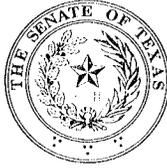


Senate Committee on Human Services

Interim Report

September, 2000

P.O. Box 12068 • Austin, Texas • 78711 • 512/463-0360



Texas Senate Committee on Human Services

76th Legislature

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Sept. 1, 2000

Senator Judith Zaffirini
Chair
Senator John Carona
Vice-Chair
Senator David Bernsen
Senator Mario Gallegos
Senator Chris Harris

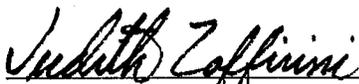
The Honorable
Rick Perry
Lt. Governor of Texas
P.O. Box 12068
Austin, TX 78711

Dear Governor Perry:

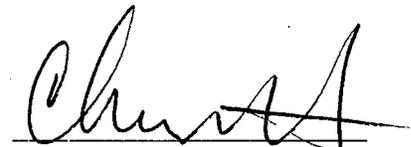
The Senate Committee on Human Services submits this report regarding our charges relating to long-term care; welfare reform; federal developments regarding long-term care and welfare reform; the implementation of Senate Bill 30 by Sen. Florence Shapiro, Senate Bill 374 by Sen. Judith Zaffirini and House Bill 2641 by Rep. Patricia Gray; and the impact of increased funding for caseworkers at the Department of Protective and Regulatory Services. We thank you for providing us this opportunity to address these important issues and to make recommendations that will benefit Texas.

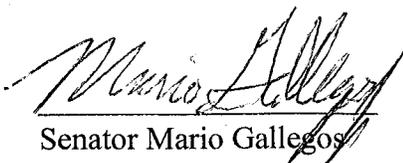
The recommendations in this report are based on extensive testimony and suggestions from state agencies, organizations and other interested persons. Our extended staff team worked hard to review thoroughly recommendations submitted to the Committee. Throughout our deliberations our priority has been to improve the health, safety and lives of all Texans.

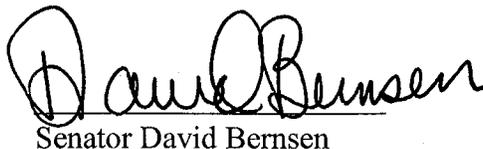
Respectfully submitted,


Senator Judith Zaffirini
Chair


Senator John Carona
Vice Chair


Senator Chris Harris


Senator Mario Gallegos


Senator David Bernsen

Copies of the 2000 interim report submitted to Lieutenant Governor Rick Perry by the Senate Committee on Human Services were distributed in compliance with the State Depository Law and are available for public use through the Texas State Publications Depository Program at the Texas State Library and other state depository libraries.

Texas Senate Committee on Human Services

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September, 2000

Contents

Executive Summary	ES-1
Introduction	1
Charge 1: Long-term Care	3
Charge 2: Welfare Reform	39
Charge 3: Federal Developments	61
Charge 4: Monitor the Implementation of Legislation, Funding and Child Abuse Prevention	75
Conclusion	99
Endnotes	101
Acknowledgments	111
Appendices	
Appendix A: Interim Charges	A-1
Appendix B: Agendas and Lists of Witnesses	B-1
Appendix C: Recommendations Adopted by the Committee	C-1
Appendix D: Draft Legislation Regarding Long-term Care	D-1
Appendix E: Draft Legislation Regarding Welfare Reform	E-1
Appendix F: Draft Legislation Regarding Federal Developments	F-1
Appendix G: Draft Legislation Regarding Monitoring the Implementation of Legislation, Funding and Child Abuse Prevention	G-1

Executive Summary

On Sept. 2, 1999, Lieutenant Governor Rick Perry issued the following interim charges to the Texas Senate Committee on Human Services (see Appendix A):

1. Examine the continuum of care and support options available to Texans in need of long-term care. The Committee shall evaluate the effectiveness of state regulatory efforts to ensure quality services as well as analyze the long-term care business climate. The Committee, working in cooperation with the Senate Finance Committee, shall analyze the current state funding method for Medicaid long-term care and develop alternatives that both ensure quality service and control costs to the state. The Committee shall also develop recommendations to ensure individual and family choice in long-term care decisions and encourage more private sector and community involvement in the delivery of long-term care.
2. Evaluate services provided to hardest-to-serve adult welfare recipients and services provided to children receiving welfare. The Committee shall assess the state's ability to avoid long-term dependency on welfare for both of these populations and develop additional strategies to encourage self-sufficiency and movement from welfare to work.
3. Monitor federal developments related to long-term care and welfare issues. In the event that significant developments occur, the Committee shall evaluate their impact on Texas.
4. Monitor the implementation of the following bills enacted during the 76th Legislature, Regular Session: Senate Bill 30, relating to parental notification before an abortion may be performed on certain minors; Senate Bill 374, relating to the provision of certain long-term care services, to the continuation and functions of the Texas Department on Aging, and to the eventual consolidation of the Texas Department of Human Services and the Texas Department on Aging into a new agency on aging and disability services; and House Bill 2641, relating to the continuation and functions of the Health and Human Services Commission. The Committee shall also monitor the effects of the additional resources provided to the Texas Department of Protective and Regulatory Services.

The Committee held an organizational meeting and briefing on Oct. 28, 1999. On April 19, 2000, and June 14, 2000, the Committee held public hearings related to the interim charges (see Appendix B). At its June meeting the Committee adopted recommendations to address its charges and related human service issues.

This report includes an overview of the analysis and background related to each charge, the recommendations adopted by the Committee (see Appendix C) and draft legislation necessary to facilitate the recommendations (see Appendices D - G).

Charge 1 - Long-term Care

Demographic projections unmistakably document the growing importance of long-term services and supports to Texans in the coming decades. The number of older Texans age 60 or older is projected to swell to 7.5 million by 2030, an increase of 176 percent from the year 2000.

Similarly, the number of Texans with a disability is projected to grow by 125 percent in the same period. These statistics highlight the critical importance of planning for the state's system of long-term services and supports.

