and intervention services in which funds are provided to carry out approved activities based on an approved budget.

(38) Counseling—A collaborative process that facilitates the client's progress toward mutually determined treatment goals and objectives. Counseling includes methods that are sensitive to individual client characteristics and to the influence of significant others, as well as the client's cultural and social context. Competence in counseling is built upon the understanding of, appreciation of, and ability to appropriately use the modalities of care for individuals, groups, families, couples, and significant others.

(39) Counselor—A qualified credentialed counselor, graduate or counselor intern working towards licensure that would qualify them to be a qualified credentialed counselor (QCC).

(40) Crisis Intervention—Actions designed to intervene in situations which require immediate attention to avert potential harm to self or others. Services include face-to-face individual, family, or group interviews/interactions and/or telephone contacts to identify needs.

(41) Days—Calendar days, unless otherwise specified.

(42) Digital Authentication Key—Identification data (that includes user identification and a time stamp) that is digitally stamped on electronic documents identifying the specific user that created the document. The identification data shall be controlled by a unique user ID and an encrypted password.

(43) Direct Care Staff—Staff responsible for providing treatment, care, supervision, or other direct client services that involve face-to-face contact with a client.

(44) Discharge—Formal, documented termination of services.

(45) Document (noun)—A written or electronic record.

(46) Diagnostic and Statistical Manual of Mental Disorders (DSM)—The Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. The current version is the Fourth Edition, Text Revision (DSM-IV-TR). Any reference to DSM shall constitute a reference to the most recent edition then published.

(47) Driving While Intoxicated (DWI)—The offense of driving while intoxicated as defined in the TEX. PEN. CODE ANN. ch. 49 (Vernon 2003).

(48) Elderly—A person 65 years of age or older.

(49) Emergency Behavioral Health Condition—Any condition, without regard to the nature or cause of the condition, which in the opinion of a prudent lay person possessing an average knowledge of medicine and health, requires immediate intervention and/or medical attention without which an individual would present a danger to themselves or others or which renders individuals incapable of controlling, knowing or understanding the consequences of their actions.

(50) Encryption—A method that allows secure transmittal of information along the Internet by encoding the transmitted data using a mathematical formula that scrambles the data. Without a corresponding "decoder," the transmission would be unusable.

(51) Executive Director—The chief administrative officer or designee of the Texas Commission on Alcohol and Drug Abuse.

(52) Exploitation—The illegal or improper use of a client or participant, or their resources, for monetary or personal benefit, profit, or gain by provider personnel, a staff member, volunteer, or other individual working under the auspices of a provider or by a counselor, counselor intern or applicant for counselor licensure or any other act or omission classified as exploitation by Texas law including, but not limited to, TEX. FAM. CODE § 261.001 (Vernon 1996) and TEX. HUM. RES. CODE § 48.002 (Vernon Supp. 2004).

(53) Facility—See Treatment Facility.

(54) Family—The children, parents, brothers, sisters, other relatives, foster parents, guardians, and/or significant others who perform the roles and functions of family members in the lives of clients or participants.

(55) Fiscal Year—The Commission's fiscal year, September 1-August 31, unless otherwise specified.

(56) Gender Specific—Therapy, education and/or program components that are designed to address emotional, developmental, rehabilitative, health and/or other issues that are specific to the gender of the client.

(57) Graduate—An individual who has successfully completed the 270 hours of education, 300 hour practicum, and 4,000 hours of supervised work experience and who is still registered with the Commission as a counselor intern.

(58) Health Insurance Portability and Accountability Act of 1996 (HIPAA)—Pub. L. No. 104-191, 45 C.F.R. pts. 160 and 164.

(59) Human Immunodeficiency Virus (HIV)—The virus that causes Acquired Immune Deficiency Syndrome (AIDS). Infection is determined through a testing and counseling process overseen by the Texas Department of Health (TDH). Being infected with HIV is not necessarily equated with having a diagnosis of AIDS, which can only be diagnosed by a physician using criteria established by the National Centers for Disease Control and Prevention.

(60) HIV Antibody Counseling and Testing—A structured counseling session performed by Prevention Counseling and Partner Elicitation (PCPE) counselors registered with TDH. It promotes risk reduction behavior for those at risk of infection with HIV and other sexually transmitted diseases and offers testing for HIV infection.

(61) HIV Early Intervention Services—

(A) appropriate pretest counseling for HIV and AIDS;

(B) testing individuals with respect to such disease, including tests to confirm the presence of the disease,

tests to diagnose the extent of the deficiency in the immune system, and tests to provide information on appropriate therapeutic measures for preventing and treating the deterioration of the immune system and for preventing and treating conditions arising from the disease;

(C) appropriate post-test counseling; and

(D) providing the therapeutic measures described in subparagraph (B) of this paragraph.

(62) Indicated Population—The population who may already be experimenting with drugs or who exhibit other problem-related behaviors.

(63) Individual Service Day—A day on which a specific client receives services.

(64) Intake—The process for gathering information about a prospective client and giving a prospective client information about treatment and services.

(65) Intervention—The interruption of the onset or progression of chemical dependency in the early stages. Intervention strategies target indicated populations.

(66) Intervention Counseling—Interactions to assist individuals, families, and groups to identify, understand, and resolve issues and problems related to ATOD use within a specific number of sessions or within a certain time frame. It is intended to intervene in problem situations and high-risk behaviors, which, if not addressed, may escalate to substance abuse or cause communicable disease. Such interactions should not include determining whether a person is in need of treatment. The use of the term “counseling” does not carry the same meaning as defined in paragraph (38) of this section.

(67) Key Performance Measures—Measures that reflect the services that are critical to the program design and intended outcomes of the program. Key performance measures are specified for all Commission-funded programs.

(68) Knowledge, Skills, and Attitudes (KSAs)—The knowledge, skills, and attitudes of addictions counseling as defined by CSAT Technical Assistance Publication (TAP 21) “Addictions Counseling Competencies: the Knowledge, Skills, and Attitudes of Professional Practice.”

(69) License—The whole or part of any agency permit, certificate, approval, registration, or similar form of permission authorized by law.

(70) Licensed Chemical Dependency Counselor (LCDC)—A counselor licensed by the Texas Commission on Alcohol and Drug Abuse pursuant to TEX. OCC. CODE ch. 504 (Vernon 2002 & Supp. 2003).

(71) Licensed Health Professional—A physician, physician assistant, advanced practice nurse practitioner, registered nurse, or licensed vocational nurse authorized to practice in the State of Texas.

(72) Licensee—Any individual or person to whom the agency has issued any permit, certificate, approved registration, or similar form of permission authorized by law.

(73) Licensing—The agency process relating to the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(74) Life Skills Training (Treatment)—A structured program of training, based upon a written curriculum and provided by qualified staff designed to help clients with social competencies such as communication and social interaction, stress management, problem solving, decision making, and management of daily responsibilities.

(75) Mechanical Restraint—

(A) The application of a device restricting the movement of the whole or a portion of an individual's body to control physical activity. Only commercially available devices specifically designed for the safe and comfortable restraint of humans may be used as mechanical restraints.

(B) Despite their commercial availability, the following types of devices may not be used to implement restraint:

(i) those with metal wrist or ankle cuffs;

(ii) those with rubber bands, rope, cord, or padlocks or key locks as fastening devices;

(iii) long ties (e.g., leashes); or

(iv) bed sheets.

(C) The following devices may be utilized to implement restraint.

(i) Anklets—A cloth or leather band fastened around the ankle or leg and secured to a stationary object (e.g., bed or chair frame). Acceptable fasteners include Velcro and buckles. The device must not be secured so tightly as to interfere with vital functions, including circulation, or so loose as to permit chafing of the skin. Padding on the inside of the device, which aids in preventing chafing, is required.

(ii) Belts—A cloth or leather band fastened around the waist. The belt may either be attached to a stationary object (e.g., chair frame) or used for securing the arms to the sides of the body. The device must not be secured so tightly as to interfere with vital functions, including breathing and circulation.

(iii) Chair restraint—A well-padded stabilized chair that supports all body parts and prevents the individual's voluntary egress from the chair without assistance (e.g., table top chair, Geri-chair). Mechanical restraint devices (e.g., wristlets, anklets) are attached or may be easily attached to restrict movement. The devices must not be secured so tightly as to interfere with vital functions, including breathing and circulation.

(iv) Ties—A length of cloth or leather used to secure approved mechanical restraints (i.e., mittens, wristlets, arm splints, belts, anklets, vests, etc.) to a stationary object (i.e., bed or wheelchair frame) or to other approved mechanical restraints. Ties must not be secured so tightly as to interfere with vital functions, including breathing and circulation.

(v) Wristlets—A cloth or leather band fastened around the wrist or arm and secured to a stationary object (e.g., bed or chair frame, waist belt). Acceptable fasteners include Velcro and buckles. The device must not be secured so tightly as to interfere with vital functions, including circulation or so loose as to permit chafing of the skin. Padding on the inside of the device, which aids in preventing chafing, is required.

(76) Medication Error—Medication not given according to the written order by the prescribing professional or as recommended on the medication label. Medication errors include without limitation, duplicate doses, missed doses, and doses of the wrong amount or drug.

(77) Minor—A person under the age of 18.

(78) Neglect—A negligent act or omission by provider personnel, a staff member, volunteer, or other individual working under the auspices of a provider, or by a counselor, applicant for counselor licensure, or counselor intern that causes or may cause death, physical injury,

or substantial emotional harm to a participant or client. Examples of neglect include, but are not limited to:

- (A) failure to provide adequate nutrition, clothing, or health care;
- (B) failure to provide a safe environment free from abuse;
- (C) failure to maintain adequate numbers of appropriately trained staff;
- (D) failure to establish or carry out an appropriate individualized treatment plan; and
- (E) any other act or omission classified as neglect by the Texas law including, but not limited to, TEX. FAM. CODE § 261.001 (Vernon 1996) and TEX. HUM. RES. CODE § 48.002 (Vernon Supp. 2004).

(79) **Advanced Practice Nurse Practitioner**—A registered nurse currently licensed in Texas who is approved by the Texas State Board of Nurse Examiners to engage in advanced practice.

(80) **Offender Education Program**—An Alcohol Education Program for Minors, Drug Offender Education Program, DWI Education Program, or DWI Intervention Program approved by the Commission under 40 TAC ch. 153 of this title (relating to Offender Education Programs).

(81) **OMB**—United States Office of Management and Budget.

(82) **On Duty**—Present, ready, awake and able to perform job duties at the physical locations where services are provided.

(83) **Outcome**—The results of a service on clients or participants or the service delivery system itself.

(84) **Outreach**—Activities directed toward finding individuals who might not use services due to lack of awareness or active avoidance.

(85) **Participant**—An individual who is receiving prevention or intervention services.

(86) **Party**—A person or agency formally named or admitted as a party.

(87) **Person**—An individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(88) **Personal Restraint**—Physical contact to control or restrict an individual's physical movement or actions. See also Mechanical Restraint.

(89) **Personnel**—The members of the governing body of a provider and, without limitation, its staff, employees, contractors, consultants, agents, representatives, volunteers, or other individuals working for or on behalf of the provider through a formal or informal agreement.

(90) **Pleading**—A written document submitted by a party, or a person seeking to participate in a case as a party, which requests procedural or substantive relief, makes claims, alleges facts, makes legal argument, or otherwise addresses matters involved in the case.

(91) **Practice of Chemical Dependency Counseling Services**—Providing or offering to provide chemical dependency counseling services involving the application of the principles, methods, and procedures of the chemical dependency counseling profession as defined by the activities listed in the domains of TAP 21 "Addictions Counseling Competencies: the Knowledge, Skills, and Attitudes of Professional Practice" published by CSAT.

(92) **Prevention**—A proactive process that uses multiple strategies to preclude the illegal use of alcohol, tobacco and other drugs and to foster safe, healthy, drug-free environments.

(93) **Private Practice**—The individual practice of a private, licensed health care practitioner who personally renders individual or group services within the scope of the practitioner's license and in the practitioner's offices. To qualify to be engaged in private practice, the individual licensed health care practitioner must not hold him/herself out as an organized program, or a part thereof, that provides counseling or treatment. This definition does not prohibit the sharing of office space or administrative support staff.

(94) **Program**—A specific type of service delivered to a specific population, at a specific location.

(95) **Proprietary School**—An organization approved and regulated by the Texas Workforce Commission under 40 TAC ch. 807 (2003) (relating to Proprietary Schools) that offers a course of study in chemical dependency counseling.

(96) **Protective Factors**—Characteristics within individuals and social systems which may inoculate or protect persons against risk factors and strengthen their determination to reject or avoid substance abuse.

(97) **Provider**—A person that performs or offers to perform substance abuse services. The term includes but is not limited to, a qualified credentialed counselor, applicant for counselor licensure, and counselor intern.

(98) **Qualified Credentialed Counselor (QCC)**—A licensed chemical dependency counselor or one of the practitioners listed below who is licensed and in good standing in the State of Texas and has at least 1,000 hours of documented experience treating substance-related disorders:

- (A) licensed professional counselor (LPC);
- (B) licensed master social worker (LMSW);
- (C) licensed marriage and family therapist (LMFT);
- (D) licensed psychologist;
- (E) licensed physician;
- (F) licensed physician's assistant;
- (G) certified addictions registered nurse (CARN);

or
(H) advanced practice nurse practitioner recognized by the Board of Nurse Examiners as a clinical nurse specialist or nurse practitioner with a specialty in psych-mental health (APN-P/MH).

(99) **Qualified Mental Health Professional**—A qualified mental health professional as defined in the 25 TAC § 401.583 (15) (2003).

(100) **Recovery Maintenance**—A level of treatment designed to maintain and support a client's continued recovery.

(101) **Referral**—The process of identifying appropriate services and providing the information and assistance needed to access them.

(102) **Residential Site**—A physical location owned, leased, or operated by a provider where clients reside in a supervised treatment environment.

(103) **Respondent**—A person against whom the Commission seeks an administrative, civil or criminal remedy for non-compliance with law and rules governing substance abuse services.

(104) **Restraint**—See Personal and Mechanical Restraint.

(105) **Retaliate**—Actions taken to punish or discourage a person, including a participant or client, who reports a violation of these rules or cooperates with an investigation, inspection, or intimidation proceeding by the Commission. Such actions include, but are not limited to, suspension or

termination of employment, demotion, discharge, transfer, discipline, abuse, neglect, restriction of privileges, harassment, or discrimination.

(106) Risk Factor—A characteristic or attribute of an individual, group, or environment associated with an increased probability of certain disorders, addictive diseases, or behaviors.

(107) Risk Management—The process of identifying, evaluating and taking steps to minimize the risk associated with any activity, function, or process.

(108) Rules—An agency statement of general applicability that implements, or prescribes law or policy by defining general standards of conduct, rights, or obligations of persons, or describes the procedure or practice requirements that prescribe the manner in which public business before an agency may be initiated, scheduled, or conducted, or interprets or clarifies law or agency policy. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the agency and does not affect private rights or procedures. This definition includes regulations. Any reference to the rules herein shall mean Commission rules currently in effect unless otherwise specified.

(109) Screening—The process through which a qualified staff, client or participant, and available significant others determine the most appropriate initial course of action, given the individual's needs and characteristics and the available resources within the community. In a treatment program, screening includes determining whether an individual is appropriate and eligible for admission to a particular program.

(110) Seclusion—Confinement of an individual for a period of time in a hazard-free room or other area in which direct observation can be maintained and from which egress is prevented.

(111) Selective Program—A prevention program designed to target subsets of the total population that are deemed to be at higher risk for substance abuse by virtue of membership in a particular population segment. Risk groups may be identified on the basis of biological, psychological, social or environmental risk factors, and targeted groups may be defined by age, gender, family history, place of residence, or victimization by physical and/or sexual abuse. Selective prevention programs target the entire subgroup regardless of the degree of individual risk.

(112) Services—Substance abuse services.

(113) Service Coordination—Administrative, clinical, and evaluative activities that bring the client, treatment services, community agencies, and other resources together to focus on issues and needs identified in the treatment plan. Service coordination, which includes care management and client advocacy, establishes a framework of action for the client to achieve specified goals. It involves collaboration with the client and significant others, coordination of treatment and referral services, liaison activities with community resources and managed care systems, client advocacy, and ongoing evaluation of treatment progress and client needs.

(114) Sexual Exploitation—A pattern, practice, or scheme of conduct by provider personnel or other individual working under the auspices of a provider, or by a counselor, intern, or applicant that involves a client or participant and can reasonably be construed as being for the purpose of sexual arousal or gratification or sexual abuse. It may include sexual contact, a request for sexual contact, or a representation that sexual contact or exploitation is consistent with, a part of or, a condition of receiving services. It is not a defense to sexual exploitation of a client, or participant if it occurs:

(A) with consent of the client or participant;

(B) outside of the delivery of services; or

(C) off of the premises used for the delivery of substance abuse services; or

(D) after the client or participant is no longer receiving services, unless it occurred two years after the client or participant stopped receiving services.

(115) Signature—Authentication of a record that meets the criteria established in §148.507 of this title (relating to General Documentation Requirements).

(116) Staff—Individuals working for a person in exchange for money or other compensation.

(117) State Office of Administrative Hearings (SOAH)—The agency to which contested cases are referred by the Commission.

(118) Substance Abuse—A maladaptive pattern of substance use leading to clinically significant impairment or distress, as defined by the most recently published version of the DSM.

(119) Substance Abuse Education—A planned, structured presentation of information provided by qualified staff, which is related to substance abuse or substance dependence, allows for discussion of the material presented and is relevant to the client or participant's goals.

(120) Substance Abuse Services (Services)—A comprehensive term intended to describe activities undertaken to address any substance-related disorder as well as prevention activities. The term includes the provision of screening, assessment, referral, treatment for chemical dependency and chemical dependency counseling.

(121) Substance-Related Disorders—Defined by the most recently published version of the DSM.

(122) TCADA—Texas Commission on Alcohol and Drug Abuse

(123) Texas Public Information Act—TEX. GOVT CODE ANN. ch. 552 (Vernon 2000 & Supp. 2004).

(124) Therapeutic Services for Women—Education, services and/or therapy to address: parenting, reproductive and general health, self-esteem, physical and sexual abuse, mental health, child development and self-sufficiency.

(125) Toxic Inhalant—A gaseous substance that is inhaled by a person to produce a desired physical or psychological effect and that may cause personal injury or illness to the inhaler.

(126) Treatment—See Chemical Dependency Treatment.

(127) Treatment Facility—

(A) a public or private hospital;

(B) a detoxification facility;

(C) a primary care facility;

(D) an intensive care facility;

(E) a long-term care facility;

(F) an outpatient care facility;

(G) a community mental health center;

(H) a health maintenance organization;

(I) a recovery center;

(J) a halfway house;

(K) an ambulatory care facility; or

(L) any other facility that offers or purports to offer treatment.