Consumer and family choice

During the last decade home and community-based services in Texas have grown significantly in expenditures and numbers of Texans served. Care provided in institutional settings, such as nursing homes and intermediate care facilities for the mentally retarded (ICF-MRs), however, continues to consume the bulk of the state's long-term care resources. Demand for home and community-based services continues to grow. Waiting lists for some programs measure in the tens of thousands, with some new applicants facing wait times of up to nine years. Such long waiting lists have resulted in unacceptable delays for those most in need of services.

To address these concerns, the Committee adopted recommendations to increase funding for the full range of home and community-based programs; to implement agency procedures to assist consumers in making long-term care choices; to establish a housing assistance program for persons moving from institutional to community care settings; to provide three medications per month for clients of the Texas Department of Human Services (DHS) Frail Elderly program; to allow greater delegation of nursing tasks to home health aides; to allow presumptive eligibility to speed the initiation of home health services; and to provide preventive dental services for nursing home residents.

Children in institutions

The Committee placed particular emphasis on addressing the issue of children with special health care needs and other conditions that place them at risk of long-term institutionalization, a Committee concern since 1993. The Committee heard testimony regarding the continuing problem of children growing up in institutional settings and the lack of resources and planning procedures to ensure a family setting for every child. The Committee adopted recommendations to make permanency planning procedures consistent across state agencies; to revise the definition of child abandonment to include children abandoned in institutions; to allow children with special health care needs to qualify for Medicaid or equivalent health benefits; and to explore alternative care options for children with special health care needs.

Access to and coordination of long-term care services

The Committee heard testimony and received comments regarding the continuing problems encountered by consumers who attempt to access long-term care services at the local level. Most persons in need have multiple problems and require services from programs located in many different agencies. Such consumers are not likely to be aware of all the services they are eligible for and, in many cases, staff of one program are unaware of services provided by other programs. To address these issues the Committee adopted recommendations to establish a fund to support local initiatives to improve access to long-term care services; to expand the Community Alzheimer's Resource and Education (CARE) program at DHS; and to establish joint training for health and human service agency caseworkers.

Long-term care regulatory system and business climate

The Committee studied the current long-term care regulatory system for ensuring the health and safety of consumers and facility residents. The Committee adopted recommendations to

establish a temporary license for nursing home operators going through the change of ownership process; to require DHS to maintain a list of operators with excellent regulatory records; to allow DHS to conduct reviews of long-term care facility architectural plans; to establish administrative penalties for assisted living facilities that do not meet standards; to create an advisory committee to assist the state in planning its response to facilities in financial crisis; to expand the number and type of employees covered by criminal background check and Employee Misconduct Registry requirements and expedite access to such information; and to establish guidelines for the use of restraints, seclusions and emergency medications in residential facilities.

The long-term care business climate remains challenging for facility-based and community-based providers. Two hundred and seventy nine long-term care facilities are operating under Chapter 11 bankruptcy protection in Texas, most part of large corporate chains and representing nearly a quarter of the state's 1,154 nursing facilities. Testimony to the Committee and related research indicate a variety of reasons for the bankruptcies, chief among them extensive debt-financed expansion by many companies early in the 1990s and subsequent sharp declines in revenue as a result of cutbacks in federal Medicare reimbursement included in the Balanced Budget Act (BBA) of 1997.

Other factors affecting the business climate include low nursing home occupancy rates, wage pressure and high turnover of direct care staff, low Medicaid reimbursement rates and the rapidly increasing cost and decreasing availability of nursing facility liability insurance. The Committee adopted recommendations to allow for-profit nursing homes to purchase liability insurance from the state Joint Underwriting Association; to clarify the appropriate admissibility of state survey documents in civil lawsuits; to provide tuition assistance for nursing students who practice in long-term care settings and to increase funding for Medicaid reimbursement and Department of Human Services (DHS) audit staff.

Medicaid funding methods for long-term care

Committee staff, in collaboration with Senate Finance Committee staff, studied current Medicaid funding methodologies for nursing home and community care rates. In January, 2000, Senate Finance Committee chair Bill Ratliff and House Appropriations Committee chair Robert Junell directed the Health and Human Services Commission (HHSC) to adopt a new rate methodology that creates an incentive for providers that increase direct care staffing levels and wages, effective May 1, 2000. The Committee adopted recommendations calling for an evaluation of the effectiveness of the new methodology, a re-examination of the classification system for nursing home residents and a study of adult day care reimbursement methods.

Long-term care insurance

Two of every five Americans age 65 and older today will enter a nursing home, with more than 20 percent of those staying more than five years. Many more will need help with daily activities at home, in the community or in assisted living facilities. Most long-term care expenses are paid by persons until they deplete their savings and become eligible for Medicaid services, while Medicare traditionally does not pay for custodial care needs.

Long-term care insurance can provide coverage for a continuum of long-term care services, including home-based assistance, assisted living facilities and nursing facilities. Expanded use of long-term care insurance could reduce the financial burden on the state to care for growing

numbers of older Texans in need of services. At the same time, consumers need a full range of information regarding the types and costs of long-term care insurance to make the best choices. The Committee adopted recommendations to increase the availability of rate history information for consumers and to establish a franchise tax credit for employers who contribute to the cost of long-term care insurance for their employees.

Charge 2 - Welfare Reform

Impact of welfare reform changes on children

In spite of a strong economy, 1.5 million Texas children remain in poverty. Welfare legislation affects the health and development of these children. Changes in welfare policies and programs frequently are driven by adult-focused goals, despite the fact that children constitute two-thirds of the recipients of cash assistance. Young children who grow up in families with limited incomes face potential exposure to various environmental and biological risk factors, placing them at risk for poor outcomes.

Welfare changes that push children into low-quality childcare or that limit their access to health care can have significant harmful effects. In addition, welfare changes that deprive families of needed social and service supports can intensify the stresses that contribute to family disintegration. In contrast, welfare reform initiatives that enable families to obtain high-quality childcare and continued or improved access to primary health care can enhance future outcomes for Texas children.

Health coverage for the approximately 1.4 million uninsured children in Texas remains a tremendous gap in the state. Since January, 1996, enrollment for Medicaid, the joint state-federal health insurance program for the lowest-income families, has dropped 20 percent, despite the fact that welfare reform expanded eligibility for Medicaid during this period. Medicaid can serve as an important support to a family transitioning from welfare to work. Accordingly, the state should assess carefully why participation in the program has declined dramatically and should take steps to ensure that children who are eligible for Medicaid receive services.

In 1999, 59 percent of poor children in Texas received Food Stamps, down from 79 percent in 1994. Although a portion of the decline in Food Stamp enrollment can be attributed to eligibility restrictions imposed by federal welfare reform and an improved economy, research shows that as much as 60 percent of the decline is a result of confusion over eligibility requirements, welfare reform initiatives designed to deter people from applying for benefits and administrative barriers. Inadequate nutrition during early childhood can impede brain development and have lasting effects on a child's ability to learn, which results in lost knowledge, brainpower and productivity for Texas. Food Stamps provide an important support to families as they work toward self-sufficiency.

To address the needs of children who receive welfare, the Committee adopted recommendations to direct DHS to assess the needs of families under sanction for non-compliance and assist them to obtain services to meet those needs, as well as to develop a plan to serve the needs of children who receive Temporary Assistance for Needy Families (TANF). The Committee also adopted recommendations to streamline the application process and eliminate the assets test for children's Medicaid eligibility; to allow 12-month continuous eligibility for children's Medicaid to avoid

disruptions in service; to create a workgroup to revise DHS eligibility, application and review processes to make them more accessible and supportive of families; to revise the TANF vehicle resource limit to exclude the value of one vehicle when determining a family's assets; to utilize expanded federal categorical eligibility rules for Food Stamps; and to streamline the recertification process for Food Stamps by allowing phone-in recertification and requiring clients to make only one face-to-face DHS office interview annually.

Hardest-to-serve TANF recipients

Texas, like other states across the nation, has succeeded in moving significant portions of the welfare caseload into the labor market. As more and more job-ready welfare recipients become employed and leave welfare, the people who remain are likely to have the most barriers to work. These "hardest-to-serve" recipients may have a limited work or education history or have personal or family issues that make achieving economic self-sufficiency difficult. Some will have been previously exempt from participation in welfare-to-work programs, while others will have participated only briefly in the past or had difficulty making the transition from program activities to jobs.

Hardest-to-serve clients are defined as individuals or families who face multiple barriers to self-sufficiency. These unique barriers may include learning disabilities, physical or mental disabilities, chronic health problems, substance abuse problems, domestic violence, incapacitated family members, children with behavioral problems, criminal history, housing instability, lack of health insurance and lack of education, training or job experience.

To address the needs of the hardest-to-serve, the Committee adopted recommendations to define hardship exemption criteria; to develop a new screening and assessment process; to develop a DHS-Texas Workforce Commission (TWC) cross-agency plan to address employment barriers; and to require that local DHS, workforce board and TWC staff receive training in domestic violence issues. The Committee also adopted recommendations to increase financial incentives to local welfare and employment offices to assist the hardest-to-serve and place them in higher-wage jobs; to expand the Employment Retention and Advancement project at DHS; and to authorize DHS funding for nonresidential family violence centers.

Charge 3 - Federal Developments

The Olmstead case

On June 22, 1999, the United States Supreme Court ruled in *Olmstead v. L.C.* that unnecessary institutionalization of persons with disabilities in state institutions is unconstitutional under the Americans with Disabilities Act. The Court ruled that states are required to place persons with mental disabilities in community settings, rather than in institutions, when (1) the state's treatment professionals have determined that community placement is appropriate; (2) the transfer from institutional care to a less restrictive setting is not opposed by the affected individual; and (3) the placement can be reasonably accommodated, taking into account the resources available to the state and the needs of others with mental disabilities.

HHSC Commissioner Don Gilbert issued *Promoting Independence: A Plan to Expand Opportunities for Texans with Disabilities* on Jan. 12, 2000, pursuant to an executive order by Governor George W. Bush. The plan stated its intent to "ensure that the state moves deliberately

and decisively toward a system of services and supports that fosters independence and productivity and provides meaningful opportunities for people with disabilities to live in their home communities.” The report outlined plans for identification and community placement of institutionalized individuals residing in state schools, large Intermediate Care Facilities for the Mentally Retarded (ICF-MRs), state hospitals and nursing homes. An advisory committee began monthly meetings in February, 2000, to hear public testimony and make recommendations to HHSC regarding implementation of the plan.

The Committee adopted a recommendation to direct state agencies to ensure the appropriate care setting for persons with disabilities, including ensuring timely and appropriate transfer of consumers from institutional to community placements and preventing the unnecessary institutionalization of those in the community who are at imminent risk. The recommended legislation would require HHSC to report on the status of implementation to the Legislature and make recommendations for needed statutory and appropriation action.

TANF and state Maintenance of Effort (MOE) funding

The federal portion of TANF program funds is block granted to states at a fixed funding level through 2002, based on historical federal welfare spending in the state. To receive federal TANF funds, states must spend specified amounts of their own funds, known as maintenance-of-effort (MOE) spending, on activities that meet one of the purposes of the welfare law. The U.S. Department of Health and Human Services (HHS) issued final regulations for the TANF block grant in April, 1999. The final regulations clarify allowable spending and broaden the circumstances under which a state may aid families without that aid being tied to TANF restrictions, such as time limits or work requirements. TANF funds can be used for services to families who are no longer on TANF or who have never received TANF, and the state can set separate income eligibility guidelines for such services.

Federal law requires states to meet specific performance expectations, or work requirements, for participants in TWC’s Choices employment program. If Texas fails to meet its targeted work participation rate, it is penalized with a reduction in its federal funds and an increase in the amount of state MOE funds it is required to provide. The number of two-parent families receiving TANF is relatively small, yet failure to meet the work requirement goal for these families can result in penalties to the state. To avoid such penalties, the Committee adopted a recommendation that the state use TANF MOE funds, rather than federal funds, to provide assistance and services to two-parent families.