(128) Treatment Planning—A collaborative process through which the provider and client develop desired treatment outcomes and identify the strategies for achieving them. At a minimum, the treatment plan addresses the identified substance use disorder(s), as well as issues related to treatment progress, including relationships with

family and significant others, employment, education, spirituality, health concerns, and legal needs.

(129) Unethical Conduct—Conduct prohibited by the ethical standards adopted by state or national professional organizations or by rules established by a profession's state licensing agency.

(130) Unit Rate—A payment mechanism in which a specified rate of payment is made in exchange for a specified unit of service.

(131) Universal Population—Universal prevention programs are delivered to large groups without any prior screening for substance abuse risk. a prevention program designed to address an entire population with messages and programs aimed at preventing or delaying the use and abuse of alcohol, tobacco, and other drugs.

(132) Utilization Review—The process of evaluating the necessity, appropriateness and efficiency of the use of chemical dependency treatment services, procedures and facilities.

(133) Youth—Individuals between the ages of 13 through 17. See also Young Adult in chapters 147 and 148 of this title (relating to Contract Program Requirements and Standard of Care).

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TITLE 26.

HEALTH AND HUMAN SERVICES

PART 1.

HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 87.

Ombudsman Services

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Subchapter A.

Office of the Ombudsman

§ 87.101. Definitions

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise.

(1) Compact with Texans—A document that describes the Texas Health and Human Services Commission's services, principles, and the process for filing complaints and requesting information.

(2) Complaint—Any expression of dissatisfaction by a consumer of a Texas Health and Human Services (HHS) program or service about HHS benefits or services. Complaints do not include the following, which are handled through other processes:

- (A) allegations of abuse, neglect, or exploitation;
- (B) allegations of discrimination or other civil rights violations;
- (C) allegations of fraud, waste, or abuse;
- (D) requests for Fair Hearings or administrative appeals; or
- (E) concerns about regulated individuals and entities.

(3) Consumer—An applicant or a client of HHS programs, as well as a member of the public seeking information about HHS programs.

(4) Contact—A consumer's written or oral inquiry or complaint about HHS programs or services.

(5) Dispute resolution services—An independent and impartial review of a program's actions regarding an HHS consumer complaint that has not been resolved to the consumer's satisfaction.

(6) Health care provider—A physician, pharmacist, or other licensed provider who is authorized under state law to provide health care services, or a credentialed professional who provides behavioral health, mental health, or substance use disorder services.

(7) HEART—HHS enterprise administrative report and tracking system, a web-based system that the HHSC Office of the Ombudsman and some HHS programs use to track inquiries and complaints.

(8) HHS—Texas Health and Human Services. The system for providing or otherwise administering health and human services in this state established in Texas Government Code Chapter 531, comprised of HHSC and the Department of State Health Services.

(9) HHSC—Texas Health and Human Services Commission. The agency established by Texas Government Code Chapter 531.

(10) Inquiry—A request by a consumer for information about HHS programs or services.

(11) LBHA—Local behavioral health authority. An entity designated as the local behavioral health authority in accordance with the Texas Health and Safety Code § 533.0356(a).

(12) Legally authorized representative—A person legally authorized to act on behalf of an individual with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(13) LMHA—Local mental health authority. An entity designated as the local mental health authority in accordance with the Texas Health and Safety Code § 533.035(a).

(14) OO—Office of the Ombudsman. The HHSC office established by Texas Government Code § 531.0171, with oversight of the HHS system.

(15) Substantiated complaint—A complaint for which research clearly indicates HHS policy was violated or HHS expectations were not met.

(16) Unable to substantiate a complaint—A complaint for which research does not clearly indicate if HHS policy was violated or HHS expectations were met.

(17) Unsubstantiated complaint—A complaint for which research clearly indicates HHS policy was not violated or HHS expectations were met.

HISTORY: The provisions of this § 87.101 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.103. Creation of the Office and Populations Served

(a) OO is established by Texas Government Code § 531.0171.

(1) OO has authority and responsibility over the HHS system in:

(A) providing dispute resolution services;

(B) performing consumer protection and advocacy functions; and

(C) collecting consumer contact data.

(2) OO is responsible for a standard process for tracking and reporting consumer contacts within the HHS system, including centralized tracking of consumer contacts submitted to field, regional, or other local offices.

(b) HHSC's Compact With Texans outlines customer service principles and standards, including a complaint process for consumers. As part of that process, a consumer is directed to first contact the HHS program for which they have an inquiry or a complaint. If the concern is not resolved to the consumer's satisfaction, the consumer is directed to contact OO. In accordance with HHSC's Compact With Texans, OO is committed to providing high quality services in a professional and ethical manner by:

(1) treating consumers with courtesy and respect;

(2) ensuring access to and provision of services is fair and equitable;

(3) implementing new and creative approaches to improve quality of services;

(4) operating based on consumers' overall needs and feedback;

(5) providing understandable information in a variety of formats;

(6) ensuring sound management of programs and funds;

(7) working in cooperation with consumers; and

(8) protecting private information and sharing public information in accordance with applicable laws.

(c) In accordance with Texas Government Code § 531.0171(b), OO does not have authority to process case actions or overturn HHS program decisions. OO staff also cannot give legal advice.

(d) OO strives to adhere to the United States Ombudsman Association's government ombudsman standards by:

(1) maintaining independence from HHS programs through an organizational structure that has OO report to the HHSC Executive Commissioner through a separate chain of command than program staff;

(2) remaining impartial by receiving and reviewing each contact in an objective and fair manner, free from bias, and treating all parties without favor or prejudice;

(3) maintaining discretion to keep confidential or release information related to a contact or a complaint investigation, if authorized by a consumer to do so; and

(4) providing a credible review process by performing responsibilities in a manner that engenders respect, confidence, and accessibility to all consumers.

(e) Several ombudsman programs are part of OO.

(1) The Ombudsman Managed Care Assistance Team (OMCAT) provides support and information services to persons enrolled in or applying for Medicaid who experience barriers to receiving health care services, in accordance with Texas Government Code § 531.0213. Administrative rules for this program can be found in Subchapter B of this chapter (relating to Ombudsman Managed Care Assistance).

(2) The Ombudsman for Children and Youth in Foster Care (FCO) established by Texas Government Code Chapter 531, Subchapter Y, as enacted by Senate Bill 830 (84th Legislature, Regular Session, 2015). FCO serves as a neutral party in assisting children and youth in the conservatorship of the Department of Family and Protective Services (DFPS) with complaints regarding issues within the authority of DFPS or an HHS agency. Administrative rules for this program can be found in Subchapter C of this chapter (relating to Ombudsman for Children and Youth in Foster Care).

(3) The Ombudsman for Behavioral Health access to care (OBH) established by Texas Government Code § 531.02251. OBH serves as a neutral party to help consumers, including consumers who are uninsured or have public or private health benefit coverage, and behavioral health care providers navigate and resolve issues related to consumer access to behavioral health care, including care for mental health conditions and substance use disorders. Administrative rules for this program can be found in Subchapter D of this chapter (relating to Behavioral Health Ombudsman).

(4) The State Long-term Care Ombudsman authorized by Texas Human Resources Code Subchapter F of Chapter 101a; 42 USC 3058f and 3058g; and 45 CFR Part 1324. The purpose of the State Long-term Ombudsman program is to protect the health, safety, welfare, and rights of people living in nursing facilities and assisted living facilities. Administrative rules for this program can be found in 26 TAC Chapter 88 (relating to State Long-term Care Ombudsman Program).

HISTORY: The provisions of this § 87.103 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.105. Contact Information

(a) OO staff maintain a public website with its contact information and develop brochures and other materials that can be distributed to consumers and health care providers.

(b) Each HHS office that provides direct service delivery of programs or services offers a process to a consumer to submit complaints and advises the consumer how to contact OO staff if that office does not resolve the complaint to the consumer's satisfaction. These HHS programs ensure OO contact information is provided on appropriate web pages, in written materials (such as consumer handbooks and denial notices), and is available upon request in local offices. This includes communications made to a consumer by a vendor contracted to provide services on behalf of an HHS program.

(c) An HHS consumer, the consumer's legally authorized representative, or a health care provider may contact OO staff through the following methods:

(1) Toll-free phone, relating to:

(A) A consumer, call 1-877-787-8999 (8:00 a.m. to 5:00 p.m., Central Standard Time, Monday through Friday).

(B) A consumer needing help with accessing services under a managed care plan, call 1-866-566-8989.

(C) A foster youth, call 1-844-286-0769.

(D) A consumer seeking behavioral health services, call 1-800-252-8154.

(E) A resident of a nursing facility or an assisted living facility, call 1-800-252-2412.

(F) A person who has a hearing or speech disability, call 7-1-1 or 1-800-735-2989.

(2) Toll-free fax: 1-888-780-8099.

(3) Mail: HHS Office of the Ombudsman, P.O. Box 13247, Austin TX 78711-3247.

(4) Online: hhs.texas.gov/ombudsman.

HISTORY: The provisions of this § 87.105 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.107. Confidentiality

(a) Before sharing a consumer's information, OO staff confirm the identity of the individual receiving the information by following the requirements outlined in Texas Works Handbook, Part B, Section 1200 (Confidentiality), which can be found on HHSC's web page at hhs.texas.gov/laws-regulations/handbooks.

(b) If a person other than a consumer or the consumer's legally authorized representative contacts OO staff, including a health care provider, the person is told OO staff can take information from them but that OO staff must have permission from either the consumer or the consumer's legally authorized representative before OO staff can share information about their HHSC case.

(c) OO staff obtain a consumer's consent before sharing the consumer's information with anyone other than HHS staff involved in the review of the contact. Consent can be obtained from the consumer's legally authorized representative.

(d) OO staff follow HHSC's policies relating to transmission of consumer data, including use of secure email to encrypt messages that contains a consumer's confidential information or protected health information. OO staff can transmit data in a non-secure format if the consumer or the consumer's legally authorized representative consents in writing.

HISTORY: The provisions of this § 87.107 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.109. Data and Reports

(a) OO staff maintain records of inquiries and complaints in the HEART system.

(b) Texas Government Code § 531.0171(d), allows OO staff to access any system or process for recording inquiries and complaints used or maintained by an HHS agency.

(c) OO staff compile a monthly report of consumer contacts received by HHS programs, including those received by vendors contracted to provide services on behalf of an HHS program. OO submits this report to the HHSC Executive Commissioner and designated program management staff across the HHS agencies on a quarterly basis. OO staff may also provide reporting of program-specific contact data to management teams of particular HHS programs.

(d) HHS programs have policies and procedures in place that address:

(1) Tracking. Use of a formal tracking system that captures essential information necessary for analysis, including:

(A) contact name and other identifying information;

(B) date contact received;

(C) method of receipt;

(D) reason for contact;

(E) details to isolate potential trends, such as location or particular service;

(F) resolution actions;

(G) date of resolution;

(H) whether the complaint was substantiated; and

(I) record of final communication with consumer, including date and method.

(2) Analysis. Monthly trend analysis to address shifts in volume of contacts received greater than five percent within a program. Research to determine the root causes for variations. For example, changes in agency policy or procedures, newly implemented programs, or staffing challenges that impact service delivery. The analysis must include:

(A) a listing of the top five reasons for inquiries, the top five reasons for complaints, and the top five reasons for legislative contacts, as compared to the total number received;

(B) explanation of factors impacting changes in reasons for contact from one month to the next; and

(C) data to indicate patterns, trends, or systemic issues of which program staff should be aware.

(3) Reporting. Monthly submission of contact data in the format determined by OO. Reporting must include:

(A) the number of inquiries, complaints, and legislative contacts received;

(B) the number of complaints resolved (from that month and previous months);

(C) the number of complaints resolved that were substantiated;

(D) the average time for resolution of complaints;

(E) the percent resolved within ten business days; and

(F) summaries of cases that illustrate relevant patterns or trends.

HISTORY: The provisions of this § 87.109 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.111. Referrals to Other HHS Offices or Other Entities

OO staff inform the consumer, the consumer's legally authorized representative, or a health care provider of any referral made to other HHS offices or other entities regarding their contact with OO and document the referral in the HEART system. Referrals include:

(1) Department of Family and Protective Services, for a contact that includes information that makes OO staff suspect abuse, neglect, or exploitation;

(2) HHSC Civil Rights Office, for a contact alleging a violation of civil rights or discrimination regarding the delivery of HHS programs or services, including those concerning lack of access to benefits and services due to language or disability;

(3) Office of Inspector General, for a contact that includes allegations of fraud, waste, or abuse regarding HHS programs or services;

(4) HHSC Appeals Division staff, for a request for a fair hearing;

(5) Medicaid managed care organization, for a request to appeal a decision by a Medicaid managed care organization;

(6) HHSC Regulatory Services Division, for a contact related to an entity regulated by HHSC; and

(7) LBHA or LMHA closest to the consumer or local law enforcement, for a contact that includes threats of violence to a consumer or others.

HISTORY: The provisions of this § 87.111 adopted to be effective January 10, 2019, 44 TexReg 252

§87.113. Intake of Contacts

(a) A contact received through an online submission is automatically loaded in the HEART system and assigned to available OO staff for action.

(b) A contact received by postal mail, fax, or email is uploaded to the HEART system and assigned to available OO staff for action within one business day of receipt.

(c) A call received by OO staff is immediately entered in the HEART system.

(d) When OO staff begin to review a contact, they take the following actions:

(1) notify the consumer, the consumer's legally authorized representative, or a health care provider of OO's roles and responsibilities;

(2) explain any referrals to other HHS staff or external organizations that are recommended;

(3) explain the OO complaint resolution process;

(4) clarify the preferred method and timeline of follow-up communications; and

(5) provide an estimated timeline in which a response can be expected.

(e) OO staff use HHSC's contracted vendors to provide language interpretation services, when necessary.

HISTORY: The provisions of this § 87.113 adopted to be effective January 10, 2019, 44 TexReg 252

§87.115. Research and Communication with HHS Programs

(a) OO staff review all available information about a consumer through inquiry into HHS program systems before referring a contact to HHS staff for review.

(b) Each complaint is investigated to determine if HHS policy was followed by HHS staff and vendors contracted to provide services on behalf of an HHS program. Applicable policies include federal and state law, administrative rules, program handbooks, contracts, and internal program policies and procedures.

(c) OO staff consider the following when investigating a complaint:

(1) Legal authority. What is the basis of the HHS program's decision, and was the decision made within the scope of that authority?

(2) Procedural fairness and rights. Was the consumer given a full understanding of the situation, offered all applicable opportunities to appeal, and given sufficient time to respond when information was requested?

(3) Agreed expectations. Did the HHS program follow through after agreeing to take particular actions, and did the program provide an adequate explanation of decisions?

(d) When OO staff research through available systems is not sufficient to address a concern or determine whether a complaint can be substantiated, OO staff request a response to the complaint from appropriate HHS staff.

(e) HHS staff are asked to respond to OO requests. If no response is received, a second communication is made, and documented in the HEART system. If still no response

is received, the request is escalated to leadership within the HHSC program.

(f) Upon receipt of information from HHS staff, OO staff review to determine if the concern has been addressed and if OO staff can determine whether a complaint can be substantiated. If the response is found to be inadequate by OO staff or if additional information is required, OO staff refer the contact back to HHS staff for additional review.

HISTORY: The provisions of this § 87.115 adopted to be effective January 10, 2019, 44 TexReg 252

§87.117. Follow-up with Consumers

(a) OO staff follow-up with a consumer or the consumer's legally authorized representative within five business days of the date of receipt of a contact, and then at least every ten business days thereafter, until the contact is closed. If the consumer provides consent, OO staff also follow-up with the consumer's health care provider.

(b) State law and HHS policy require disclosure of an employee's full name, work phone number, and work email address, if requested by a consumer. However, a consumer or the consumer's legally authorized representative is asked to use the OO toll-free line and shared email address when corresponding with OO staff.

(c) A consumer or the consumer's legally authorized representative requesting the direct phone number or individual email address of any HHS staff not already listed on the HHS website, including OO staff, is directed to HHSC's Open Records process.

HISTORY: The provisions of this § 87.117 adopted to be effective January 10, 2019, 44 TexReg 252

§87.119. Substantiating and Closing Complaints

(a) Once OO staff have determined all pertinent information has been gathered and their investigation of a complaint is complete, they determine if it is substantiated, unsubstantiated, or unable to be substantiated.

(b) A consumer or the consumer's legally authorized representative is notified of the outcome of a complaint. A written summary is provided upon request of a consumer or the consumer's legally authorized representative, or if OO staff cannot reach the consumer by telephone to relay the findings. If the consumer provides consent and requests, OO staff also notify the consumer's health care provider of the outcome.

HISTORY: The provisions of this § 87.119 adopted to be effective January 10, 2019, 44 TexReg 252

Subchapter B.

Ombudsman Managed Care Assistance

§87.201. Definitions

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise.

(1) MCO—Managed care organization. An entity contracted with HHSC to provide health care services in a Medicaid managed care program.

(2) Medicaid managed care programs—Includes:

(A) STAR;

(B) STAR+PLUS, including the Texas Dual Eligibles Integrated Care Demonstration Project;

(C) STAR Kids; and

(D) STAR Health.

(3) OMCAT—Ombudsman Managed Care Assistance Team. The team within OO responsible for implementing Texas Government Code § 531.0213.

HISTORY: The provisions of this § 87.201 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.203. Creation of the Program and Populations Served

(a) OMCAT coordinates a network of entities to provide support and information services to persons enrolled in or applying for Medicaid who experience barriers to receiving health care services, in accordance with Texas Government Code § 531.0213.

(b) As a part of the support and information services, OMCAT is responsible for operating a statewide toll-free assistance telephone number and for intervening promptly with HHSC Medicaid program staff, MCOs, health care providers, and any other appropriate entity on behalf of a person who has an urgent need for medical services.

(c) OMCAT is responsible for assisting persons who are experiencing barriers in the Medicaid application and enrollment process and educating them so that they understand the concept of managed care; understand their rights under Medicaid, including grievance and appeal procedures; and are able to advocate for themselves.

(d) In accordance with Texas Government Code § 531.0213(e), OMCAT is sufficiently independent from other aspects of Medicaid managed care to represent the best interests of consumers in complaint resolution.

HISTORY: The provisions of this § 87.203 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.205. Contact Information

(a) OO staff maintain a public website for OMCAT with its contact information and develop brochures and other materials that can be distributed to consumers and Medicaid health care providers.

(b) In accordance with requirements of the Uniform Managed Care Manual maintained by HHSC Medicaid program staff and available on the HHSC web site, each MCO includes OMCAT contact information on its member web sites and in member handbooks.

(c) An HHS consumer, the consumer's legally authorized representative, or a health care provider may contact OMCAT through the following methods:

- (1) toll-free phone:
 - (A) 1-866-566-8989 (8:00 a.m. to 5:00 p.m., Central Standard Time, Monday through Friday); or
 - (B) 7-1-1 or 1-800-735-2989 for a person who has a hearing or speech disability;
- (2) toll-free fax: 1-888-780-8099;
- (3) mail to HHS Office of the Ombudsman, Managed Care Assistance Team, P.O. Box 13247, Austin TX 78711-3247; or
- (4) online: hhs.texas.gov/ombudsman.