Waiver expiration issues

Federal rules required governors in states operating under welfare waivers to identify inconsistencies between their state laws and federal law, and to submit a list of those inconsistencies no later than Oct. 1, 1999. If a state did not cite an inconsistency, the federal provision would apply. Governor George W. Bush certified several inconsistencies with federal law to continue the state’s waiver. Work exemptions, work requirements, work participation rate calculations, work activities and sanctions for failure to comply with employment services requirements were all identified as inconsistent with federal law.

Governor Bush, however, did not certify state law regarding time limits as inconsistent with federal law, which imposes a five-year lifetime limit on TANF benefits. Committee records

indicate Rep. Harvey Hilderbran supported Governor Bush's decision. Other legislators, including Sen. Judith Zaffirini, Rep. Elliott Naishtat and Rep. Garnet Coleman, disagreed with his decision, noting that in 1995 the Legislature imposed a five-year "freeze out" for recipients of TANF benefits, rather than a lifetime limit. As a result of the Governor's decision, the five-year federal lifetime limit was applied retroactively to October, 1996 (when the federal welfare bill became law) for TANF clients enrolled in the Choices program. For other recipients of TANF the federal five-year clock began Oct. 1, 1999.

States that have received welfare waivers, such as Texas, may follow their waiver-based reforms instead of provisions in federal law that are inconsistent with the waiver, for the duration of the waiver. Texas' waiver expires in March, 2002, at which time state TANF policies must come into alignment with federal TANF policy, except in certain cases where the state may continue its own policies.

The Committee adopted a number of recommendations to bring the state into compliance with federal welfare law and to allow the state to continue certain policies that vary from federal law, where allowed. These included recommendations to increase penalties for large-household families that do not comply with child support requirements; to continue current sanctions on recipients with drug- or alcohol-related misdemeanor convictions; and to allow certain clients with non-trafficking drug felonies to receive assistance if they are in compliance with all judicial requirements and are in or have completed substance abuse treatment. The Committee adopted recommendations to require TANF recipients to participate in work activities within 24 months and to allow those clients with significant and continuing work barriers to receive assistance beyond 24 months. The Committee also adopted a recommendation to define allowable work activities for TANF recipients.

Transitional supports

With the flexibility of the final TANF regulations, Texas has the opportunity to develop a creative package of services that assists Texans receiving TANF in achieving self-sufficiency and permanently leaving public assistance. In addition, the state has additional opportunities to design programs that prevent at-risk, low-income persons from having to apply for TANF.

Accessible childcare remains a major barrier to seeking and holding a job for the working poor. Many jobs that are available have non-traditional hours, such as jobs in the service industry. The lack of availability of childcare providers during the evening hours and on weekends can prevent current welfare recipients from obtaining employment. Increasing the supply of quality childcare, including those providers who operate during non-traditional hours, can reduce barriers to employment faced by current and former TANF clients. Currently in Texas the only benefits received statewide when a person moves from TANF to the workforce are childcare and transitional Medicaid benefits. Some local workforce boards provide post-employment services such as intensive case management, transportation assistance and mentoring. The state has the opportunity to provide additional supports to help these persons remain on the job and prevent them from cycling back onto welfare.

To address these issues the Committee adopted recommendations to increase the supply and capacity of childcare services (especially infant care, weekends, shift hours and other services); to expand transitional supports for those leaving welfare for work; and to continue current state

law that provides an additional six months of transitional Medicaid benefits to recipients who volunteer for the Choices program in spite of their exempt status.

Charge 4 - Monitor the Implementation of Legislation, Funding and Child Abuse Prevention

Senate Bill 30

The 76th Legislature (1999) passed Senate Bill 30 by Sen. Florence Shapiro and Rep. Dianne Delisi, relating to parental notification before an abortion may be performed on certain minors. Prior to SB 30 a physician could perform an abortion on a minor without notifying her parent, managing conservator or guardian. SB 30 adds language to the Texas Family Code requiring notification of a parent, managing conservator or guardian 48 hours before a physician may perform an abortion on a minor. A minor alternately may seek judicial approval to have an abortion if certain conditions regarding the minor and her family situation are met.

As of August, 2000, the Texas Supreme Court had heard six appeals on parental notification cases. All cases were pursued by minors who had been denied permission to have an abortion without parental notification by the lower courts. The Court's rulings in each of the four appeals elaborated on the standards to be applied by lower courts in considering a minor's request for judicial approval of an abortion. A variety of concerns regarding SB 30 have been raised during the ongoing litigation. Due to these challenges, the Committee made no interim recommendations regarding SB 30, which the Senate Committee on Human Services reported favorably by a vote of 3-2 in 1999.

Senate Bill 374

Senate Bill 374 by Sen. Judith Zaffirini and Rep. Patricia Gray, 76th Legislative Session (1999), the long-term care Sunset bill, mandates the transfer of long-term care programs from the Texas Department of Health (TDH) and the Texas Rehabilitation Commission (TRC) to DHS in September, 1999; the creation of two interagency coordinating workgroups; increased Texas Department on Aging (TDoA) research and planning activities; support for local efforts to improve access to services; and other provisions, all of which were completed by September, 1999. Three related reports are due prior to the 77th Legislative Session. The bill also mandates transfer of the Medically Dependent Children's Program from TDH to DHS by September, 2001, and modifies the Children with Special Health Care Needs program at TDH, effective July 1, 2001. SB 374 calls for the transfer of TDoA to DHS on Sept. 1, 2003, with DHS to be renamed as the Texas Department on Aging and Disability Services and the creation of an advisory Aging Policy Council at the new agency.

The Committee adopted three recommendations related to SB 374's goals of improved access to and coordination of long-term care services. These recommendations are included in the Charge 1 - Long-term Care section of the report on pp. 19-20.

House Bill 2641

House Bill 2641 by Rep. Patricia Gray and Sen. J. E. "Buster" Brown, 76th Legislative Session (1999), the HHSC Sunset bill, increases the powers and authority granted to HHSC in certain areas and requires changes to the structure and function of the agency and to the accountability relationships between HHSC and the health and human services agencies. The bill defines the HHSC commissioner's responsibilities in the areas of the Medicaid program, information

services and use of federal funds and increases the commissioner's authority over health and human service agency directors.

Other major provisions relate to community-based services, information and referral, transportation, the Texas Integrated Eligibility Redesign System (TIERS), purchasing and contracting, mental health and substance abuse coordination, health regulatory programs, regional management, guardianship, transfer of the Empowerment Zone program, Medicaid managed care, coordination between TWC and DHS and a number of related reports to the Legislature and executive branch leadership.

Currently HHSC is permitted to submit documents to the federal government, such as Medicaid waiver applications or TANF state plan amendments, that have significant policy implications to the state and that could require the state to conform to federal requirements, without benefit of the legislative process. To facilitate appropriate legislative involvement in the submission of such documents by HHSC, the Committee adopted a recommendation to require HHSC to submit advance copies of official submissions to the federal government to the Senate Human Services, Senate Health Services, House Human Services and House Public Health Committees.

Protective and Regulatory Services (PRS)

Senate Bill 472 by Sen. Bill Ratliff and Rep. Robert Junell, 76th Legislative Session (1999), relating to making emergency general appropriations, appropriated \$8.9 million to PRS. An additional \$138.3 million was appropriated to PRS through House Bill 1, the General Appropriations Act of the 76th Legislature. Together these funds were used to reduce the number of cases per worker; to reduce the number of workers per supervisor; to upgrade salaries; to increase purchased services for families and children; to purchase needed computer equipment; to provide a rate increase for foster care providers; to improve at-risk prevention services; to expand the Adult Guardianship program; to improve child care licensing services; and to upgrade overall PRS automation support.

Access to medical care is a major problem for youth aging out of the foster care system. These young people often lose their Medicaid coverage when they age out of foster care and have a difficult time obtaining necessary medication and medical services. Children in need of adoptive families, particularly those with special health care needs, also face a lack of access to medical services. To address these issues, the Committee adopted recommendations to provide Medicaid or other health care coverage for former foster care youth and to increase the subsidy provided to families who adopt children with special needs.

PRS is responsible for protecting the health, safety and well being of children who attend or reside in regulated childcare facilities and homes. The Committee received suggestions from PRS, advocates and providers regarding a wide range of regulatory issues and adopted recommendations to increase unannounced inspections of child care facilities; to include registered drop-in day care centers in the training requirements for child care providers; to add child abuse prevention information to child abuse reporting posters; and to expand PRS authority to obtain criminal background information on persons who have contact with children in PRS foster care.

The Committee adopted additional recommendations to enhance coordination among agencies that provide services to children ages zero to three; to implement a statewide infant mortality prevention program; to require teacher training on recognition of child abuse and neglect; and to include child abuse prevention information in the state's education curriculum for students. Finally, the Committee adopted recommendations to establish a statewide PRS respite care program; to expand home visiting programs; and to increase funding for drug testing of certain Children's Protective Services clients.

Introduction

On Sept. 2, 1999, Lieutenant Governor Rick Perry issued the following interim charges to the Texas Senate Committee on Human Services (see Appendix A):

1. Examine the continuum of care and support options available to Texans in need of long-term care. The Committee shall evaluate the effectiveness of state regulatory efforts to ensure quality services as well as analyze the long-term care business climate. The Committee, working in cooperation with the Senate Finance Committee, shall analyze the current state funding method for Medicaid long-term care and develop alternatives that both ensure quality service and control costs to the state. The Committee shall also develop recommendations to ensure individual and family choice in long-term care decisions and encourage more private sector and community involvement in the delivery of long-term care.
2. Evaluate services provided to hardest-to-serve adult welfare recipients and services provided to children receiving welfare. The Committee shall assess the state's ability to avoid long-term dependency on welfare for both of these populations and develop additional strategies to encourage self-sufficiency and movement from welfare to work.
3. Monitor federal developments related to long-term care and welfare issues. In the event that significant developments occur, the Committee shall evaluate their impact on Texas.
4. Monitor the implementation of the following bills enacted during the 76th Legislature, Regular Session: Senate Bill 30, relating to parental notification before an abortion may be performed on certain minors; Senate Bill 374, relating to the provision of certain long-term care services, to the continuation and functions of the Texas Department on Aging, and to the eventual consolidation of the Texas Department of Human Services and the Texas Department on Aging into a new agency on aging and disability services; and House Bill 2641, relating to the continuation and functions of the Health and Human Services Commission. The Committee shall also monitor the effects of the additional resources provided to the Texas Department of Protective and Regulatory Services.

The Committee held an organizational meeting and briefing on Oct. 28, 1999, and on April 19, 2000, and June 14, 2000, held public hearings related to the interim charges (see Appendix B). Additionally, Committee staff and members' staff representatives conducted 14 informal stakeholder meetings between January and April, 2000, to receive suggestions and proposals related to the charges. The meetings were attended by representatives of 14 legislative offices, 16 state agencies and 53 other organizations, including advocates, provider associations and local governments. At its June meeting the Committee adopted 67 of the 115 recommendations submitted to address the interim charges.

This report includes an overview of the analysis and background related to each charge, the recommendations adopted by the Committee (see Appendix C) and related draft legislation necessary to facilitate the recommendations (see Appendices D - G). Many of the recommendations will require

fiscal appropriations to be implemented. The Committee provides these recommendations to assist the 77th Legislature as funding priorities are identified during the appropriations process.

Charge 1: Long-term Care

CHARGE 1: Examine the continuum of care and support options available to Texans in need of long-term care. The Committee shall evaluate the effectiveness of state regulatory efforts to ensure quality services as well as analyze the long-term care business climate.