HISTORY: The provisions of this § 87.205 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.207. Confidentiality

(a) Before sharing a consumer's information, OMCAT staff confirm the identity of the individual receiving the information by following the requirements outlined in Texas Works Handbook, Part B, Section 1200 (Confidentiality), which can be found on HHSC's web page at hhs.texas.gov/laws-regulations/handbooks.

(b) OMCAT staff obtain a consumer's consent before sharing the consumer's information with anyone other than HHS or MCO staff involved in the review of the contact. This includes sharing information with a consumer's health care provider. Consent can be obtained from the consumer's legally authorized representative.

HISTORY: The provisions of this § 87.207 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.209. Reports

(a) OMCAT collects and maintains statistical information on contacts relating to each MCO, by region and Medicaid managed care program.

(b) Reports of OMCAT contacts are distributed to HHSC executive staff and Medicaid program staff quarterly and are posted on the HHS website. The reports include the number of contacts by region, trends identified in delivery of services and access to care complaints, identified recurring barriers, and other problems identified with Medicaid managed care.

HISTORY: The provisions of this § 87.209 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.211. Referrals to Other HHS Offices or Other Entities

(a) If a consumer or the consumer's legally authorized representative contacts OMCAT seeking information or wishing to complain about an HHS program other than Medicaid, the consumer or the consumer's legally authorized representative is transferred to OO staff that handle complaints regarding those programs. OMCAT staff inform the consumer or the consumer's legally authorized representative of this referral and document it in the HEART system.

(b) A request for a fair hearing is referred to HHSC Appeals Division staff. a request for an appeal of a decision by an MCO is referred to that entity. OMCAT staff inform the consumer or the consumer's legally authorized representative of these referrals and document them in the HEART system.

(c) A request from a Medicaid health care provider that does not relate to a consumer's Medicaid case is referred to the HHSC office designated to receive these complaints, in accordance with the Texas Medicaid Provider Procedures Manual maintained by HHSC Medicaid program staff and available on the HHS web site. OMCAT staff inform the health care provider of this referral and document it in the HEART system.

HISTORY: The provisions of this § 87.211 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.213. Intake of Contacts

(a) A contact received through an online submission is automatically loaded in the HEART system and assigned to available OMCAT staff for action.

(b) A contact received by postal mail, fax, or email is uploaded to the HEART system and assigned to available OMCAT staff for action within one business day of receipt.

(c) A call received by OMCAT staff is immediately entered in the HEART system.

(d) When OMCAT staff begin to review a contact, they take the following actions:

- (1) notify the consumer, the consumer's legally authorized representative, or a health care provider of OMCAT's roles and responsibilities;

- (2) explain any referrals to other HHS staff or external organizations that are recommended;
- (3) explain the OMCAT complaint resolution process;
- (4) clarify the preferred method and timeline of follow-up communications; and
- (5) provide an estimated timeline in which a response can be expected.

HISTORY: The provisions of this § 87.213 adopted to be effective January 10, 2019, 44 TexReg 252

§87.215. Research and Communication with HHS Programs, Health Care Providers, and Medicaid Managed Care Organizations

(a) OMCAT staff review all available information about a consumer through inquiry into HHS program systems before referring a contact to HHS staff or MCO staff for review.

(b) OMCAT staff may contact a consumer's health care provider as part of their work on a contact.

(c) Each complaint is investigated to determine if HHS policy was followed by HHS staff and vendors contracted to provide services, including MCO staff. Applicable policies include federal and state law, administrative rules, the MCO's contract with HHSC, and internal program policies and procedures.

(d) When OMCAT research through available systems is not sufficient to address a concern or determine whether a complaint can be substantiated, OMCAT staff request a response to the complaint from appropriate MCO staff. OMCAT staff may also contact the consumer's health care provider directly in order to resolve a complaint.

(e) MCO staff are asked to respond to an OMCAT request. If no response is received, a second communication is made, and documented in the HEART system. If still no response is received, the request is escalated to leadership within the HHSC Medicaid program.

(f) Upon receipt of information from MCO staff, OMCAT staff review to determine if the concern has been addressed and if OMCAT staff can determine whether the complaint can be substantiated. If the response is found to be inadequate by OMCAT staff or if additional information is required, OMCAT staff refer the contact back to MCO staff for additional review.

(g) OMCAT staff may seek assistance from HHSC Medicaid program staff on some contacts, at the discretion of OMCAT's managing ombudsman.

HISTORY: The provisions of this § 87.215 adopted to be effective January 10, 2019, 44 TexReg 252

§87.217. Follow-up with Consumers

(a) OMCAT staff follow-up with a consumer or the consumer's legally authorized representative within five business days of the date of receipt of the contact, and then at least every ten business days thereafter, until the contact is closed.

(b) If the consumer provides consent, OO staff also follow-up with the consumer's health care provider.

HISTORY: The provisions of this § 87.217 adopted to be effective January 10, 2019, 44 TexReg 252

§87.219. Substantiating and Closing Complaints

Once OMCAT staff have determined all pertinent information has been gathered and their investigation of a complaint is complete, they determine if the complaint is substantiated, unsubstantiated, or unable to be substantiated.

HISTORY: The provisions of this § 87.219 adopted to be effective January 10, 2019, 44 TexReg 252

Subchapter C.

Ombudsman in Children and Youth in Foster Care

§87.301. Definitions

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise.

(1) DFPS—Department of Family and Protective Services. The state agency established by Chapter 40 of the Human Resources Code and responsible for administration of Child Protective Services.

(2) DFPS OCR—DFPS Office of Consumer Relations. a neutral party that reviews complaints regarding case-specific activities of DFPS program areas to determine if policies and procedures were followed in compliance with DFPS administrative rules at Title 40, Part 19, Chapter 702, Subchapter I.

(3) FCO—Foster Care Ombudsman. The Ombudsman for Children and Youth in Foster Care established by Texas Government Code Chapter 531, Subchapter Y, as enacted by Senate Bill 830 (84th Legislature, Regular Session, 2015).

(4) Retaliation—A harmful action taken because of, or substantially motivated by, reprisal or revenge in response to a legally protected activity, such as making a good faith complaint.

(5) Vendor contracted to provide services on behalf of DFPS—A vendor contracted as part of the community-based care model established by Texas Family Code Chapter 264, Subchapter B-1, Community-Based Care, including single source continuum contractors that provide placement and case management services.

(6) Youth—Children and youth in the conservatorship of DFPS, which ends at age 18.

HISTORY: The provisions of this § 87.301 adopted to be effective January 10, 2019, 44 TexReg 252

§87.303. Creation of Program and Population Served

(a) FCO is established by Subchapter Y of Chapter 531 of the Government Code as enacted by Senate Bill 830 (84th Legislature, Regular Session, 2015) and is administratively attached to OO.

(b) FCO serves as a neutral party in assisting children and youth in the conservatorship of DFPS with complaints regarding issues within the authority of DFPS or an HHS agency.

(c) While individuals age 18 and older may continue to receive DFPS services, they are not considered part of the population served by FCO because they are no longer "in the conservatorship" of DFPS. However, if FCO receives a complaint from a youth who turns 18 during the course of FCO's investigation, the complaint will be completed.

(d) FCO is responsible for receiving and investigating inquiries and complaints from youth in the conservatorship of DFPS, including youth placed by vendors contracted to provide services on behalf of DFPS.

(e) FCO may refer youth to any DFPS or HHS program or service that can assist with the youth's inquiry. With permission from the youth, FCO may work with staff in any DFPS or HHS program to resolve a complaint.

HISTORY: The provisions of this § 87.303 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.305. Contact Information

(a) OO staff maintain a public website for FCO with its contact information and develop brochures and other materials that can be distributed to foster youth and vendors contracted to provide services on behalf of DFPS.

(b) In accordance with requirements in Texas Family Code § 40.0041(h), all residential child-care facilities in which foster youth are placed must display FCO contact information in a location that is easily accessible and offers maximum privacy to the youth.

(c) A youth may contact FCO through the following methods:

(1) toll-free phone, 1-844-286-0769 (8:00 a.m. to 5:00 p.m., Monday through Friday);

(2) toll-free fax, 1-888-780-8099;

(3) mail to Texas Health and Human Services Commission, Foster Care Ombudsman, P.O. Box 13247, Austin TX 78711-3247;

(4) online at hhs.texas.gov/foster-care-help; or

(5) in person when FCO staff present to a meeting of youth organized by DFPS or visit a residential treatment center or hospital where a youth is placed.

HISTORY: The provisions of this § 87.305 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.307. Confidentiality

(a) FCO maintains the confidentiality of its communications and records, including records FCO receives from others.

(b) The disclosure of confidential information to FCO does not constitute a waiver of confidentiality. Any information disclosed to FCO remains confidential and privileged following disclosure.

HISTORY: The provisions of this § 87.307 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.309. Data and Reports

(a) FCO maintains records of all inquiries and complaints in the HEART system. FCO contact records are maintained separate from other OO contact records.

(b) FCO staff have access to any DFPS and HHS data and systems necessary to complete their investigations of contacts, including:

(1) Information Management Protecting Adults and Children in Texas (IMPACT); and

(2) Child Care Licensing Automated Support System (CLASS).

(c) FCO submits an annual report to the HHSC Executive Commissioner and the DFPS Commissioner by December 1st, which is posted on the HHSC and DFPS websites. The report includes:

(1) a description of FCO activities;

(2) a list of DFPS or HHS agency changes made in response to substantiated complaints received;

(3) a description of trends in the nature of complaints received, recommendations to address them, and an evaluation of the feasibility of those recommendations;

(4) a glossary of terms;

(5) a description of methods used to promote awareness of FCO and the plan for the coming year; and

(6) any feedback from the public on the previous annual report.

HISTORY: The provisions of this § 87.309 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.311. Referrals to Other HHS Offices or Other Entities

(a) If a person other than a youth contacts FCO indicating the person wishes to provide information about a DFPS case, the person is given DFPS OCR's contact information and transferred to that office.

(b) If a youth contacts FCO with a complaint that does not allege a violation of a DFPS or HHS policy or procedure, FCO staff explains to the youth that it is outside the scope of FCO's ability to assist and offers the youth resources for working on the issue.

(c) If an adjudicated youth that is not in foster care contacts FCO, the youth is referred to the Independent Ombudsman for the Texas Juvenile Justice System.

(d) If a person other than a youth contacts FCO seeking information about HHS programs, or indicating the person wishes to complain about an HHS program, the person is transferred to OO staff that handle complaints regarding those programs.

HISTORY: The provisions of this § 87.311 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.313. Intake of Contacts

(a) A contact received by online submission, postal mail, fax, or email is uploaded to the HEART system and assigned to available FCO staff for action within one business day of receipt.

(b) A call received by FCO staff is immediately entered in the HEART system.

(c) When FCO staff begin to review a contact, they take the following actions:

(1) notify the youth of FCO's roles and responsibilities;

(2) explain any referrals to DFPS or HHS staff or external organizations that are recommended;

(3) explain the FCO complaint resolution process;

(4) clarify the preferred method and timeline of follow-up communications; and

(5) provide an estimated timeline in which a response can be expected.

(d) When FCO meet a youth in-person who has an inquiry or a complaint, they enter the contact in the HEART system on the first business day after they return to the FCO office.

(e) Calls that include information that give FCO staff reason to suspect abuse or neglect are transferred to the Texas Abuse Hotline operated by DFPS Statewide Intake (SWI). FCO staff assist the youth in making a report. Online reports can be made when hold times warrant.

(f) In the case of written submissions that include information that give FCO reason to suspect abuse or neglect, FCO staff attempt to communicate with the youth by phone. If FCO staff are not able to speak with the youth by phone within one business day, FCO staff report the suspected abuse or neglect by calling SWI. Online reports can be made when hold times warrant.

HISTORY: The provisions of this § 87.313 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.315. Research Using DFPS and HHS Systems and Policies

(a) FCO staff review any available information about a foster care case through inquiry into DFPS and HHS sys-

tems, including IMPACT and CLASS, and any system used by vendors contracted to provide services on behalf of DFPS.

(b) Each complaint is investigated to determine if DFPS or HHS policy was followed by agency staff and vendors contracted to provide services on behalf of DFPS or an HHS program. Applicable policies include federal and state law, administrative rules, program handbooks, contracts, and internal program policies and procedures.

(c) If FCO staff discover a violation of DFPS or HHS policy during the course of their research that was not outlined in the original submission from the youth, an additional complaint is entered in the existing HEART record.

(d) If FCO staff determine a youth is adjudicated, they note this in the contact record and outreach to the Independent Ombudsman for the Texas Juvenile Justice System to determine if coordination would be helpful.

(e) FCO staff request a response to the complaint from appropriate DFPS or HHS staff, or vendors contracted to provide services on behalf of DFPS or HHS, if the youth has authorized sharing of the youth's information.

HISTORY: The provisions of this § 87.315 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.317. Follow-up Communication with Youth

(a) FCO staff follow-up with the youth within one business day of the date of receipt of the contact, and then at least every five business days thereafter, until the contact is closed.

(b) All follow-up communication is in a secure format, unless FCO has received the youth's written consent to provide information in an unsecure format.

HISTORY: The provisions of this § 87.317 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.319. Substantiating and Closing Complaints

(a) Once FCO staff have determined all pertinent information has been gathered and their investigation of a complaint is complete, they enter a resolution in the contact record, choosing substantiate, unable to substantiate, or unsubstantiated.

(b) For substantiated complaints, FCO staff also enter a program corrective action based on the response provided by program staff.

(c) An FCO complaint cannot be closed without a resolution and, for substantiated complaints, a program corrective action.

(d) The complaint record documents informing program staff and the youth of the resolution.

(e) A written response to program staff includes additional recommended corrective actions, when applicable. Regardless of whether DFPS, a vendor contracted to provide services on behalf of DFPS, or an HHS agency was the subject of the youth's complaint, DFPS is provided a copy of the written response to program staff.

(f) A written response may be provided to the youth, if requested, and includes:

(1) a description of the steps taken to investigate the complaint;

(2) a general description of what FCO found as a result of the investigation; and

(3) if a complaint is:

(A) substantiated, a description of the actions taken by DFPS, a vendor contracted to provide services on behalf of DFPS, or the HHS agency in response to that finding; or

(B) unsubstantiated, a description of additional steps the youth can take to have someone review the youth's concern (e.g., speak to a court-appointed advocate or to the judge assigned to the youth's case).

HISTORY: The provisions of this § 87.319 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.321. Retaliation

(a) DFPS is asked to review each case where FCO staff believe a youth has been retaliated against based on the definition of retaliation in this subchapter and applicable DFPS policies and procedures. DFPS is asked to respond with its view of whether retaliation occurred.

(b) If after reviewing the DFPS response FCO staff finally determine a youth has been retaliated against because of a complaint submitted to FCO, FCO staff opens a new complaint within the HEART record.

(c) FCO staff collaborate with DFPS staff to identify consequences for any retaliatory action taken against a youth by any person in response to a complaint filed with FCO.

(d) FCO highlights retaliation cases in its annual report.

HISTORY: The provisions of this § 87.321 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.401. Definitions

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise.

(1) IDD—Intellectual and developmental disabilities.

(2) OBH—Ombudsman for Behavioral Health.

The ombudsman for behavioral health access to care established by the Texas Government Code § 531.02251.

(3) Parity—The requirement outlined in Texas Insurance Code Subchapter F of Chapter 1355 that a health benefit plan provide benefits and coverage for mental health conditions and substance use disorders under the same terms and conditions applicable to the plan's medical and surgical benefits and coverage.

(4) State hospital—A state mental health facility operated by HHSC.

HISTORY: The provisions of this § 87.401 adopted to be effective January 10, 2019, 44 TexReg 252

Subchapter D.

Ombudsman in Behavioral Health

§ 87.403. Creation of the Program and Populations Served

(a) OBH is established by Texas Government Code § 531.02251, and is administratively attached to OO.

(b) OBH serves as a neutral party to help consumers, including consumers who are uninsured or have public or private health benefit coverage, and behavioral health care providers navigate and resolve issues related to consumer access to behavioral health care, including care for mental health conditions and substance use disorders. OBH identifies, tracks, and helps report potential violations of Texas Insurance Code Subchapter F of Chapter 1355.

(c) OBH advocates for the rights and service needs of consumers who have questions, concerns, or complaints regarding services provided by a state hospital or an LBHA or LMHA. Specific rights of these consumers are outlined

in 25 TAC Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services).

HISTORY: The provisions of this § 87.403 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.405. Contact Information

(a) OO staff maintain a public website with OBH contact information and develop brochures and other materials that can be distributed to consumers seeking behavioral health services and health care providers.

(b) In accordance with 25 TAC Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services), OBH's toll-free number is published in consumer rights handbooks made available at all service locations at state hospitals or LBHAs or LMHAs. Consumers at these facilities also have a right to be verbally explained all of their rights — including the right to complain to OBH — within 24 hours of admission. Additional situations that require a state hospital or an LBHA or LMHA to notify a consumer of OBH's contact information include:

(1) any time an LBHA or LMHA determines a consumer is not in their priority population during the admission screening process, as outlined in 25 TAC 412.161 (Screening and Assessment);

(2) any time an LBHA or LMHA determines a consumer requesting interstate transfer is not eligible for admission to a state hospital; and

(3) in each state hospital and LBHA or LMHA's "Notice of Privacy Practice."

(c) A consumer, the consumer's legally authorized representative, or a health care provider may contact OBH through the following methods:

(1) toll-free phone:

(A) 1-800-252-8154 (8:00 a.m. to 5:00 p.m., Central Standard Time, Monday through Friday); or

(B) 7-1-1 or 1-800-735-2989 for a person who has a hearing or speech disability;

(2) toll-free fax: 1-888-780-8099;

(3) mail to HHS Office of the Ombudsman, Ombudsman for Behavioral Health, P.O. Box 13247, Austin TX 78711-3247; or

(4) online at hhs.texas.gov/ombudsman.

HISTORY: The provisions of this § 87.405 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.407. Confidentiality

(a) OBH staff adhere to statutory requirements and policy of the HHSC Health & Specialty Care System when protecting records of consumers receiving services at state hospitals.

(b) OBH staff adhere to statutory requirements and policy of the HHSC IDD-Behavioral Health Services Department when protecting records of consumers receiving services at LBHAs or LMHAs.

(c) OBH staff obtain a consumer's consent before sharing the consumer's information with anyone other than HHS staff or LBHA or LMHA staff required to receive and respond to OBH complaints. This includes sharing information with a federal or state agency that regulates a consumer's health plan. Consent can be obtained from the consumer's legally authorized representative.

HISTORY: The provisions of this § 87.407 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.409. Data and Reports

(a) OBH staff have access to data and systems maintained by the HHSC Health & Specialty Care System and the HHSC IDD-Behavioral Health Services Department necessary to complete their investigation of a contact. Specifically, OBH staff have access to the Client Assignment and Registration (CARE) system.