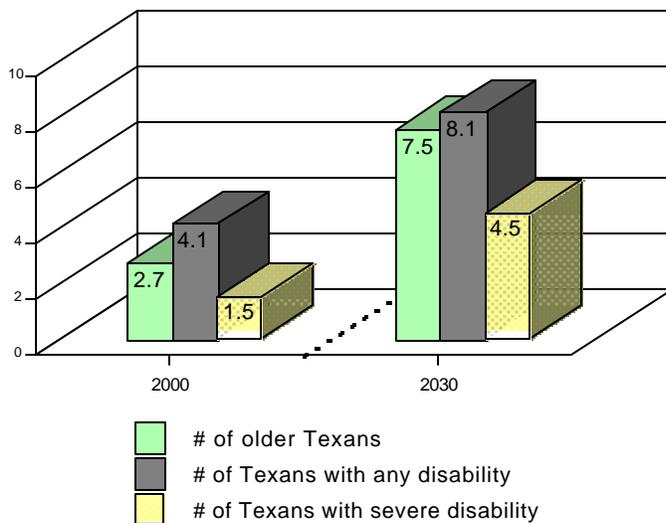
The Committee, working in cooperation with the Senate Finance Committee, shall analyze the current state funding method for Medicaid long-term care and develop alternatives that both ensure quality service and control costs to the state. The Committee shall also develop recommendations to ensure individual and family choice in long-term care decisions and encourage more private sector and community involvement in the delivery of long-term care.

Overview

Demographics

Demographic projections unmistakably document the growing importance of long-term services and support to Texans in the coming decades. The Texas Department on Aging (TDoA) reports that there are more than 2.7 million Texans age 60 years or older in 2000, representing 13.4 percent of the total population. The number of older Texans is expected to grow dramatically in the coming decades. The population age 60 or older is projected to swell to 7.5 million by 2030, an increase of 176 percent from the year 2000, and will represent 22 percent of the total state population.¹

Fig. 1- Projected Aging and Disability Growth in Texas



Source: TDoA and HHSC

The Health and Human Services Commission (HHSC) developed projections regarding growth in the number of Texans with moderate and severe disabilities, using national disability data rates and Texas population growth estimates. HHSC projects that the number of Texans with any disability (i.e., those with a *limitation* in performing one or more activity of daily living, such as bathing, dressing, etc.) will grow from approximately 4.1 million in 2000 to 8.1 million by 2030, a 97 percent increase. The number of Texans with a severe disability (i.e. those *unable* to perform an activity of daily living) will grow from approximately 1.9 million in 2000 to 4.3 million in 2030, a 119 percent increase (see Fig. 1).²

Medicaid is the jointly funded state-federal program that funds health insurance and long-term care services for low-income persons and those with disabilities. Based on population changes alone, overall Medicaid spending in Texas is estimated to grow from \$7.9 billion in 2000 to \$14.4 billion by 2030, an 82 percent increase.³

Although accurate Medicaid spending projections are difficult to project, HHSC reports that 13 percent of the Fiscal Year (FY) 1998 Medicaid population were age 65 or older (and did not have disabilities), but accounted for 33 percent of total Medicaid expenditures. HHSC also reports that 12 percent of the Medicaid population were blind or had disabilities, but accounted for 35 percent of total expenditures. Assuming similar spending proportions in 2030, Medicaid recipients over age 65 and those with disabilities could account for \$9.79 billion in Medicaid expenditures, including a possible state portion of \$3.72 billion or more.

Long-term services/long-term care

"Long-term care services" are defined in Texas statute as "the provision of personal care and assistance related to health and social services given episodically or over a sustained period to assist individuals of all ages and their families to achieve the highest level of functioning possible, regardless of the setting in which the assistance is given."⁴

Four Texas state agencies currently provide long-term care services:

Texas Department on Aging (TDoA)

All of TDoA's programs and services are available to persons who are 60 years of age or older; however, federal law mandates that priority be given to those with the greatest social and economic need. Services are provided through contracts with 28 local Area Agencies on Aging (AAAs). These entities contract with local providers to deliver services through the following programs:

- *Access and Assistance Services*—Information, case management, referrals and assistance by or on behalf of older persons;
- *Nutrition Program*—Home-delivered meals, congregate meals and nutrition counseling; and
- *Independent and Productive Living*—Homemaker, personal assistance, transportation, home repair, senior centers and volunteer programs.

Texas Department of Human Services (DHS)

DHS provides long-term care services to low-income elderly and persons with disabilities who meet functional criteria. The largest percentage of the agency's client population is over the age of 60. DHS contracts with community care providers, residential facilities and nursing homes across the state to deliver services through the following programs:

- *Community-Based Alternatives*—Medicaid waiver program providing home and community based services to adults who are aged and have disabilities as an alternative to nursing home care;
- *Day Activity and Health Services*—Adult day care center services to clients residing in the community;

- *Deaf-Blind Multiple Disabilities Program*—Home and community-based services to persons who are deaf and blind with multiple disabilities as an alternative to Intermediate Care Facility for Mentally Retarded/Related Condition (ICF-MR) placement;
- *Frail Elderly Program*—Medicaid-funded personal care (including help with tasks such as bathing, dressing, eating, etc.) and attendant services (including help with housekeeping, errands, transportation, etc.) to certain disabled elderly persons (no other Medicaid services are provided in this program);
- *In-Home Family Support Services*—Direct grant benefits to persons with physical disabilities or their families to purchase services enabling clients to remain in their own home;
- *Community Care*—Non-Medicaid-funded home and community-based services to aged and disabled adults;
- *Primary Home Care*—Personal care and attendant services;
- *Community Living Assistance and Support Services (CLASS)*—Medicaid waiver program providing home and community-based services to persons with autism, pervasive developmental disorder or other criteria, as an alternative to ICF-MR placement;
- *Social Services Block Grant*—Home and community based services to non-Medicaid-eligible aged and disabled adults;
- *Integrated Service Delivery Systems*—Includes Program for All-inclusive Care for the Elderly (PACE) project providing community-based services for frail elderly in the El Paso area and the STAR+PLUS Medicaid pilot project integrating delivery of acute and long-term care services through a managed care system in the Houston area; and
- *Nursing Facility and Hospice care*—Nursing facility care to functionally eligible clients.