(b) In accordance with Texas Government Code § 531.02251(g), OBH is part of the Mental Health Condition and Substance Use Disorder Parity Work Group and provides summary reports of concerns, complaints, and potential parity violations.

HISTORY: The provisions of this § 87.409 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.411. Referrals to Other HHS Offices or Other Entities

(a) If a consumer, the consumer's legally authorized representative, or a health care provider contacts OBH seeking information or wishing to complain about an HHS program other than behavioral health, the consumer, the consumer's legally authorized representative, or the health care provider is transferred to OO staff that handle complaints regarding those programs. OBH staff inform the consumer, the consumer's legally authorized representative, or the health care provider of this referral and document it in the HEART system.

(b) A resident of a state supported living center (SSLC), the consumer's legally authorized representative, or a health care provider is referred to the Office of the Independent Ombudsman for SSLCs established by Texas Health and Safety Code Subchapter C of Chapter 555. OBH staff inform the consumer, the consumer's legally authorized representative, or the health care provider of this referral and document it in the HEART system.

(c) A consumer, the consumer's legally authorized representative, or a health care provider seeking to complain about treatment of a substance use disorder at a facility regulated by the HHSC Regulatory Services Division or seeking to complain about inappropriate commitment at a facility regulated by the HHSC Regulatory Services Division is transferred to staff in that division. OBH staff inform the consumer, the consumer's legally authorized representative, or the health care provider of this referral and document it in the HEART system.

(d) A referral is made to the HHSC Regulatory Services Division for a consumer receiving IDD services in the community through Home and Community-based Services or the Texas Home Living Program, a consumer receiving services from a local IDD authority, or the legally authorized representative or health care provider of one of these consumers. OBH staff inform the consumer, the consumer's legally authorized representative, or the health care provider of this referral and document it in the HEART system.

(e) A consumer presenting with concerns of imminent threat to the health or safety of the consumer or others is conferenced with LBHA or LMHA crisis services or local law enforcement. OBH staff stay connected with the consumer until crisis services are obtained. OBH staff document the referral in the HEART system.

(f) A contact that relates to interstate transfer of a consumer in need of behavioral health services is referred to the HHSC Emergency Services Program's Repatriation Program. OBH staff inform the consumer, the consumer's legally authorized representative, or a health care provider of this referral and document it in the HEART system.

(g) A contact where a consumer, the consumer's legally authorized representative, or a health care provider alleges a HIPAA violation by state hospital staff is referred to the HHSC Privacy Office. A contact where a consumer, the consumer's legally authorized representative, or the health care provider alleges a HIPAA violation by an LBHA or LMHA staff is referred to the LBHA's or LMHA's contract manager within HHSC's IDD-Behavioral Health Services Department. OBH staff inform the consumer, the consumer's legally authorized representative, or the health care provider of the referral and document it in the HEART system.

HISTORY: The provisions of this § 87.411 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.413. Intake of Contacts

(a) A contact received by postal mail, fax, or online submission is uploaded to the HEART system and assigned to available OBH staff for action within 24 hours of receipt.

(b) A call received by OBH staff is immediately entered in the HEART system.

(c) When OBH staff begin to review a contact, they take the following actions:

- (1) notify the consumer, the consumer's legally authorized representative, or a health care provider of OBH's roles and responsibilities;
- (2) explain any referrals to other HHS staff or external organizations that are recommended;
- (3) explain the OBH complaint resolution process;
- (4) clarify the preferred method and timeline of follow-up communications; and
- (5) provide an estimated timeline in which a response can be expected.

HISTORY: The provisions of this § 87.413 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.415. Research and Communication with HHS Programs and Agencies that Regulate Health Plans

(a) For a contact involving a consumer receiving services at a state hospital or an LBHA or LMHA:

(1) OBH staff review all available information about a consumer through inquiry into HHS program systems before referring a contact to the rights protection officer at the relevant state hospital or LBHA or LMHA, who are responsible for receiving complaints from OBH, per 25 TAC 404.164 (Rights Protection Officer at Department Facilities and Community Centers).

(2) Each complaint is investigated to determine if HHS policy was followed by HHS staff and vendors contracted to provide services, including LBHA or LMHA staff. Applicable policies include federal and state law, administrative rules, HHSC contracts, and internal program policies and procedures.

(3) When OBH research through available systems is not sufficient to address the concern or determine whether a complaint can be substantiated, OBH staff request a response from the rights protection officer at the relevant state hospital or LBHA or LMHA, if the consumer has consented to discussion of the contact.

(4) Upon receipt of a response from a rights protection officer, OBH staff review to determine if the concerns have been addressed and if OBH staff can determine whether a complaint can be substantiated. If the response is found to be inadequate by OBH staff or if additional information is required, OBH staff refer the contact back to the rights protection officer for additional review.

(b) For a contact involving a consumer seeking behavioral health services through the consumer's health plan:

(1) OBH staff refer a potential violation of Texas Insurance Code Subchapter F of Chapter 1355, to the appropriate regulatory or oversight agency.

(A) A referral for a consumer with private insurance, the child health plan established under Chapter 62 of the Texas Health and Safety Code or insurance bought through the federal Healthcare.gov Marketplace is made to the Texas Department of Insurance.

(B) A referral for a consumer whose employer offers a self-funded plan is made to the U.S. Department of Labor or, if applicable, the public agency that administers the plan.

(C) A referral for a consumer with Medicaid is made to the HHSC Medicaid & CHIP Services Department.

(D) A referral for a consumer with Medicare is made to the U.S. Department of Health and Human Services' Medicare Ombudsman program.

(E) A referral for a consumer with Tricare is made to the U.S. Department of Defense's Defense Health Agency, Hearing and Claim's Collection Division.

(2) OBH staff attempt to get a consumer to provide a copy of the explanation of benefits or denial letter from the consumer's health plan, which is submitted to the appropriate regulatory or oversight agency.

(3) A contact relating to a potential parity violation is left open until a response is received from the appropriate regulatory or oversight agency.

(4) OBH staff also provide a consumer, the consumer's legally authorized representative, or a health care provider information about how to file an appeal or a complaint with the consumer's health plan.

HISTORY: The provisions of this § 87.415 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.417. Follow-up with Consumers

(a) OBH staff follow-up with a consumer or the consumer's legally authorized representative within five business days of the date of receipt of a contact, and then at least every ten business days thereafter, until the contact is closed.

(b) If the consumer provides consent, OBH staff also follow-up with the consumer's health care provider.

HISTORY: The provisions of this § 87.417 adopted to be effective January 10, 2019, 44 TexReg 252

§ 87.419. Substantiating and Closing Complaints

(a) Once OBH staff have determined all pertinent information has been gathered and their investigation of a complaint is complete, they determine if the complaint is substantiated, unsubstantiated, or unable to be substantiated.

(b) A written response requested by a consumer or the consumer's legally authorized representative includes:

(1) a description of the steps taken to investigate the complaint;

(2) a description of what OBH found as a result of their investigation; and

(3) if a complaint is:

(A) substantiated, a description of the actions taken in response; or

(B) unsubstantiated, a description of additional steps the consumer can take to have someone review the consumer's concerns (e.g., a referral to Disability Rights Texas).

(c) If the consumer provides consent, OBH staff also notify the consumer's health care provider of the outcome of a complaint.

(d) OBH staff notify the rights protection officer that reviewed a case of the OBH finding. On a substantiated complaint, the superintendent of the relevant state hospital or the HHSC staff responsible for enforcement of the LBHA or LMHA contract is also asked to respond with a summary of actions taken. If a response is received, OBH staff upload the response into the HEART system.

HISTORY: The provisions of this § 87.419 adopted to be effective January 10, 2019, 44 TexReg 252

CHAPTER 307.

Mental Health Community-Based Services

Subchapter B.

Home and Community-Based Services— Adult Mental Health Program

Section

§ 307.51. Purpose and Application

§ 307.52. Definitions

§ 307.53. Eligibility Criteria and HCBS-AMH Assessment

§ 307.54. Individual Recovery Plan

§ 307.55. Co-payments

§ 307.56. Provider Qualifications and Contracting

§ 307.57. Fair Hearings Process

§ 307.51. Purpose and Application

(a) The purpose of this subchapter is to implement the Home and Community-Based Services—Adult Mental Health (HCBS-AMH) program, providing home and community-based services to individuals with a serious mental illness who are eligible for or currently receiving Medicaid in accordance with the Medicaid state plan and applicable state legislative direction.

(b) The subchapter applies to:

(1) a person or entity contracting with HHSC to provide HCBS-AMH services, as described in this subchapter;

(2) an entity having administrative responsibilities under this program; and

(3) an individual applying for or enrolled in the HCBS-AMH program.

HISTORY: The provisions of this § 307.51 adopted to be effective July 23, 2019, 44 TexReg 3637

§ 307.52. Definitions

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise.

(1) Activities of daily living—Routine daily activities. These activities include:

- (A) performing personal hygiene activities;
- (B) dressing;
- (C) meal planning and preparation;
- (D) managing finances;
- (E) shopping for food, clothing, and other essential items;
- (F) performing essential household chores;
- (G) communicating by phone or other media;
- (H) navigating public transportation;
- (I) participating in the community; and

(J) other activities as defined by HHSC.

(2) Adult—An individual 18 years of age or older.

(3) Assessor—A qualified mental health professional-community services as defined in 25 TAC Chapter 412, Subchapter G (relating to Mental Health Community Services Standards) who conducts the HCBS-AMH assessment evaluating an individual's need for HCBS-AMH.

(4) Designee—A person or entity named by HHSC to act on its behalf.

(5) HCBS—Home and community-based services.

(6) HCBS-AMH—Home and community-based services-adult mental health.

(7) HCBS-AMH assessment—A set of HHSC-defined standardized assessment measures used by HHSC to determine an individual's level of need based on an individual's strengths and needs. The HCBS-AMH assessment serves as the basis for the IRP.

(8) HHSC—Texas Health and Human Services Commission, or its designee.

(9) Individual—A person seeking or receiving services under this subchapter.

(10) IRP—Individual recovery plan. a written, individualized plan, developed in accordance with 25 TAC Chapter 412, Subchapter D (relating to Mental Health Services—Admission, Continuity, and Discharge) and 25 TAC § 412.322 (relating to Provider Responsibilities for Treatment Planning and Service Authorization) in consultation with the individual and LAR, if applicable, identifying necessary HCBS-AMH services the provider will deliver to the individual and which serves as the treatment plan or recovery plan.

(11) LAR—Legally authorized representative. a person authorized by law to act on behalf of an individual as defined in Texas Health and Safety Code § 241.151.

(12) Ombudsman—The Ombudsman for Behavioral Health Access to Care established by Texas Government Code § 531.02251, which serves as a neutral party to help consumers, including consumers who are uninsured or have public or private health benefit coverage, and behavioral health care providers navigate and resolve issues related to consumer access to behavioral health care, including care for mental health conditions and substance use disorders.

(13) Provider—A person or entity that contracts with HHSC to provide services under this subchapter.

(14) Serious mental illness—An illness, disease, or condition (other than a sole diagnosis of epilepsy, neurocognitive disorders, substance use disorder, or intellectual disability) that:

(A) substantially impairs thought, perception of reality, emotional process, development, or judgment; or

(B) grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.

HISTORY: The provisions of this § 307.52 adopted to be effective July 23, 2019, 44 TexReg 3637

§ 307.53. Eligibility Criteria and HCBS-AMH Assessment

(a) To participate in the HCBS-AMH program, an assessor must conduct an HCBS-AMH assessment on each individual for HHSC to determine that the individual meets the needs-based eligibility criteria for HCBS-AMH.

(1) The assessor must consult with the individual, the individual's LAR, if applicable, treatment team, providers, and other persons according to the needs

and desire of the individual to conduct the HCBS-AMH assessment.

(2) The HCBS-AMH assessment must:

- (A) be conducted face-to-face as permitted under Medicaid guidelines;
- (B) take into account the ability of the individual to perform two or more activities of daily living; and
- (C) assess the individual's need for HCBS-AMH.

(b) For HHSC to determine an individual eligible to participate in HCBS-AMH, the individual must meet criteria in accordance with applicable state legislative direction and eligibility requirements as set forth in the Medicaid state plan, including:

(1) having three years or more of consecutive or cumulative inpatient psychiatric hospitalizations during the five years before initial enrollment in the HCBS-AMH program;

(2) having two or more psychiatric crises and four or more discharges from correctional facilities during the three years before initial enrollment in HCBS-AMH; or

(3) having two or more psychiatric crises and fifteen or more total emergency department documented contacts in which services are delivered during the three years before initial enrollment in HCBS-AMH.

(c) The HCBS-AMH assessment must be repeated at least annually for each individual, and when circumstances necessitate a re-assessment, using the same requirements outlined in subsections (a) and (b) of this section.

(d) HHSC approves each HCBS-AMH initial eligibility assessment, annual assessment, and assessment conducted based on a change in circumstances.

HISTORY: The provisions of this § 307.53 adopted to be effective July 23, 2019, 44 TexReg 3637

§ 307.54. Individual Recovery Plan

(a) An IRP must:

(1) prepare for the individual's effective transition to the community;

(2) promote the individual's inclusion into the community;

(3) protect the individual's health and welfare in the community;

(4) supplement, rather than replace, the individual's natural support systems and resources;

(5) be designed to prevent or reduce the individual's likelihood of:

(A) an inpatient psychiatric facility admission;

(B) a correctional facility admission; and

(C) an emergency department visit in which services are delivered;

(6) include the most appropriate type and amount of services to meet the individual's needs;

(7) prevent the provision of unnecessary or inappropriate care;

(8) be based on the individual's preferences, needs, and goals; and

(9) be developed with the individual, LAR, individual's treatment team and providers, and other persons according to the needs and desire of the individual.

(b) An HHSC-approved designee must review the IRP and submit it to HHSC for its approval.

(c) An HHSC-approved designee must submit to HHSC, with the IRP:

(1) an HCBS-AMH assessment of the individual identifying the individual's needs and supporting the HCBS-AMH included in the IRP; and

(2) documentation that non-HCBS-AMH support systems and resources are unavailable or are insufficient to meet the goals specified in the IRP.

(d) A provider must obtain HHSC's approval of the IRP before the provider may deliver HCBS-AMH program services.

(e) HHSC may conduct a utilization review of an IRP and supporting documentation at any time to determine if the services specified in the IRP meet the requirements described in subsection (a) of this section.

(f) If HHSC determines one or more of the services specified in the IRP do not meet the requirements described in subsection (a) of this section, HHSC may:

(1) deny, reduce, or terminate the service; or modify the IRP; and

(2) send written notification to the individual, LAR, and the provider according to § 307.57 of this subchapter (relating to Fair Hearings Process).

(g) The cost of the IRP must be reasonable as determined by HHSC.

HISTORY: The provisions of this § 307.54 adopted to be effective July 23, 2019, 44 TexReg 3637

§ 307.55. Co-payments

A co-payment for HCBS-AMH services may be assessed as described in 25 TAC Chapter 412, Subchapter C (relating to Charges for Community Services).

HISTORY: The provisions of this § 307.55 adopted to be effective July 23, 2019, 44 TexReg 3637

§ 307.56. Provider Qualifications and Contracting

(a) A prospective provider may request and submit an application to HHSC to provide HCBS-AMH at any time. The application sets forth the qualifications to be a provider.

(b) HHSC must approve the provider and enter into a contract with the provider before the provider serves any individual.

(c) HCBS providers must comply with any applicable federal or state law or rule.

HISTORY: The provisions of this § 307.56 adopted to be effective July 23, 2019, 44 TexReg 3637

§ 307.57. Fair Hearings Process

(a) Right of an individual to request a fair hearing. Any individual whose request for eligibility to receive HCBS-AMH is denied or is not acted upon with reasonable promptness, or whose services have been terminated, suspended, or reduced by HHSC, is entitled to a fair hearing in accordance with 1 TAC Chapter 357, Subchapter a (relating to Uniform Fair Hearing Rules).

(b) At any time, an individual may contact the Ombudsman for additional information and resources by calling toll-free (1-800-252-8154) or online at hhs.texas.gov/ombudsman.

HISTORY: The provisions of this § 307.57 adopted to be effective July 23, 2019, 44 TexReg 3637

TITLE 37.
PUBLIC SAFETY AND CORRECTIONS

PART 9.

**TEXAS COMMISSION ON JAIL
STANDARDS**

CHAPTER 251.

General

Section

§ 251.1. Authority

§ 251.1. Authority

The Texas Legislature created the Commission on Jail Standards in 1975 to implement a declared state policy that all county jail facilities conform to minimum standards of construction, maintenance and operation. In 1983, the Texas Legislature expanded the jurisdiction of the commission to include county and municipal jails operated under vendor contract. In 1991, the Texas Legislature added the requirement for count, payment, and transfer of inmates when precipitated by crowded conditions as well as expanding the commission's role of consultation and technical assistance. In 1993, the legislative function expanded the role of the commission again by requiring that it provide consultation and technical assistance for the State Jail program. In 1997, the Texas legislature affirmed that counties, municipalities and private vendors housing out-of-state inmates are within the commission's jurisdiction. It is the duty of the commission to promulgate reasonable written rules and procedures establishing minimum standards, inspection procedures, enforcement policies and technical assistance for:

- (1) the construction, equipment, maintenance, and operation of jail facilities under its jurisdiction;
- (2) the custody, care and treatment of inmates;
- (3) programs of rehabilitation, education, and recreation for inmates confined in county and municipal jail facilities under its jurisdiction.

HISTORY: The provisions of this § 251.1 adopted to be effective December 27, 1994, 19 TexReg 9878; amended to be effective September 2, 1997, 22 TexReg 8404.

CHAPTER 273.

Health Services

Section

§ 273.2. Health Services Plan

§ 273.4. Health Records

§ 273.5. Mental Disabilities/Suicide Prevention Plan

§ 273.2. Health Services Plan

Each facility shall have and implement a written plan, approved by the Commission, for inmate medical, mental, and dental services. The plan shall:

- (1) provide procedures for regularly scheduled sick calls;
- (2) provide procedures for referral for medical, mental, and dental services;

(3) provide procedures for efficient and prompt care for acute and emergency situations;

(4) provide procedures for long-term, convalescent, and care necessary for disabled inmates;

(5) provide procedures for medical, mental, nutritional requirements, special housing and appropriate work assignments and the documented use of restraints during labor, delivery and recovery for known pregnant inmates. a sheriff/operator shall notify the commission of any changes in policies and procedures in the provision of health care to pregnant prisoners. a sheriff/operator shall notify the commission of any changes in policies and procedures in the placement of a pregnant prisoner in administrative separation;

(6) provide procedures for the control, distribution, secured storage, inventory, and disposal of prescriptions, syringes, needles, and hazardous waste containers;

(7) provide procedures for the distribution of prescriptions in accordance with written instructions from a physician by an appropriate person designated by the sheriff/operator;

(8) provide procedures for the control, distribution, and secured storage of over-the-counter medications;

(9) provide procedures for the rights of inmates to refuse health care in accordance with informed consent standards for certain treatments and procedures (in the case of minors, the informed consent of a parent, guardian, or legal custodian, when required, shall be sufficient);

(10) provide procedures for all examinations, treatments, and other procedures to be performed in a reasonable and dignified manner and place;

(11) provide that adequate first aid equipment and patient evacuation equipment be on hand at all times;

(12) provide procedures that shall require that a qualified medical professional shall review as soon as possible any prescription medication a prisoner is taking when the prisoner is taken into custody;

(13) provide procedures that shall give prisoners the ability to access a mental health professional at the jail through a telemental health service 24 hours a day and approved by the Commission by August 31, 2020; and

(14) provide procedures that shall give prisoners the ability to access a health professional at the jail or through a telehealth service 24 hours a day or, if a health professional is unavailable at the jail or through a telehealth service, provide for a prisoner to be transported to access a health professional and approved by the Commission by August 31, 2020.