Texas Department of Health (TDH)

TDH delivers long-term care services to children through the following programs:

- *Medically Dependent Children's Program (MDCP)*—Medicaid waiver program providing respite, adjunct supports, home modifications, adaptive aids and other services to children with special health care needs as an alternative to nursing home placement;

- *Children with Special Health Care Needs (CSHCN)*—Non-Medicaid medical and related services to children with special health care needs who meet financial and medical eligibility criteria; and
- *Texas Health Steps-Comprehensive Care Program (THSteps-CCP)*—Medicaid services to children providing medically necessary and appropriate services, including physical, occupational and speech therapies, medical equipment, supplies and private duty nursing.

Texas Department of Mental Health and Mental Retardation (MHMR)

MHMR provides services to persons with mental illness and mental retardation through the following programs:

- *Assessment and Coordination (MR/RC)*—Initial screening of persons requesting services, determination of eligibility, initial assessment and ongoing coordination of services to persons with mental retardation, autism, pervasive developmental disorder or other criteria;
- *Assessment and Coordination (MI)*—Initial screening of persons requesting services, determination of eligibility, initial assessment and ongoing coordination of services to persons with severe mental illness;
- *Children’s Mental Health Services*—Assessment, medication-related services, crisis resolution services, day treatment, family services and other services to children with serious emotional disturbance and their families;
- *Home and Community Based Services (HCS)*—Medicaid waiver program providing homemaker services, habilitation, case management and other services to persons with mental retardation in the person’s own or family home or in small residential living homes;
- *In-Home and Family Support (MH)*—Small financial grants to persons with mental disabilities so that they may live independently or at home with their families;
- *MH Training and Support* —Provides persons the tools necessary to function as independently as possible in the community, including Assertive Community Treatment, Supported Housing, Supported Employment, skills training and skills maintenance;
- *Mental Health Treatment*—Medication-related services, counseling, acute day treatment, intensive crisis residential services and other services for persons with severe mental illness;
- *MR Training and Support*—Specific training opportunities as well as support for community living;

- *Vocational Services (MR)*—Employment-related services and supports targeted at persons with mental retardation, autism, pervasive developmental disorder or other criteria;
- *Community Hospitals*—Inpatient and outpatient services provided at four psychiatric hospitals (Houston, Galveston, Lubbock and El Paso) located in communities distant from state hospitals;
- *Intermediate Care Facility - Mental Retardation (ICF-MR/RC) Program*—Residential and habilitation services to persons with mental retardation and/or related conditions, including 24-hour supervision and active treatment appropriate to the needs of the consumer;
- *Mental Health Campus-Based Services*—State psychiatric facilities providing inpatient care to persons with mental illness (seven state hospitals, one state center and the Waco Center for Youth);
- *Mental Retardation Campus-Based Services*—Eleven state schools and two state centers providing 24-hour residential services for persons with mental retardation or related conditions who are medically fragile, severely physically impaired or have severe behavior problems and cannot be served in the community; and
- *Non-Medicaid Residential*—Residential and habilitation services to non-Medicaid eligible persons with mental retardation and/or related conditions, including 24-hour supervision and active treatment appropriate to the needs of the consumer.

Ensuring Consumer and Family Choice

Consumer and family choice of long-term care services and supports is influenced greatly by the availability of programs to choose from; availability, in turn, is dependent upon program funding. The bulk of publicly funded long-term care services in Texas are funded through the Medicaid program.

The Texas Medicaid program includes both *entitlement services* and *waiver program services*. Entitlement services are those services listed in the Medicaid State Plan that must be provided to all eligible persons who seek them. These include long-term care-related services such as home health care, personal assistance services, nursing facility care, ICF-MR services and day activity and health services (also known as adult day care).⁵

Federal law allows states to apply to the federal Health Care Financing Administration (HCFA) for permission to depart from certain Medicaid requirements. Home and Community-Based Services - 1915(c) waivers, for instance, allow states to provide community-based services to persons who otherwise would require care in an institution, such as a nursing home, ICF-MR or hospital, enabling them to remain in their own home or in a community-based setting. Because waiver services are not entitlements, the state is allowed to cap their funding levels.⁶

Waiting lists

If the demand for waiver programs exceeds the number of appropriated “slots,” a waiting list is created. Waiting lists for Texas waiver programs are very long, as indicated in Table 1. Although legislation passed by the 76th Legislature directs the state to consolidate waiting list information (see HB 2148 below), the state currently has no way of knowing how many of the same persons are listed on multiple waiting lists. Wait times vary with funding level and the typical length of time persons utilize services. For instance, the CBA waiting list turns over relatively quickly, despite its size, in part because many CBA clients are extremely ill and near the end of life. Persons in the CLASS or HCS programs, on the other hand, frequently are young and may continue to need the waiver services for decades.

Table 1 - Waiver Program Waiting Lists			
Waiver Program	Agency	# on Waiting List	Approx. Expected Wait Time
Community-Based Alternatives (CBA)	DHS	21,546	Seven to eight months
Community Living Assistance and Support Services (CLASS)	DHS	4,896	Four years
Deaf-Blind Multiple Disabilities Program (DBMD)	DHS	33	One to two years
Home and Community-based Services (HCS)	MHMR	12,971	Seven years
Medically Dependent Children Program (MDCP)	TDH	1,443	Nine years
Source: DHS, MHMR and TDH (Notes: Wait times vary by region, not all persons on waiting lists are eligible and wait times may be reduced as appropriations are increased.)			

Other long-term care services are funded by sources other than the Medicaid program, such as federal Title XX Social Service Block Grant funds, Title V children’s services or state general revenue. Limited funding for these services also can generate lengthy waiting lists.