HISTORY: The provisions of this § 273.2 adopted to be effective December 20, 1994, 19 TexReg 9650; amended to be effective December 30, 2009, 34 TexReg 9482; amended to be effective September 12, 2012, 37 TexReg 7196; amended to be effective December 22, 2015, 40 TexReg 9305; amended to be effective January 1, 2018, 42 TexReg 6631; amended to be effective August 26, 2018, 43 TexReg 5541

§ 273.4. Health Records

(a) The health services plan shall include procedures for the maintenance of a separate health record on each inmate. The record shall include a health screening procedure administered by health personnel or by a trained booking officer upon the admission of the inmate to the facility and shall cover, but shall not be limited to, the following items:

- (1) health history;
- (2) current illnesses (prescriptions, special diets, and therapy);
- (3) known pregnancy;

(4) current medical, mental, and dental care and treatment;

(5) behavioral observation, including state of consciousness and mental status;

(6) inventory of body deformities, ease of movement, markings, condition of body orifices, and presence of lice and vermin.

(b) Separate health records shall reflect all subsequent findings, diagnoses, treatment, disposition, special housing assignments, medical isolation, distribution of medications, and the name of any institution to which the inmate's health record has been released.

(c) The Texas Uniform Health Status Update form, in the format prescribed by the Commission, shall be completed and forwarded to the receiving criminal justice entity at the time an inmate is transferred or released from custody.

(d) Each facility shall report to the Department of State Health Services (DSHS) the release of an inmate who is receiving treatment for tuberculosis in accordance with DSHS Guidelines.

HISTORY: The provisions of this § 273.4 adopted to be effective December 20, 1994, 19 TexReg 9650; amended to be effective September 1, 1998, 23 TexReg 8845; amended to be effective December 22, 1999, 24 TexReg 11519; amended to be effective November 1, 2004, 29 TexReg 10141; amended to be effective December 30, 2009, 34 TexReg 9483

§ 273.5. Mental Disabilities/Suicide Prevention Plan

(a) Each sheriff/operator shall develop and implement a mental disabilities/suicide prevention plan, in coordination with available medical and mental health officials, approved by the Commission by March 31, 1997. The plan shall address the following principles and procedures:

(1) Training. Provisions for staff training (including frequency and duration) on the procedures for recognition, supervision, documentation, and handling of inmates who are mentally disabled and/or potentially suicidal. Supplemental training should be provided to those staff members responsible for intake screening;

(2) Identification. Procedures for intake screening to identify inmates who are known to be or observed to be mentally disabled and/or potentially suicidal and procedures for compliance with Code of Criminal Procedure Article 16.22 and referrals to available mental health officials;

(3) Communication. Procedures for communication of information relating to inmates who are mentally disabled and/or potentially suicidal;

(4) Housing. Procedures for the assignment of inmates who are mentally disabled and/or potentially suicidal to appropriate housing;

(5) Supervision. Provisions for adequate supervision of inmates who are mentally disabled and/or potentially suicidal and procedures for documenting supervision;

(6) Intervention and Emergency Treatment. Procedures for staff intervention prior to the occurrence of a suicide and during the progress of a suicide attempt, or serious deterioration of mental condition;

(7) Reporting. Procedures for reporting of completed suicides to appropriate outside authorities and family members; and

(8) Follow-Up Review. Procedures for follow-up review of policies by the sheriff/operator and mental health and medical officials following all attempted or completed suicides.

(b) Screening Instrument. An approved mental disabilities/suicide prevention screening instrument shall be completed immediately on all inmates admitted.

(c) Mental History Check. Each jail shall:

(1) check each inmate upon intake into the jail against the Department of State Health Services CCQ system to determine if the inmate has previously received state mental healthcare, unless the inmate is being housed as an out of state inmate or a federal inmate on a contractual basis;

(2) maintain documentation to be available at the time of inspection showing that information for each inmate designated in paragraph (1) of this subsection was submitted for CCQ system checks; and

(3) include any relevant mental health information on the mental health screening instrument and, if sentenced to the Department of Criminal Justice, on the Uniform Health Status form.

HISTORY: The provisions of this § 273.5 adopted to be effective December 20, 1994, 19 TexReg 9650; amended to be effective October 23, 1996, 21 TexReg 10439; amended to be effective December 22, 1999, 24 TexReg 11519; amended to be effective December 17, 2006, 31 TexReg 10100; amended to be effective May 1, 2008, 33 TexReg 3446; amended to be effective December 30, 2009, 34 TexReg 9483; amended to be effective December 9, 2010, 35 TexReg 10770; amended to be effective April 10, 2013, 38 TexReg 2228

TITLE 40.**SOCIAL SERVICES AND ASSISTANCE****PART 1.****DEPARTMENT OF AGING AND
DISABILITY SERVICES****CHAPTER 2.****Local Authority Responsibilities***Subchapter G.**Role and Responsibilities of a Local
Authority*

Section

§ 2.305. LIDDA's Role and Responsibilities

§ 2.305. LIDDA's Role and Responsibilities

(a) A LIDDA's role is to serve as the single point of access to certain publicly funded services and supports for the residents within the LIDDA's local service area.

(b) As the single point of access, a LIDDA's responsibilities include:

(1) providing information about services and supports to an individual and LAR or actively involved person;

(2) ensuring an individual's access into services and supports by:

(A) conducting intake and eligibility activities for an individual seeking services and supports; and

(B) enrolling or admitting an eligible individual into services and supports;

(3) performing safety net functions;

(4) ensuring the provision and oversight of general revenue services by:

(A) developing and managing a network of general revenue services providers; and

(B) establishing processes to monitor the performance of general revenue services providers;

(5) conducting service coordination;

(6) conducting utilization management;

(7) conducting planning for the local service area, including ensuring involvement by a local advisory committee and other stakeholders;

(8) conducting permanency planning for certain individuals under 22 years of age; and

(9) protecting the rights of an individual.

(c) This subchapter elaborates on the responsibilities listed in subsection (b) of this section and describes other responsibilities of a LIDDA.

HISTORY: The provisions of this § 2.305 adopted to be effective December 1, 2008, 33 TexReg 9512; amended to be effective November 15, 2015, 40 TexReg 7821

This Chapter cited in 40 TAC § 5.2004, (relating to Eligibility Requirements); 40 TAC § 15.105, (relating to Description of Eligible Clients); 40 TAC § 79.2003, (relating to Determination and Disposition of Intentional Program Violations); 40 TAC § 1.1, (relating to Client Eligibility Requirements); 40 TAC § 5.2, (relating to Eligibility Requirements).

CHAPTER 9.**Intellectual Disability Services—
Medicaid State Operating Agency
Responsibilities***Subchapter D.**Home and Community-Based Services
(HCS) Program*

Section

§ 9.153. Definitions

§ 9.154. Description of the HCS Program and CFC

§ 9.153. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Abuse—

(A) physical abuse;

(B) sexual abuse; or

(C) verbal or emotional abuse.

(2) Actively involved—Significant, ongoing, and supportive involvement with an applicant or individual by a person, as determined by the applicant's or individual's service planning team or program provider, based on the person's:

(A) interactions with the applicant or individual;

(B) availability to the applicant or individual for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the applicant's or individual's needs, preferences, values, and beliefs.

(3) ADLs—Activities of daily living. Basic personal everyday activities, including tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

(4) Alarm call—A signal transmitted from an individual's CFC ERS equipment to the CFC ERS response center indicating that the individual needs immediate assistance.

(5) Alleged perpetrator—A person alleged to have committed an act of abuse, neglect, or exploitation of an individual.

(6) Applicant—A Texas resident seeking services in the HCS Program.

(7) Behavioral emergency—A situation in which an individual's severely aggressive, destructive, violent, or self-injurious behavior:

(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the individual or others;

(B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

(C) is not addressed in a written behavior support plan; and

(D) does not occur during a medical or dental procedure.

(8) Business day—Any day except a Saturday, Sunday, or national or state holiday listed in Texas Government Code § 662.003(a) or (b).

(9) Calendar day—Any day, including weekends and holidays.

(10) CDS option—Consumer directed services option. a service delivery option as defined in § 41.103 of this title (relating to Definitions).

(11) CFC—Community First Choice.

(12) CFC ERS—CFC emergency response services. Backup systems and supports used to ensure continuity of services and supports. CFC ERS includes electronic devices and an array of available technology, personal emergency response systems, and other mobile communication devices.

(13) CFC ERS provider—The entity directly providing CFC ERS to an individual, which may be the program provider or a contractor of the program provider.

(14) CFC FMS—The term used for FMS on the IPC of an applicant or individual if the applicant or individual receives only CFC PAS/HAB through the CDS option.

(15) CFC PAS/HAB—CFC personal assistance services/habilitation. a service that:

(A) consists of: (i) personal assistance services that provide assistance to an individual in performing ADLs and IADLs based on the individual's person-centered service plan, including:

(I) non-skilled assistance with the performance of the ADLs and IADLs;

(II) household chores necessary to maintain the home in a clean, sanitary, and safe environment;

(III) escort services, which consist of accompanying and assisting an individual to access services or activities in the community, but do not include transporting an individual; and

(IV) assistance with health-related tasks; and (ii) habilitation that provides assistance to an individual in acquiring, retaining, and improving self-help, socialization, and daily living skills and training the individual on ADLs, IADLs, and health-related tasks, such as:

(I) self-care;

(II) personal hygiene;

(III) household tasks;

(IV) mobility;

(V) money management;

(VI) community integration, including how to get around in the community;

(VII) use of adaptive equipment;

(VIII) personal decision making;

(IX) reduction of challenging behaviors to allow individuals to accomplish ADLs, IADLs, and health-related tasks; and

(X) self-administration of medication; and

(B) does not include transporting the individual, which means driving the individual from one location to another.

(16) CFC support consultation—The term used for support consultation on the IPC of an applicant or individual if the applicant or individual receives only CFC PAS/HAB through the CDS option.

(17) CFC support management—Training regarding how to select, manage, and dismiss an unlicensed service provider of CFC PAS/HAB, as described in the HCS Handbook.

(18) Chemical restraint—A medication used to control an individual's behavior or to restrict the individual's freedom of movement that is not a standard treatment for the individual's medical or psychological condition.

(19) CMS—Centers for Medicare & Medicaid Services. The federal agency within the United States

Department of Health and Human Services that administers the Medicare and Medicaid programs.

(20) Cognitive rehabilitation therapy—A service that:

(A) assists an individual in learning or relearning cognitive skills that have been lost or altered as a result of damage to brain cells or brain chemistry in order to enable the individual to compensate for lost cognitive functions; and

(B) includes reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns of cognitive activity or compensatory mechanisms for impaired neurological systems.

(21) Competitive employment—Employment that pays an individual at least minimum wage if the individual is not self-employed.

(22) Condition of a serious nature—Except as provided in paragraph (40) of this section, a condition in which a program provider's noncompliance with a certification principle caused or could cause physical, emotional, or financial harm to one or more of the individuals receiving services from the program provider.

(23) Contract—A provisional contract or a standard contract.

(24) Controlling person—A person who:

(A) has an ownership interest in a program provider;

(B) is an officer or director of a corporation that is a program provider;

(C) is a partner in a partnership that is a program provider;

(D) is a member or manager in a limited liability company that is a program provider;

(E) is a trustee or trust manager of a trust that is a program provider; or

(F) because of a personal, familial, or other relationship with a program provider, is in a position of actual control or authority with respect to the program provider, regardless of the person's title.

(25) CRCG—Community resource coordination group. a local interagency group, composed of public and private agencies, that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More Than One Agency, available on the HHSC website.

(26) Critical incident—An event listed in the HCS Provider User Guide found on the HHSC website.

(27) DADS—HHSC.

(28) DARS—The Texas Workforce Commission.

(29) DFPS—The Department of Family and Protective Services.

(30) Emergency—An unexpected situation in which the absence of an immediate response could reasonably be expected to result in risk to the health and safety of an individual or another person.

(31) Emergency situation—An unexpected situation involving an individual's health, safety, or welfare, of which a person of ordinary prudence would determine that the LAR should be informed, such as:

(A) an individual needing emergency medical care;

(B) an individual being removed from his residence by law enforcement;

(C) an individual leaving his residence without notifying a staff member or service provider and not being located; and

(D) an individual being moved from his residence to protect the individual (for example, because of a hurricane, fire, or flood).

(32) Exploitation—The illegal or improper act or process of using, or attempting to use, an individual or the resources of an individual for monetary or personal benefit, profit, or gain.

(33) Family-based alternative—A family setting in which the family provider or providers are specially trained to provide support and in-home care for children with disabilities or children who are medically fragile.

(34) FMS—Financial management services, a service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option.

(35) FMSA—Financial management services agency. As defined in §41.103 of this title, an entity that provides financial management services to an individual participating in the CDS option.

(36) Former military member—A person who served in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(37) Four-person residence—A residence:

(A) that a program provider leases or owns;

(B) in which at least one person but no more than four persons receive: (i) residential support; (ii) supervised living; (iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or (iv) respite;

(C) that, if it is the residence of four persons, at least one of those persons receives residential support;

(D) that is not the residence of any persons other than a service provider, the service provider's spouse or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and

(E) that is not a dwelling described in §9.155(a)(5) (H) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services and of CFC Services).

(38) Good cause—As used in §9.174(j) of this subchapter (relating to Certification Principles: Service Delivery), a reason outside the control of the CFC ERS provider, as determined by HHSC.

(39) GRO—General residential operation. The term has the meaning set forth in Texas Human Resources Code, §42.002.

(40) Hazard to health or safety—A condition in which serious injury or death of an individual or other person is imminent because of a program provider's noncompliance with a certification principle.

(41) HCS Program—The Home and Community-based Services Program operated by HHSC as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(42) Health-related tasks—Specific tasks related to the needs of an individual, which can be delegated or assigned by licensed health care professionals under state law to be performed by a service provider of CFC

PAS/HAB. These include tasks delegated by an RN; health maintenance activities as defined in 22 TAC §225.4 (relating to Definitions), that may not require delegation; and activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

(43) HHSC—The Texas Health and Human Services Commission.

(44) IADLs—Instrumental activities of daily living. Activities related to living independently in the community, including meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community.

(45) ICAP—Inventory for Client and Agency Planning.

(46) ICF/IID—Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided and that is:

(A) licensed in accordance with THSC, Chapter 252; or

(B) certified by HHSC, including a state supported living center.

(47) ICF/IID Program—The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(48) ID/RC Assessment—Intellectual Disability/Related Conditions Assessment, a form used by HHSC for LOC determination and LON assignment.

(49) Implementation plan—A written document developed by the program provider that, for each HCS Program service, except for transportation provided as a supported home living activity, and CFC service, except for CFC support management, on the individual's IPC to be provided by the program provider, includes:

(A) a list of outcomes identified in the PDP that will be addressed using HCS Program services and CFC services;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are: (i) observable, measurable, and outcome-oriented; and (ii) derived from assessments of the individual's strengths, personal goals, and needs;

(C) a target date for completion of each objective;

(D) the number of units of HCS Program services and CFC services needed to complete each objective;

(E) the frequency and duration of HCS Program services and CFC services needed to complete each objective; and

(F) the signature and date of the individual, LAR, and the program provider.

(50) Individual—A person enrolled in the HCS Program.

(51) Initial IPC—The first IPC for an individual developed before the individual's enrollment into the HCS Program.

(52) Intellectual disability—Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(53) IPC—Individual plan of care, a written plan that:

(A) states: (i) the type and amount of each HCS Program service and each CFC service, except for CFC

support management, to be provided to the individual during an IPC year; (ii) the services and supports to be provided to the individual through resources other than HCS Program services or CFC services, including natural supports, medical services, and educational services; and (iii) if an individual will receive CFC support management; and

(B) is authorized by HHSC.

(54) IPC cost—Estimated annual cost of HCS Program services included on an IPC.

(55) IPC year—A 12-month period of time starting on the date an initial or renewal IPC begins. A revised IPC does not change the begin or end date of an IPC year.

(56) LAR—Legally authorized representative. A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(57) LIDDA—Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC, § 533A.035.

(58) LOC—Level of care. A determination given to an individual as part of the eligibility determination process based on data submitted on the ID/RC Assessment.

(59) LON—Level of need. An assignment given by HHSC to an individual upon which reimbursement for host home/companion care, supervised living, residential support, and day habilitation is based.

(60) LVN—Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(61) Managed care organization—This term has the meaning set forth in Texas Government Code, § 536.001.

(62) MAO Medicaid—Medical Assistance Only Medicaid. A type of Medicaid by which an applicant or individual qualifies financially for Medicaid assistance but does not receive SSI benefits.

(63) Mechanical restraint—A mechanical device, material, or equipment used to control an individual's behavior by restricting the ability of the individual to freely move part or all of the individual's body.

(64) Microboard—A program provider:

(A) that is a non-profit corporation: (i) that is created and operated by no more than 10 persons, including an individual; (ii) the purpose of which is to address the needs of the individual and directly manage the provision of HCS Program services or CFC services; and (iii) in which each person operating the corporation participates in addressing the needs of the individual and directly managing the provision of HCS Program services or CFC services; and

(B) that has a service capacity designated in the HHSC data system of no more than three individuals.

(65) Military family member—A person who is the spouse or child (regardless of age) of:

(A) a military member; or

(B) a former military member.

(66) Military member—A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(67) Natural supports—Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(68) Neglect—A negligent act or omission that caused physical or emotional injury or death to an individual or placed an individual at risk of physical or emotional injury or death.

(69) Nursing facility—A facility licensed in accordance with THSC, Chapter 242.

(70) PDP—Person-directed plan. A written plan, based on person-directed planning and developed with an applicant or individual in accordance with the HHSC Person-Directed Plan form and discovery tool found on the HHSC website, that describes the supports and services necessary to achieve the desired outcomes identified by the applicant or individual (and LAR on the applicant's or individual's behalf) and ensure the applicant's or individual's health and safety.

(71) Performance contract—A written agreement between HHSC and a LIDDA for the performance of delegated functions, including those described in THSC, § 533A.035.

(72) Permanency planning—A philosophy and planning process that focuses on the outcome of family support for an applicant or individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(73) Permanency Planning Review Screen—A screen in the HHSC data system, completed by a LIDDA, that identifies community supports needed to achieve an applicant's or individual's permanency planning outcomes and provides information necessary for approval to provide supervised living or residential support to the applicant or individual.

(74) Person-directed planning—An ongoing process that empowers the applicant or individual (and the LAR on the applicant's or individual's behalf) to direct the development of a PDP. The process:

(A) identifies supports and services necessary to achieve the applicant's or individual's outcomes;

(B) identifies existing supports, including natural supports and other supports available to the applicant or individual and negotiates needed services system supports;

(C) occurs with the support of a group of people chosen by the applicant or individual (and the LAR on the applicant's or individual's behalf); and

(D) accommodates the applicant's or individual's style of interaction and preferences.

(75) Physical abuse—Any of the following:

(A) an act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, that caused physical injury or death to an individual or placed an individual at risk of physical injury or death;

(B) an act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in a physical injury to an individual;

(C) the use of a restraint on an individual not in compliance with federal and state laws, rules, and regulations; or

(D) seclusion.

(76) Physical restraint—Any manual method used to control an individual's behavior, except for physical guidance or prompting of brief duration that an individual does not resist, that restricts:

(A) the free movement or normal functioning of all or a part of the individual's body; or

(B) normal access by an individual to a portion of the individual's body.

(77) Post-move monitoring visit—As described in § 17.503 of this title (relating to Transition Planning for a Designated Resident), a visit conducted by the service coordinator in the individual's residence and other locations, as determined by the service planning team, for an individual who enrolled in the HCS Program from a nursing facility or enrolled in the HCS Program as a diversion from admission to a nursing facility. The purpose of the visit is to review the individual's residence and other locations to:

- (A) assess whether essential supports identified in the transition plan are in place;
- (B) identify gaps in care; and
- (C) address such gaps, if any, to reduce the risk of crisis, re-admission to a nursing facility, or other negative outcome.

(78) Pre-enrollment minor home modifications—Minor home modifications, as described in the HCS Program Billing Guidelines, completed before an applicant is discharged from a nursing facility, an ICF/IID, or a GRO and before the effective date of the applicant's enrollment in the HCS Program.

(79) Pre-enrollment minor home modifications assessment—An assessment performed by a licensed professional as required by the HCS Program Billing Guidelines to determine the need for pre-enrollment minor home modifications.

(80) Pre-move site review—As described in § 17.503 of this title, a review conducted by the service coordinator in the planned residence and other locations, as determined by the service planning team, for an applicant transitioning from a nursing facility to the HCS Program. The purpose of the review is to ensure that essential services and supports described in the applicant's transition plan are in place before the applicant moves to the residence or receives services in the other locations.

(81) Program provider—A person, as defined in § 49.102 of this title (relating to Definitions), that has a contract with HHSC to provide HCS Program services, excluding an FMSA.

(82) Provisional contract—An initial contract that HHSC enters into with a program provider in accordance with § 49.208 of this title (relating to Provisional Contract Application Approval) that has a stated expiration date.

(83) Public emergency personnel—Personnel of a sheriff's department, police department, emergency medical service, or fire department.

(84) Related condition—A severe and chronic disability that:

- (A) is attributed to: (i) cerebral palsy or epilepsy; or (ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity: (i) self-care; (ii) understanding and use of language; (iii) learning; (iv) mobility; (v) self-direction; and (vi) capacity for independent living.

(85) Relative—A person related to another person within the fourth degree of consanguinity or within the

second degree of affinity. a more detailed explanation of this term is included in the HCS Program Billing Guidelines.

(86) Renewal IPC—An IPC developed for an individual in accordance with § 9.166(a) of this subchapter (relating to Renewal and Revision of an IPC).

(87) Responder—A person designated to respond to an alarm call activated by an individual.

(88) Restraint—Any of the following:

- (A) a physical restraint;
- (B) a mechanical restraint; or
- (C) a chemical restraint.

(89) Revised IPC—An initial IPC or a renewal IPC that is revised during an IPC year in accordance with § 9.166(b) or (d) of this subchapter to add a new HCS Program service or CFC service or change the amount of an existing service.

(90) RN—Registered nurse. a person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

(91) Seclusion—The involuntary placement of an individual alone in an area from which the individual is prevented from leaving.

(92) Service backup plan—A plan that ensures continuity of critical program services if service delivery is interrupted.

(93) Service coordination—A service as defined in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability).

(94) Service coordinator—An employee of a LIDDA who provides service coordination to an individual.

(95) Service planning team—One of the following:

- (A) for an applicant or individual other than one described in subparagraphs (B) or (C) of this paragraph, a planning team consisting of: (i) an applicant or individual and LAR; (ii) service coordinator; and (iii) other persons chosen by the applicant or individual or LAR, for example, a staff member of the program provider, a family member, a friend, or a teacher;

(B) for an applicant 21 years of age or older who is residing in a nursing facility and enrolling in the HCS Program, a planning team consisting of: (i) the applicant and LAR; (ii) service coordinator; (iii) a staff member of the program provider; (iv) providers of specialized services; (v) a nursing facility staff person who is familiar with the applicant's needs; (vi) other persons chosen by the applicant or LAR, for example, a family member, a friend, or a teacher; and (vii) at the discretion of the LIDDA, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability; or

(C) for an individual 21 years of age or older who has enrolled in the HCS Program from a nursing facility or has enrolled in the HCS Program as a diversion from admission to a nursing facility, for 365 calendar days after enrollment, a planning team consisting of: (i) the individual and LAR; (ii) service coordinator; (iii) a staff member of the program provider; (iv) other persons chosen by the individual or LAR, for example, a family member, a friend, or a teacher; and (v) with the approval of the individual or LAR, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability.

(96) Service provider—A person, who may be a staff member, who directly provides an HCS Program service or CFC service to an individual.

(97) Sexual abuse—Any of the following:

- (A) sexual exploitation of an individual;
- (B) non-consensual or unwelcomed sexual activity with an individual; or
- (C) consensual sexual activity between an individual and a service provider, staff member, volunteer, or controlling person, unless a consensual sexual relationship with an adult individual existed before the service provider, staff member, volunteer, or controlling person became a service provider, staff member, volunteer, or controlling person.

(98) Sexual activity—An activity that is sexual in nature, including kissing, hugging, stroking, or fondling with sexual intent.

(99) Sexual exploitation—A pattern, practice, or scheme of conduct against an individual that can reasonably be construed as being for the purposes of sexual arousal or gratification of any person:

- (A) which may include sexual contact; and
- (B) does not include obtaining information about an individual's sexual history within standard accepted clinical practice.

(100) Specialized services—As defined in § 17.102 of this title (relating to Definitions).

(101) SSI—Supplemental Security Income.

(102) Staff member—An employee or contractor of an HCS Program provider.

(103) Standard contract—A contract that HHSC enters into with a program provider in accordance with § 49.209 of this title (relating to Standard Contract) that does not have a stated expiration date.

(104) State Medicaid claims administrator—The entity contracting with the state as the Medicaid claims administrator and fiscal agent.

(105) State supported living center—A state-supported and structured residential facility operated by HHSC to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by HHSC.

(106) Support consultation—A service, as defined in § 41.103 of this title, that is provided to an individual participating in the CDS option at the request of the individual or LAR.

(107) System check—A test of the CFC ERS equipment to determine if:

- (A) the individual can successfully activate an alarm call; and
- (B) the equipment is working properly.

(108) TANF—Temporary Assistance for Needy Families.

(109) TAS—Transition assistance services. Services provided to assist an applicant in setting up a household in the community before being discharged from a nursing facility, an ICF/IID, or a GRO and before enrolling in the HCS Program. TAS consists of:

- (A) for an applicant whose proposed initial IPC does not include residential support, supervised living, or host home/companion care: (i) paying security deposits required to lease a home, including an apartment, or to establish utility services for a home; (ii) purchasing essential furnishings for a home, including a table, a bed, chairs, window blinds, eating utensils, and food preparation items; (iii) paying for expenses required to move personal items, including furniture and clothing, into a home; (iv) paying for services to ensure

the health and safety of the applicant in a home, including pest eradication, allergen control, or a one-time cleaning before occupancy; and (v) purchasing essential supplies for a home, including toilet paper, towels, and bed linens; and

(B) for an applicant whose initial proposed IPC includes residential support, supervised living, or host home/companion care: (i) purchasing bedroom furniture; (ii) purchasing personal linens for the bedroom and bathroom; and (iii) paying for allergen control.

(110) Three-person residence—A residence:

- (A) that a program provider leases or owns;
- (B) in which at least one person but no more than three persons receive: (i) residential support; (ii) supervised living; (iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or (iv) respite;
- (C) that is not the residence of any person other than a service provider, the service provider's spouse or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and
- (D) that is not a dwelling described in § 9.155(a)(5) (H) of this subchapter.

(111) THSC—Texas Health and Safety Code. Texas statutes relating to health and safety.

(112) Transition plan—As described in § 17.503 of this title, a written plan developed by the service planning team for an applicant who is residing in a nursing facility and enrolling in the HCS Program. a transition plan includes the essential and nonessential services and supports the applicant needs to transition from a nursing facility to a community setting.

(113) Transportation plan—A written plan, based on person-directed planning and developed with an applicant or individual using the HHSC Individual Transportation Plan form found on the HHSC website. a transportation plan is used to document how transportation as a supported home living activity will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the PDP.

(114) Vendor hold—A temporary suspension of payments that are due to a program provider under a contract.

(115) Verbal or emotional abuse—Any act or use of verbal or other communication, including gestures:

- (A) to: (i) harass, intimidate, humiliate, or degrade an individual; or (ii) threaten an individual with physical or emotional harm; and
- (B) that: (i) results in observable distress or harm to the individual; or (ii) is of such a serious nature that a reasonable person would consider it harmful or a cause of distress.

(116) Volunteer—A person who works for a program provider without compensation, other than reimbursement for actual expenses.

HISTORY: The provisions of this § 9.153 adopted to be effective March 1, 2000, 25 TexReg 1649; amended to be effective March 31, 2002, 27 TexReg 2460; amended to be effective January 5, 2003, 27 TexReg 12246; amended to be effective September 1, 2003, 28 TexReg 6885; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8841; amended to be effective June 1, 2006, 31 TexReg 4442; amended to be effective September 1, 2006, 31 TexReg 6785; amended to be effective March 1, 2007, 32 TexReg 537; amended to be effective June 1, 2008, 33 TexReg 4334; amended to be effective June 1, 2010, 35 TexReg 4441; amended to be effective January 1, 2013,

37 TexReg 9969; amended to be effective April 1, 2014, 39 TexReg 2296; amended to be effective September 1, 2014, 39 TexReg 6516; amended to be effective July 1, 2015, 40 TexReg 2760; amended to be effective November 15, 2015, 40 TexReg 7827; amended to be effective March 20, 2016, 41 TexReg 1867; amended to be effective October 1, 2019, 44 TexReg 5062

§ 9.154. Description of the HCS Program and CFC

(a) The HCS Program is a Medicaid waiver program approved by CMS pursuant to § 1915(c) of the Social Security Act. It provides community-based services and supports to eligible individuals as an alternative to the ICF/IID Program. The HCS Program is operated by DADS under the authority of HHSC.

(b) Enrollment in the HCS Program is limited to the number of individuals in specified target groups and to the geographic areas approved by CMS.

(c) HCS Program services listed in this subsection are selected for inclusion in an individual's IPC to ensure the individual's health, safety, and welfare in the community, supplement rather than replace that individual's natural supports and other community services for which the individual may be eligible, and prevent the individual's admission to institutional services. The following HCS Program services are defined in Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us. Services available under the HCS Program are:

- (1) TAS;
- (2) professional therapies provided by appropriately licensed or certified professionals as follows:
 - (A) physical therapy, including a pre-enrollment minor home modifications assessment;
 - (B) occupational therapy, including a pre-enrollment minor home modifications assessment;
 - (C) speech and language pathology;
 - (D) audiology;
 - (E) social work;
 - (F) behavioral support, including a pre-enrollment minor home modifications assessment;
 - (G) dietary services; and
 - (H) cognitive rehabilitation therapy;
- (3) nursing provided by an RN or LVN;
- (4) residential assistance, excluding room and board, provided in one of the following three ways:
 - (A) host home/companion care;
 - (B) supervised living; or
 - (C) residential support;
- (5) supported home living, which is not a reimbursable service for individuals receiving host home/companion care, supervised living, or residential support;
- (6) respite, which includes room and board when provided in a setting other than the individual's home, but is not a reimbursable service for individuals receiving host home/companion care, supervised living, or residential support;
- (7) day habilitation, provided exclusive of any other separately funded service, including public school services, rehabilitative services for persons with mental illness, other programs funded by DADS, or programs funded by DARS;
- (8) employment assistance;
- (9) supported employment;
- (10) adaptive aids;

(11) minor home modifications, including pre-enrollment minor home modifications;

(12) dental treatment; and

(13) if the individual's IPC includes at least one HCS Program service to be delivered through the CDS option:

(A) FMS; and

(B) support consultation.

(d) A program provider may only provide and bill for supported home living if the activity provided is transportation as described in § 9.174(a)(33)(C) of this subchapter (relating to Certification Principles: Service Delivery).

(e) CFC is a state plan option governed by Code of Federal Regulations, Title 42, Chapter 441, Subchapter K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice) that provides the following services to individuals:

(1) CFC PAS/HAB;

(2) CFC ERS; and

(3) CFC support management for an individual receiving CFC PAS/HAB.

(f) DADS has grouped Texas counties into geographical areas, referred to as "local service areas," each of which is served by a LDDA. DADS has further grouped the local service areas into "waiver contract areas," a list of the counties included in each local service area and waiver contract area is found at www.dads.state.tx.us.

(1) A program provider may provide HCS Program services and CFC services only to persons residing in the counties specified for the program provider in DADS automated enrollment and billing system.

(2) A program provider must have a separate contract for each waiver contract area served by the program provider.

(3) A program provider may have a contract to serve one or more local service areas within a waiver contract area, but the program provider must serve all of the counties within each local service area covered by the contract.

(4) A program provider may not have more than one contract per waiver contract area.

(g) A program provider must comply with:

(1) all applicable state and federal laws, rules, and regulations, including Chapter 49 of this title (relating to Contracting for Community Services); and

(2) DADS Information Letters regarding the HCS Program found at www.dads.state.tx.us.

(h) The CDS option is a service delivery option, described in Chapter 41 of this title (relating to Consumer Directed Services Option), in which an individual or LAR employs and retains service providers and directs the delivery of a service through the CDS option, as described in § 41.108 of this title (relating to Services Available Through the CDS Option).

HISTORY: The provisions of this § 9.154 adopted to be effective March 1, 2000, 25 TexReg 1649; transferred effective September 1, 2004, as published in the Texas Register September 10, 2004, 29 TexReg 8841; amended to be effective June 1, 2006, 31 TexReg 4442; amended to be effective March 1, 2007, 32 TexReg 537; amended to be effective June 1, 2008, 33 TexReg 4334; amended to be effective June 1, 2010, 35 TexReg 4441; amended to be effective April 1, 2014, 39 TexReg 2296; amended to be effective September 1, 2014, 39 TexReg 6516; amended to be effective November 15, 2015, 40 TexReg 7827; amended to be effective March 20, 2016, 41 TexReg 1867

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Guardianship, Gov §155.001.

Advisory committee.

Acute care and long-term care services and supports for persons with intellectual or developmental disabilities, Gov §534.001.

Intellectual disability services, HS §533A.0335.

Sunset commission, Gov §325.002.

Affiliate.

Durable power of attorney, Estates §751.002.

After-care.

Interstate compact on mental health, HS §612.001.

Agency.

Correctional office on offenders with medical or mental impairments, HS §614.017.

Criminal law and procedure, Penal §1.07.

Schools and education, Educ §5.001.

Agent.

Durable power of attorney, Estates §751.002.

Alcoholic beverage.

Criminal law and procedure, Penal §1.07.

Alleged offender resident.

Forensic state supported living center, Educ §29.451.

State supported living centers, HS §555.001.

Another.

Criminal law and procedure, Penal §1.07.

Applicable federal developmental disability laws.

Intellectual or developmental disabilities, persons with, HR §112.001.

Approved peer assistance program.

Peer assistance programs, HS §467.001.

Area agency on aging.

Aging and disability services department, HR §§161.075, 161.079.

Assigned counsel program.

Indigent defense commission, Gov §79.001.

DEFINED TERMS —Cont'd**Assistive technology device.**

Schools and education, Educ §30.0015.

Association.

Criminal law and procedure, Penal §1.07.

Attending physician.

Consent to medical treatment act, HS §313.002.

Declaration for mental health treatment, CPRC §137.001.

Autism and other pervasive developmental disorders, HR §114.002.**Aversive techniques.**

Schools and education, Educ §37.0023.

Basic attendant services.

Acute care and long-term care services and supports for persons with intellectual or developmental disabilities, Gov §534.001.

Basic life support.

Emergency medical services, HS §773.003.

Benefit.

Criminal law and procedure, Penal §1.07.

Board.

Arrestment, Crim Proc §26.051.

Health services authority, HS §182.002.

Indigent defense commission, Gov §79.001.

Bodily injury.

Criminal law and procedure, Penal §1.07.

Business entity.

Mental health services, HS §531.002.

Capacity.

Court-ordered mental health services, HS §574.101.

Intellectual or developmental disabilities, persons with, HS §592.151.

Capitation.

Acute care and long-term care services and supports for persons with intellectual or developmental disabilities, Gov §534.101.

Care.

Intellectual disability services, HS §591.002.

Caseload standards.

Health and human services commission, Gov §531.001.

Cemetery organization.

Intellectual or developmental disabilities, persons with, HS §595.0055.

Center.

Law enforcement officers, Occ §1701.262.

State supported living centers, HS §555.001.

Center employee.

State supported living centers, HS §555.001.

Chemical dependency.

Mental health services, HS §531.002.

Child.

Criminal law and procedure, Penal §8.01.

Permanency planning, Gov §531.151.

Child health plan program.

Health and human services commission, Gov §531.001.

Children's commission.

Permanent judicial commission for children, youth and families, Gov §22.017.

Children with disabilities.

Schools and education, Educ §30.001.

Children with severe emotional disturbances.

Provision of services for children with multiagency needs, Gov §531.421.

Child who is homeless.

Schools and education, Educ §5.001.

DEFINED TERMS —Cont'd**Chronic serious health condition.**

Lifespan respite services program, HR §161.151.

Civil commitment facility.

Criminal law and procedure, Penal §1.07.

Classroom teacher.

Schools and education, Educ §5.001.

Client.

Capacity to consent to treatment, HS §597.001.

Elderly persons, HR §161.091.

Intellectual disability services, HS §591.002.

State supported living centers, HS §555.001.

Coercion.

Criminal law and procedure, Penal §1.07.

Commission.

Aging and disability services department, HR §161.001.

Autism and other pervasive developmental disorders, HR §114.002.

Commission on jail standards, Gov §511.001.

Early childhood intervention services, HR §73.001.

Health and human services commission, Gov §531.001.

Incompetency to stand trial, Crim Proc §§46B.001, 46B.091.

Indigent defense commission, Gov §79.001.

Insanity defense, Crim Proc §46C.001.

Intellectual disability services, HS §591.002.

Intermediate care facilities, HS §252.002.

Mental health facilities, HS §551.001.

Mental health services, HS §531.002.

Office for the prevention of developmental disabilities, HR §112.042.

Permanent judicial commission for children, youth and families, Gov §22.017.

Sunset commission, Gov §325.002.

Veterans, Gov §434.351.

Commissioner.

Aging and disability services department, HR §161.001, HS §§532A.001, 533A.001.

Community-based intellectual disability services, HS §534.101.

Community-based mental health services, HS §534.051.

Community centers, HS §534.0001.

Emergency medical services, HS §773.003.

Intellectual disability services, HS §591.002.

Intermediate care facilities, HS §252.002.

Mental health facilities, HS §551.001.

Mental health services, HS §531.002.

Mentally ill persons, HS §571.003.

Rehabilitation services, HR §111.002.

Schools and education, Educ §5.001.

State health services department, HS §§532.001, 533.0001.

Commitment order.

Mentally ill persons, HS §571.003.

Committee.

Capacity to consent to treatment, HS §597.001.

Legislative committee on aging, HR §161.251.

Community center.

Intellectual disability services, HS §591.002.

Mental health services, HS §531.002.

Mentally ill persons, HS §571.003.

Community corrections facility.

Community justice assistance division, Gov §509.001.

Community health worker.

High-risk maternal care coordination services pilot program, HS §1001.261.

DEFINED TERMS —Cont'd**Community mental health provider.**

Child mental health care consortium, HS §113.0001.

Community resource coordination group.

Permanency planning, Gov §531.151.

Provision of services for children with multiagency needs, Gov §531.421.

Competency restoration.

Incompetency to stand trial, Crim Proc §46B.001.

Complaint.

State supported living centers, HS §555.001.

Comprehensive long-term services and supports provider.

Acute care and long-term care services and supports for persons with intellectual or developmental disabilities, Gov §534.001.

Comprehensive medical rehabilitation.

Rights of individuals, HS §321.001.

Conduct.

Criminal law and procedure, Penal §1.07.

Consent.

Criminal law and procedure, Penal §1.07.

Consortium.

Child mental health care consortium, HS §113.0001.

Provision of services for children with multiagency needs, Gov §531.421.

Consumer direction model.

Acute care and long-term care services and supports for persons with intellectual or developmental disabilities, Gov §534.001.

Continuity of care and service program.

Correctional office on offenders with medical or mental impairments, HS §614.018.

Contract defender program.

Indigent defense commission, Gov §79.001.

Contracted organization.

Mortality review of persons with intellectual or developmental disabilities, Gov §531.8501.

Controlled substance.

Bail, Crim Proc §17.03.

Criminal law and procedure, Penal §1.07.

Controlling person.

Intermediate care facilities, HS §252.0311.

Corporate fiduciary.

Guardianship, Gov §155.001.

Corporation.

Criminal law and procedure, Penal §1.07.

Health services authority, HS §182.002.

Correctional facility.

Commission on jail standards, Gov §511.001.

Comprehensive reentry and reintegration plan, Gov §501.091.

Criminal law and procedure, Penal §1.07.

Correctional institutions division.

Arraignment, Crim Proc §26.051.

Council.

Aging and disability services department, HR §161.001.

Autism and other pervasive developmental disorders, HR §114.002.

Indigent defense commission, Gov §79.001.

Intellectual or developmental disabilities, persons with, HR §112.001.

Specialty courts advisory council, Gov §772.0061.

Statewide behavioral health coordinating council, Gov §531.471.

County court.

Courts, Gov §21.009.

DEFINED TERMS —Cont'd**County jail.**

Commission on jail standards, Gov §511.001.

County judge.

Courts, Gov §21.009.

Court.

Former mental health patient, CPRC §144.001.

Guardianship proceedings, Estates §22.007.

Covered entity.

Health services authority, HS §182.002.

Medical records, HS §181.001.

Crime.

Indigent defense commission, Gov §79.001.

Criminal law cases and proceedings.

Statutory county courts, Gov §25.0002.

Criminal negligence.

Criminal law and procedure, Penal §1.07.

Dangerous drug.

Criminal law and procedure, Penal §1.07.

Deadly weapon.

Criminal law and procedure, Penal §1.07.

Deaf person, Crim Proc §38.31.**Death.**

Criminal law and procedure, Penal §1.07.

Decision-making capacity.

Consent to medical treatment act, HS §313.002.

Declaration for mental health treatment, CPRC §137.001.**Defendant.**

Indigent defense commission, Gov §79.001.

De-identified protected health information.

Health services authority, HS §182.002.

Department.

Acute care and long-term care services and supports for persons with intellectual or developmental disabilities, Gov §534.001.

Aging and disability services department, HR §161.001, HS §§532A.001, 533A.001.

Community-based intellectual disability services, HS §534.101.

Community-based mental health services, HS §534.051.

Community centers, HS §534.0001.

Community collaboratives, Gov §539.001.

Community justice assistance division, Gov §509.001.

Early childhood intervention services, HR §73.001.

Emergency medical services, HS §773.003.

Health and human services commission, Gov §§531.02442, 531.02443.

Incompetency to stand trial, Crim Proc §46B.090.

Intellectual disability services, HS §591.002.

Intermediate care facilities, HS §252.002.

Mental health facilities, HS §551.001.

Mental health services, HS §531.002.

Mentally ill persons, HS §571.003.

Peer assistance programs, HS §467.001.

Rehabilitation services, HR §111.002.

State health services department, HS §§532.001, 533.0001.

State hospitals, HS §552.0011.

State supported living centers, HS §555.001.

Waco center for youth, HS §554.0001.

Department facility.

Aging and disability services department, HS §533A.001.

Community-based intellectual disability services, HS §534.101.

Intellectual disability services, HS §533A.038.

DEFINED TERMS —Cont'd**Department facility —Cont'd**

Mental health facilities, HS §551.001.
State health services department, HS §533.0001.

Designated state agency.

Intellectual or developmental disabilities, persons with, HR §112.001.

Designee.

Intermediate care facilities, HS §252.002.

Developmental delay.

Early childhood intervention services, HR §73.001.

Developmental disability.

Intellectual or developmental disabilities, persons with, HR §112.001.
Office for the prevention of developmental disabilities, HR §112.042.

Developmental period.

Incompetency to stand trial, Crim Proc §46B.001.

Direct care employee.

State hospitals, HS §552.0011.
State supported living centers, HS §555.001.

Director.

Intellectual disability services, HS §591.002.

Direct supervision.

State hospitals, HS §552.0011.

Disability.

Supported decision-making agreement act, Estates §1357.002.

Disabled.

Durable power of attorney, Estates §751.00201.

Disclose.

Health services authority, HS §182.002.
Medical records, HS §181.001.

Division.

Community justice assistance division, Gov §509.001.

Drug.

Criminal law and procedure, Penal §1.07.

Drug court.

Magistrates, Gov §54.1801.

Drug court program.

Magistrates, Gov §54.1801.

Durable power of attorney, Estates §751.002.**Dyslexia.**

Schools and education, Educ §38.003.

Educationally disadvantaged.

Schools and education, Educ §5.001.

Educational records.

Juvenile justice, Fam §58.0051.

Educator.

Mental health first aid training, HS §1001.201.
Schools and education, Educ §5.001.

Effective administration.

Mental health services, HS §531.002.

Effective consent.

Criminal law and procedure, Penal §1.07.

Elderly resident.

Intellectual disability services, HS §533A.031.
Mental health services, HS §533.031.

Electric generating plant.

Criminal law and procedure, Penal §1.07.

Electric utility substation.

Criminal law and procedure, Penal §1.07.

Electronic broadcast system.

Incompetency to stand trial, Crim Proc §46B.001.

Element of offense.

Criminal law and procedure, Penal §1.07.

Eligible person.

Elderly persons, HR §161.057.

DEFINED TERMS —Cont'd**Emergency.**

Declaration for mental health treatment, CPRC §137.001.

Emergency medical care.

Emergency medical services, HS §773.003.

Emergency medical services, HS §773.003.**Emergency medical services and trauma care system.**

Emergency medical services, HS §773.003.

Emergency medical services personnel.

Emergency detention, HS §573.0001.
Emergency medical services, HS §773.003.

Emergency medical services provider.

Emergency medical services, HS §773.003.

Emergency medical services vehicle.

Emergency medical services, HS §773.003.

Emergency medical services volunteer.

Emergency medical services, HS §773.003.

Emergency medical services volunteer provider.

Emergency medical services, HS §773.003.

Emergency prehospital care.

Emergency medical services, HS §773.003.

Employee.

Intermediate care facilities, HS §252.132.

Executive commissioner.

Aging and disability services department, HR §161.001.
Autism and other pervasive developmental disorders, HR §114.002.

Early childhood intervention services, HR §73.001.

Emergency medical services, HS §773.003.

Health and human services commission, Gov §531.001.

Incompetency to stand trial, Crim Proc §§46B.001, 46B.091.

Insanity defense, Crim Proc §46C.001.

Intellectual disability services, HS §591.002.

Intermediate care facilities, HS §252.002.

Mental health facilities, HS §551.001.

Mental health services, HS §531.002.

Mentally ill persons, HS §571.003.

Office for the prevention of developmental disabilities, HR §112.042.

Peer assistance programs, HS §467.001.

Rehabilitation services, HR §111.002.

Rights of individuals, HS §321.001.

Executive committee.

Child mental health care consortium, HS §113.0001.
Office for the prevention of developmental disabilities, HR §112.042.

Executive director.

Commission on jail standards, Gov §511.001.
Council for developmental disabilities, HR §112.0111.
Indigent defense commission, Gov §79.001.

Extended care unit.

Mental health services, HS §533.031.

Facility.

Intermediate care facilities, HS §252.002.
Restraint and seclusion, HS §322.001.

Facility administrator.

Mentally ill persons, HS §571.003.

Family law cases and proceedings.

Statutory county courts, Gov §25.0002.

Federal prisoner.

Commission on jail standards, Gov §511.001.

Federal special investigator.

Criminal law and procedure, Penal §1.07.

DEFINED TERMS —Cont'd**Felony.**

Criminal law and procedure, Penal §1.07.

Financial institution.

Medical records, HS §181.052.

First responder.

Law enforcement officers, Occ §1701.264.

First responder organization.

Emergency medical services, HS §773.003.

Forensic patient.

State health services director, HS §§532.013, 532.0131.

Forensic services.

State health services director, HS §§532.013, 532.0131.

Former mental health patient.

Destruction of records, CPRC §144.001.

Functional need.

Acute care and long-term care services and supports for persons with intellectual or developmental disabilities, Gov §534.001.

Intellectual disability services, HS §533A.0335.

Fund.

Initiatives relating to aging, HR §161.301.

General hospital.

Mentally ill persons, HS §571.003.

Government.

Criminal law and procedure, Penal §1.07.

Governmental entity.

Arrestment, Crim Proc §26.047.

Emergency medical services, HS §773.003.

Governmental unit.

Intermediate care facilities, HS §252.002.

Gross receipts.

Intermediate care facilities, HS §252.201.

Group home.

Intellectual disability services, HS §591.002.

Guardian.

Guardianship, Gov §155.001.

Intellectual disability services, HS §591.002.

Guardianship program.

Guardianship, Gov §155.001.

Habilitation.

Intellectual disability services, HS §591.002.

Habilitation services.

Acute care and long-term care services and supports for persons with intellectual or developmental disabilities, Gov §534.001.

Harm.

Criminal law and procedure, Penal §1.07.

Harmful, threatening, or violent behavior.

Schools and education, Educ §37.115.

Having a mental illness.

Mentally ill children, Fam §55.01.

Health and human services agency.

Health and human services commission, Gov §531.001.

Legislative committee on aging, HR §161.251.

Restraint and seclusion, HS §322.001.

Health and human services system.

Health and human services commission, Gov §531.001.

Health care provider.

Declaration for mental health treatment, CPRC §137.001.

Health information exchange, HS §182.151.**Health insurance portability and accountability act and privacy standards.**

Health services authority, HS §182.002.

DEFINED TERMS —Cont'd**Health insurance portability and accountability act and privacy standards —Cont'd**

Medical records, HS §181.001.

Highly restrictive procedure.

Capacity to consent to treatment, HS §597.001.

High-risk alleged offender resident.

State supported living centers, HS §555.001.

Home and community support services agency.

Consent to medical treatment act, HS §313.002.

Health and human services commission, Gov §531.02164.

Homeless children and youths.

Schools and education, Educ §5.001.

Home telemonitoring service.

Health and human services commission, Gov §531.001.

Hospital.

Consent to medical treatment act, HS §313.002.

Health and human services commission, Gov §531.02164.

Rights of individuals, HS §321.001.

Hospital administrator.

Mentally ill persons, HS §571.003.

ICF-IID.

Acute care and long-term care services and supports for persons with intellectual or developmental disabilities, Gov §534.001.

Capacity to consent to treatment, HS §597.001.

Mental health services, HS §531.002.

State supported living centers, HS §555.001.

ICF-IID and related waiver programs.

Intellectual disability services, HS §533A.031.

ICF-IID program.

Acute care and long-term care services and supports for persons with intellectual or developmental disabilities, Gov §534.001.

Intellectual disability services, HS §533A.0335.

Immediate jeopardy to health and safety.

Intermediate care facilities, HS §252.071.

Immediate threat to the health or safety of a recipient.

Aging and disability services department, HR §161.089.

Immediate threat to the health or safety of a resident.

Intermediate care facilities, HS §§252.064, 252.065.

Impaired professional.

Peer assistance programs, HS §467.001.

Impaired student.

Peer assistance programs, HS §467.001.

Incapacitated.

Consent to medical treatment act, HS §313.002.

Declaration for mental health treatment, CPRC §137.001.

Durable power of attorney, Estates §751.00201.

Incapacitated person.

Guardianship, Gov §155.001.

Independent ombudsman.

State supported living centers, HS §555.001.

Indigent defense support services.

Indigent defense commission, Gov §79.001.

Individual.

Criminal law and procedure, Penal §1.07.

Individually identifiable health information.

Health services authority, HS §182.002.

Individual with a disability.

Rehabilitation services, HR §111.002.

DEFINED TERMS —Cont'd**Inmate.**

Commission on jail standards, Gov §511.001.
Interstate corrections compact, Crim Proc §42.19.

Inpatient mental health facility.

Incompetency to stand trial, Crim Proc §46B.001.
Mentally ill persons, HS §571.003.

Inspector general.

State hospitals, HS §552.0011.
State supported living centers, HS §555.001.

Institute.

Law enforcement officers, Occ §1701.262.

Institution.

Health and human services commission, Gov §531.02442.
Interstate compact on mental health, HS §612.001.
Interstate corrections compact, Crim Proc §42.19.
Permanency planning, Gov §531.151.

Institution of higher education.

Collaborative task force on public school mental health services, Educ §38.301.

Intellectual disability.

Incompetency to stand trial, Crim Proc §46B.001.
Intellectual disability services, HS §591.002.

Intellectual disability services, HS §591.002.

Mental health services, HS §531.002.

Intentional.

Criminal law and procedure, Penal §1.07.

Interdisciplinary team.

Capacity to consent to treatment, HS §597.001.
Forensic state supported living center, Educ §29.451.
Intellectual disability services, HS §591.002.
State supported living centers, HS §555.001.

Interested person.

Guardianship proceedings, Estates §1002.018.

Juvenile justice agency.

Juvenile justice, Fam §58.0052.

Juvenile law cases and proceedings.

Statutory county courts, Gov §25.0002.

Juvenile offense.

Indigent defense commission, Gov §79.001.

Juvenile probation services, HR §142.001.**Juvenile service provider.**

Juvenile justice, Fam §§58.0051, 58.0052.

Juvenile with a mental impairment.

Correctional office on offenders with medical or mental impairments, HS §614.017.

Knowing.

Criminal law and procedure, Penal §1.07.

Law.

Criminal law and procedure, Penal §1.07.

Law enforcement agency.

Emergency detention, HS §573.0001.

Least restrictive setting.

Health and human services commission, Gov §531.055.

Legal holiday.

Mentally ill persons, HS §571.003.

Legally authorized representative.

Health and human services commission, Gov §§531.02442, 531.02443.

License.

Rights of individuals, HS §321.001.

Licensing or disciplinary authority.

Peer assistance programs, HS §467.001.

Local agency.

Mental health services, HS §531.002.

Local entity.

Aging and disability services department, HR §161.079.

DEFINED TERMS —Cont'd**Local intellectual and developmental disability authority.**

Acute care and long-term care services and supports for persons with intellectual or developmental disabilities, Gov §534.001.

Health and human services commission, Gov §§531.02442, 531.02443.

Incompetency to stand trial, Crim Proc §46B.001.

Mental health services, HS §531.002.

Local mental health authority.

Colleges and universities, Educ §51.9193.

Incompetency to stand trial, Crim Proc §46B.001.

Mental health first aid training, HS §1001.201.

Mental health services, HS §531.002.

Mentally ill persons, HS §571.003.

Regional educational service centers, Educ §8.151.

Local tax effort.

Special education, Educ §29.008.

Local workforce development board.

Foster care, Fam §264.121.

Lower trial court.

Judgments, CPRC §31.004.

Major medical and dental treatment.

Capacity to consent to treatment, HS §597.001.

Managed assigned counsel program.

Arraignment, Crim Proc §26.047.

Indigent defense commission, Gov §79.001.

Managed care organization.

Acute care and long-term care services and supports for persons with intellectual or developmental disabilities, Gov §534.001.

Managed care plan.

Acute care and long-term care services and supports for persons with intellectual or developmental disabilities, Gov §534.001.

Marketing.

Medical records, HS §181.001.

Medicaid.

Health and human services commission, Gov §531.001.

Medicaid managed care organization.

Health and human services commission, Gov §531.001.

Medicaid waiver program.

Acute care and long-term care services and supports for persons with intellectual or developmental disabilities, Gov §534.001.

Intellectual disability services, HS §533A.0335.

Medicaid wrap-around benefit.

Mental health services, HS §533.038.

Medical supervision.

Emergency medical services, HS §773.003.

Medical treatment.

Consent to medical treatment act, HS §313.002.

Medication-related emergency.

Court-ordered mental health services, HS §574.101.

Intellectual or developmental disabilities, persons with, HS §592.151.

Mental deficiency.

Interstate compact on mental health, HS §612.001.

Mental disease or defect.

Insanity defense, Penal §8.01.

Mental health cases and proceedings.

Statutory county courts, Gov §25.0002.

Mental health commission.

Judicial commission on mental health, Gov §22.017.

Mental health condition.

Schools and education, Educ §5.001.

DEFINED TERMS —Cont'd**Mental health court program**, Gov §125.001.**Mental health facility.**

Incompetency to stand trial, Crim Proc §46B.001.

Mentally ill persons, HS §571.003.

Rights of individuals, HS §321.001.

Mental health services, HS §531.002.**Mental health treatment.**

Declaration for mental health treatment, CPRC §137.001.

Mental hospital.

Mentally ill persons, HS §571.003.

Mental illness.

Incompetency to stand trial, Crim Proc §46B.001.

Insanity defense, Crim Proc §46C.001.

Interstate compact on mental health, HS §612.001.

Mentally ill persons, HS §571.003.

Mental retardation.

Insanity defense, Crim Proc §46C.001.

Intellectual disability services, HS §591.002.

Minor.

Intellectual disability services, HS §591.002.

Local mental health systems of care, Gov §531.251.

Misdemeanor.

Criminal law and procedure, Penal §1.07.

Multi-system youth.

Juvenile justice, Fam §58.0052.

Non-physician mental health professional.

Mentally ill persons, HS §571.003.

Regional educational service centers, Educ §8.151.

Schools and education, Educ §§38.016, 38.0101.

Nursing home.

Consent to medical treatment act, HS §313.002.

Oath.

Criminal law and procedure, Penal §1.07.

Offender.

Comprehensive reentry and reintegration plan, Gov §501.091.

Office.

Office for the prevention of developmental disabilities, HR §112.042.

Specialty courts, Gov §121.003.

State supported living centers, HS §555.001.

Office of capital and forensic writs.

Indigent defense commission, Gov §79.001.

Official proceeding.

Criminal law and procedure, Penal §1.07.

Ombudsman.

Health and human services commission, Gov §531.02251.

Omission.

Criminal law and procedure, Penal §1.07.

Open-enrollment charter school.

Schools and education, Educ §5.001.

Owner.

Criminal law and procedure, Penal §1.07.

Parent.

Schools and education, Educ §§38.010, 38.016.

Special education, Educ §29.022.

Patient.

Consent to medical treatment act, HS §313.002.

Interstate compact on mental health, HS §612.001.

Mental health records, HS §611.001.

Mentally ill persons, HS §571.003.

State hospitals, HS §552.0011.

Pattern of violation.

Aging and disability services department, HR §161.089.

DEFINED TERMS —Cont'd**Pattern of violation —Cont'd**

Intermediate care facilities, HS §§252.064, 252.065.

Peace officer.

Criminal law and procedure, Penal §1.07.

Peer.

State health services department, HS §1001.221.

Veterans, Gov §434.351.

Peer service coordinator.

State health services department, HS §1001.221.

Veterans, Gov §434.351.

Penal institution.

Criminal law and procedure, Penal §1.07.

Permanency planning, Gov §531.151.**Person.**

Criminal law and procedure, Penal §1.07.

Intermediate care facilities, HS §252.002.

Mentally ill persons, HS §571.003.

Personal health information.

Juvenile justice, Fam §58.0052.

Person interested.

Durable power of attorney, Estates §753.001.

Guardianship proceedings, Estates §1002.018.

Person responsible for a patient.

State hospitals, HS §552.018.

Person responsible for a resident.

Intellectual disability services, HS §593.082.

Person who is homeless.

Schools and education, Educ §5.001.

Person with a developmental disability.

Mental health services, HS §531.002.

Person with a disability.

Community homes for persons with disabilities, HR §123.002.

Sexual offenses, Crim Proc §38.07.

Person with an intellectual disability.

Intellectual disability services, HS §591.002.

Mental health services, HS §531.002.

Person with mental retardation.

Intellectual disability services, HS §591.002.

Physician.

Consent to medical treatment act, HS §313.002.

Health services authority, HS §182.002.

Mentally ill persons, HS §571.003.

Pilot program.

Acute care and long-term care services and supports for persons with intellectual or developmental disabilities, Gov §534.101.

High-risk maternal care coordination services pilot program, HS §1001.261.

Pilot program workgroup.

Acute care and long-term care services and supports for persons with intellectual or developmental disabilities, Gov §534.101.

Plan of care.

Intermediate care facilities, HS §252.181.

Platform.

Health and human services commission, Gov §531.001.

Political subdivision.

Mentally ill persons, HS §571.003.

Possession.

Criminal law and procedure, Penal §1.07.

Post-discharge services.

Juvenile probation services, HR §142.007.

Postpartum depression, HS §32.046.**Potentially preventable event.**

Acute care and long-term care services and supports for persons with intellectual or developmental disabilities, Gov §534.001.

DEFINED TERMS —Cont'd**Preparation for adult living program.**

Foster care, Fam §264.121.

Principal.

Declaration for mental health treatment, CPRC §137.001.

Durable power of attorney, Estates §751.002.

Priority population.

Mental health services, HS §531.002.

Prisoner.

Commission on jail standards, Gov §511.001.

Private mental hospital.

Mentally ill persons, HS §571.003.

Private professional guardian.

Guardianship, Gov §155.001.

Private school.

Schools and education, Educ §5.001.

Private space.

State supported living centers, HS §555.025.

Probate court.

Guardianship proceedings, Estates §22.007.

Product.

Medical records, HS §181.001.

Professional.

Mental health records, HS §611.001.

Peer assistance programs, HS §467.001.

Professional association.

Peer assistance programs, HS §467.001.

Professional caseload standards.

Health and human services commission, Gov §531.001.

Program.

Arrestment, Crim Proc §26.047.

Promotora.

High-risk maternal care coordination services pilot program, HS §1001.261.

Protected health information.

Health services authority, HS §182.002.

Protection and advocacy system.

Intellectual or developmental disabilities, persons with, HR §112.001.

Provider.

Acute care and long-term care services and supports for persons with intellectual or developmental disabilities, Gov §534.101.

Psychoactive medication.

Capacity to consent to treatment, HS §597.001.

Court-ordered mental health services, HS §574.101.

Guardianship proceedings, Estates §1151.054.

Intellectual or developmental disabilities, persons with, HS §592.151.

Psychotropic drug.

Schools and education, Educ §38.016.

Public defender's office.

Indigent defense commission, Gov §79.001.

Public place.

Criminal law and procedure, Penal §1.07.

Public safety employee.

Public safety employees treatment court program, Gov §129.001.

Public safety employees treatment court program,

Gov §129.002.

Public servant.

Criminal law and procedure, Penal §1.07.

Qualified interpreter.

Deaf or hard of hearing persons, Crim Proc §38.31.

Qualified service provider.

Intellectual disability services, HS §533A.031.

DEFINED TERMS —Cont'd**Reasonable belief.**

Criminal law and procedure, Penal §1.07.

Receiving state.

Interstate compact on mental health, HS §612.001.

Interstate corrections compact, Crim Proc §42.19.

Recipient.

Aging and disability services department, HR §161.089.

Reckless.

Criminal law and procedure, Penal §1.07.

Record.

Durable power of attorney, Estates §751.002.

Former mental health patient, CPRC §144.001.

Region.

Mental health services, HS §531.002.

Regional education service center.

Mental health first aid training, HS §1001.201.

Schools and education, Educ §5.001.

Registration.

Guardianship, Gov §155.001.

Rehabilitation services,

HR §111.002.

Related disorders.

Schools and education, Educ §38.003.

Resident.

Intellectual disability services, HS §§591.002, 593.082.

Intermediate care facilities, HS §252.002.

State supported living centers, HS §555.001.

Residential care facility.

Incompetency to stand trial, Crim Proc §46B.001.

Insanity defense, Crim Proc §46C.001.

Intellectual disability services, HS §591.002.

Residential facility.

Schools and education, Educ §5.001.

Residential services.

Acute care and long-term care services and supports for persons with intellectual or developmental disabilities, Gov §534.001.

Respite care.

Intermediate care facilities, HS §252.181.

Respite services.

Lifespan respite services program, HR §161.151.

Respite services coordinator.

Lifespan respite services program, HR §161.151.

Retirement plan.

Durable power of attorney, Estates §752.113.

Rule.

Criminal law and procedure, Penal §1.07.

School business day.

Special education, Educ §29.022.

School climate.

Schools and education, Educ §38.351, HS §161.325.

School district employee.

Mental health first aid training, HS §1001.201.

School district peace officer.

Law enforcement officers, Occ §1701.262.

School resource officer.

Law enforcement officers, Occ §1701.262.

Mental health first aid training, HS §1001.201.

Seclusion.

Restraint and seclusion, HS §322.001.

Section 1915(c) waiver program.

Health and human services commission, Gov §531.001.

Intellectual disability services, HS §533A.031.

Secure correctional facility.

Criminal law and procedure, Penal §1.07.

Self-contained classroom.

Special education, Educ §29.022.

DEFINED TERMS —Cont'd**Sending state.**

Interstate compact on mental health, HS §612.001.
Interstate corrections compact, Crim Proc §42.19.

Serious bodily injury.

Criminal law and procedure, Penal §1.07.

Serious emotional disturbance.

Local mental health systems of care, Gov §531.251.

Servicemember.

Special education, Educ §29.0163.

Service provider.

Intellectual disability services, HS §591.002.

Sight order.

Criminal law and procedure, Penal §1.07.

Special needs offender.

Correctional office on offenders with medical or mental impairments, HS §614.017.

Special services.

Special education, Educ §29.002.

Specialty court, Gov §121.001.

Specialty courts advisory council, Gov §772.0061.

Staff member.

Special education, Educ §29.022.

State.

Interstate compact on mental health, HS §612.001.
Interstate corrections compact, Crim Proc §42.19.

State agency.

Sunset commission, Gov §325.002.

State aid.

Community justice assistance division, Gov §509.001.

State health care regulatory agency.

Rights of individuals, HS §321.001.

State hospital, HS §552.0011.**State mental hospital.**

Intellectual or developmental disabilities, persons with, HS §594.0301.

Mentally ill persons, HS §571.003.

State or local authority.

Mentally ill persons, HS §571.0081.

State supported living center, HS §555.001.

Acute care and long-term care services and supports for persons with intellectual or developmental disabilities, Gov §534.001.

Forensic state supported living center, Educ §29.451.
Health and human services commission, Gov §531.02443.

Mental health services, HS §531.002.

Statutory county court.

Courts, Gov §21.009.

Statutory probate court, Gov §54A.201.

Courts, Gov §21.009.

Guardianship proceedings, Estates §22.007.

Student.

Juvenile justice, Fam §58.0051.

Peer assistance programs, HS §467.001.

Student who is homeless.

Schools and education, Educ §5.001.

Student with a disability.

Schools and education, Educ §30.0015.

Subaverage general intellectual functioning.

Incompetency to stand trial, Crim Proc §46B.001.

Subaverage general intelligence functioning.

Intellectual disability services, HS §591.002.

Substance abuse.

Schools and education, Educ §5.001.

Substantial impediment to employment.

Rehabilitation services, HR §111.002.

Supported decision-making.

Supported decision-making agreement act, Estates §1357.002.

DEFINED TERMS —Cont'd**Supported decision-making agreement.**

Supported decision-making agreement act, Estates §1357.002.

Supporter.

Supported decision-making agreement act, Estates §1357.002.

Surrogate decision-maker.

Capacity to consent to treatment, HS §597.001.

Consent to medical treatment act, HS §313.002.

Swear.

Criminal law and procedure, Penal §1.07.

System of care framework.

Local mental health systems of care, Gov §531.251.

Systems of care services.

Provision of services for children with multiagency needs, Gov §531.421.

Task force.

Collaborative task force on public school mental health services, Educ §38.301.

Team.

Schools and education, Educ §37.115.

Telehealth service.

Health and human services commission, Gov §531.001.

Telemedicine medical service.

Health and human services commission, Gov §531.001.

Texas nonprofit organization.

Aging and disability services department, HR §161.075.

Texas trade association.

Council for developmental disabilities, HR §112.0161.

Time-out.

Special education, Educ §29.022.

Training.

Intellectual disability services, HS §591.002.

Transfer.

Schools and education, Educ §30.0015.

Transitional living program.

Children and minors, Fam §32.203.

Transitional living services program.

Foster care, Fam §264.121.

Transitional living unit.

Mental health services, HS §533.031.

Trauma facility.

Emergency medical services, HS §773.003.

Trauma patient.

Emergency medical services, HS §773.003.

Trauma services.

Emergency medical services, HS §773.003.

Treatment.

Intellectual disability services, HS §591.002.

Treatment facility.

Rights of individuals, HS §321.001.

Unauthorized person.

Intermediate care facilities, HS §252.042.

University employee.

Mental health first aid training, HS §1001.201.

Unlawful.

Criminal law and procedure, Penal §1.07.

Unlicensed person.

Elderly persons, HR §161.091.

Urban area.

Parole and mandatory supervision, Gov §508.146.

Veteran, Gov §434.351.

Law enforcement officers, Occ §1701.265.

State health services department, HS §1001.221.

DEFINED TERMS —Cont'd**Veterans treatment court program**, Gov §124.001.**Violent offense.**

Bail, Crim Proc §17.032.

Vocational rehabilitation program.

Rehabilitation services, HR §111.002.

Volunteer.

Aging and disability services department, HR §161.075.

Elderly persons, HR §§161.113, 161.114.

Ward.

Court-ordered mental health services, HS §574.103.

Guardianship, Gov §155.001.

Ward with mental retardation.

Kidney donations, HS §613.001.

Widespread in scope.

Aging and disability services department, HR §161.089.

Intermediate care facilities, HS §§252.064, 252.065.

Wrongfully imprisoned person.

Correctional office on offenders with medical or mental impairments, HS §614.021.

DENTISTS AND DENTISTRY.**Intellectual or developmental disabilities, persons with.**

Residents, HS §592.052.

Mental health facilities.

Dental treatment, HS §551.041.

State board of dental examiners.Peer assistance programs.
Funding, HS §467.0041.**DENTON COUNTY.****Court at law**, Gov §25.0633.**Criminal court**, Gov §25.0634.**Statutory county courts**, Gov §25.0631.**DESTRUCTION OF RECORDS**, CPRC §§144.001 to 144.010.**Applicability of provisions**, CPRC §144.009.**Collateral effects of order**, CPRC §144.006.**Court records concerning orders**, CPRC §144.005.**Criminal law and procedure**, CPRC §144.008.**Definitions**, CPRC §144.001.**Disclosure of information subject to order**, CPRC §144.008.**Expiration of provisions**, CPRC §144.010.**Limitation on actions**, CPRC §144.007.**Misdemeanors**, CPRC §144.008.**DEVELOPMENTAL DISABILITIES, PERSONS WITH.**

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DISABILITIES, CHILDREN WITH.**Schools and education.**

Coordination of services, Educ §30.001.

DISABILITIES, PERSONS WITH.**Appropriate care setting**, Gov §531.0244.**Assistance grants**, TX ConstArt III §51-a.**Disasters.**

Task force, Gov §418.132.

Eligibility for services, TX ConstArt III §51-a.**Federal aid.**

Acceptance by stage agencies, TX ConstArt XVI §6.

Gifts.

Acceptance by stage agencies, TX ConstArt XVI §6.

Health and human services commission.

Appropriate care setting, Gov §531.0244.

DISABILITIES, PERSONS WITH —Cont'd**Person first respectful language initiative.**

Legislative findings, Gov §392.001.

Use of respectful language, Gov §392.002.

DISASTERS.**Communications following**, Gov §418.054.**Disabilities, persons with.**

Task force, Gov §418.132.

Elderly persons.

Task force, Gov §418.132.

DISCHARGE OF PATIENTS.**Community-based intellectual disability services.**

Joint discharge planning, HS §534.104.

Community-based mental health services.

Joint discharge planning, HS §534.0535.

Court-ordered mental health services, HS §§574.081 to 574.089.

Certificate of discharge, HS §574.087.

Continuing care plans, HS §574.081.

Inpatient mental health services, HS §574.082.

On expiration of court order, HS §574.085.

Prior to expiration of court order, HS §574.086.

Relief from disabilities, HS §574.088.

Return to facility, HS §574.083.

Revocation, HS §574.084.

Transportation plans, HS §574.089.

Crisis stabilization units, 25 TAC §§411.628 to 411.633.

Involuntary patients, 25 TAC §411.633.

Notice, 25 TAC §411.629.

Planning, 25 TAC §411.628.

Transfer of patients, 25 TAC §411.630.

Voluntary patients, 25 TAC §411.631.

Maximum length of stay, 25 TAC §411.632.

Institutions for mental diseases.

Discharge criteria, 25 TAC §419.377.

Intellectual or developmental disabilities, persons with, HS §§594.001 to 594.019.

Alternative services, HS §594.019.

Appeals, HS §594.017.

Applicability of provisions, HS §594.001.

Approval, HS §594.013.

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Habeas corpus.

Effect on, HS §594.003.

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Leaves of absence, HS §594.002.

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Committing court, HS §594.018.

Requests, HS §594.012.

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Voluntary mental health services.

Prior law.

Discharge of patients, HS §593.092.

Jail-based competency restoration program.

Preparation for, 25 TAC §416.89.

Local mental health authorities, 25 TAC §§412.201 to 412.208.

Absence for trial placement, 25 TAC §412.206.

Continuing care plans, 25 TAC §412.208.

Procedures upon, 25 TAC §412.207.

Absence from state mental health facility, 25 TAC §412.205.

Continuing care plans, 25 TAC §412.208.

From local mental health authority services, 25 TAC §412.221.

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Psychiatric hospitals, 25 TAC §§411.482 to 411.485.

- Children and minors, 25 TAC §411.483.
- Involuntary patients, 25 TAC §411.485.
- Notice, 25 TAC §411.483.
- Planning, 25 TAC §411.482.
- Voluntary patients requesting discharge, 25 TAC §411.484.

Voluntary mental health services, HS §572.004.

- Crisis stabilization units, 25 TAC §411.631.
- Maximum length of stay, 25 TAC §411.632.
- Intellectual or developmental disabilities, persons with.
 - Prior law.
 - Discharge of patients, HS §593.092.
- Local mental health authority facilities, 25 TAC §412.203.
- Psychiatric hospitals.
 - Voluntary patients requesting discharge, 25 TAC §411.484.

DISCRIMINATION.**Community homes for persons with disabilities.**

- Discrimination prohibited, HR §123.003.

Declaration for mental health treatment.

- Prohibitions, CPRC §137.006.

DISMISSAL OF CHARGES.**Incompetency to stand trial**, Crim Proc §46B.078.

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DISPUTE RESOLUTION.**Aging and disability services department.**

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Office for the prevention of developmental disabilities.

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Health and human services commission.

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VETERANS TREATMENT COURT PROGRAM, Gov §§124.001 to 124.007.

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Crisis stabilization units.

Admission and commitment of persons, 25 TAC §411.609.

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Discharge, HS §572.004.

Crisis stabilization units, 25 TAC §411.631.

Maximum length of stay, 25 TAC §411.632.

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Intellectual or developmental disabilities, persons with.

Prior law.

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