Disproportionate institutional spending

Although state spending for home and community-based long-term care services grew considerably during the 1990s, institutional services still took a disproportionate share of the state’s long-term care budget, reflecting the intensive level of care required for most residents of these institutions and the fact that many state institutions have declined in census and carry high fixed costs. According to the Legislative Budget Board, in FY 1990 nursing facility clients and community care clients each comprised about 50 percent of DHS’s long-term care caseload, yet nursing facility costs represented about 80 percent of the department’s long-term care spending. By FY 2001 nursing facility clients will

represent only 35 percent of all DHS long-term care clients, but still will consume 63 percent of the approximately \$2.5 billion long-term care budget.⁷

A similar asymmetry is present in MHMR funding for mental retardation services. For FY 2000, residents of state schools and other ICF-MRs are expected to number just over 13,000, representing one-half of all mental retardation consumers. Spending for this group, however, will amount to about 63 percent of the \$1.1 billion budget for MR services.⁸

Efforts of the 76th Legislature (1999) to increase consumer and family choice

Voucher expansion

Senate Bill 1586 by Sen. Judith Zaffirini and Rep. Harvey Hilderbran, relating to the establishment of a program in which vouchers are used for payment of services provided to persons with disabilities, gives consumers more control and responsibility in coordinating their services. These services may be state-funded or Medicaid-funded and include personal assistance services, respite care services, supported employment services and the provision of durable medical equipment and assistive technology.

Waiver consolidation

House Bill 2148 by Rep. Glen Maxey and Sen. Mike Moncrief, relating to certain federally funded long-term care Medicaid programs, establishes a pilot program to test consolidation of the state's 1915(c) waiver programs and requires uniform administration of waiver programs, including a single computerized waiting list.

MHMR Sunset Bill

Senate Bill 358 by Sen. Frank Madla and Rep. Patricia Gray, relating to the continuation and functions of the Texas Department of Mental Health and Mental Retardation and to certain facilities that provide care for persons with mental illness, includes provisions directing MHMR to:

- Offer a choice of state school or group home placement option to eligible applicants for 24-hour mental retardation care and, if no vacancy exists, allow applicants to be placed on a waiting list; and
- Establish criteria for the use of campus-based facilities to ensure availability of a continuum of care.

Recommendations

- 1. Recommend that the Legislature increase funding for the full range of home and community-based services, including adult day care, home health services, respite services, attendant care and other services.*

These services play an essential role in allowing the elderly and persons with disabilities to remain in their homes and communities, postponing or avoiding totally the need for institutionalization. Funding for a full continuum of long-term services and supports will enable Texas to meet the increasing needs of an aging population base in the coming decades.

2. ***Recommend that the Legislature require agencies to implement procedures to ensure that persons with disabilities (or their parent/guardians) residing in institutions or at risk of such a placement have access to information about the full range of care options and assistance in utilizing those options if they choose to do so.***

A person's desire to be served at home, or a family's desire to care for a child with disabilities at home, should be recognized and encouraged by the state. Examples of such procedures include MHMR's local Mental Retardation Authority (MRA) role involved in state school discharges. MRA's staff evaluate a client's readiness for discharge and then work toward making plans for the discharge and locating aftercare services. Another example is a proposed collaborative effort of Advocacy, Incorporated, the Texas Council for Developmental Disabilities and the Texas University Affiliated Program to assist persons living in state schools and nursing homes understand their choices and options about where to live. Known as the Texas Community Integration Collaborative, the project is aimed at increasing access to community support services for persons with disabilities that will result in more people moving into the community from facilities in Texas.⁹

3. ***Expand housing options for the elderly and persons with disabilities by establishing a housing vouchers program at HHSC for those who move from institutional to community care settings.***

Housing subsidies would be targeted for those who move into the community as part of the state's effort to reduce unnecessary institutionalization. Use of rental subsidies would make existing but expensive housing in a community affordable to persons living on disability income. Vouchers would enable the use of a variety of existing integrated housing options in the community and could be used for rent, to support home ownership, make architectural modifications, etc.

4. ***Modify the Primary Home Care (PHC) and Frail Elderly programs to:***

- Allow three medications per month for Frail Elderly program clients;***
- Allow greater nurse delegation of tasks to home health aides; and***
- Allow presumptive eligibility to speed the initiation of services for new clients.***

Medication coverage would address a critical gap in needed care for Frail Elderly program clients. DHS estimates that 20 percent of CBA clients could be served with attendant care services under the much less expensive Frail Elderly program if a three-prescription per month benefit were provided.

Delegation of nursing tasks such as medication administration or tube feeding, under the supervision of a registered nurse, would reduce the number of consumers having to utilize more expensive waiver or institutional services solely to receive such services. Such delegation, already allowed in the CBA program, can prevent further deterioration of clients' medical conditions and functional levels, and thus prevent costly hospitalization or institutional care.

Presumptive eligibility would allow home health services to begin while a client's Medicaid eligibility was still being confirmed. If eligibility ultimately was denied, DHS would reimburse the cost of services provided during the eligibility determination period. Presumptive eligibility is available to providers in the Project CHOICE pilot program at HHSC and has speeded the delivery of needed services to consumers in that program.

5. *Include routine preventive dental services to nursing home residents as basic services under the Texas Medicaid program, contingent upon federal waiver approval.*

Dental care in nursing homes reaches only a fraction of those in need. According to a 1998 DHS sample of 3,500 nursing home residents, only 826 (24 percent) received any dental services.¹⁰ Little attempt is made to deal with dental problems until residents are in pain and/or unable to eat. Patients with Alzheimer's dementia or who are otherwise unable to communicate often undergo great discomfort or incur dangerous weight loss before dental problems are identified. The care eventually received is far more expensive than preventive care.

Children in Institutions

In December, 1993, Lieutenant Governor Bob Bullock responded to an *Austin American-Statesman* four-part series regarding medically fragile children living in Texas nursing homes by directing the Senate Committee on Health and Human Services to investigate the problems of children living in nursing homes.

In response, the HHS Committee adopted a mission statement regarding medically fragile children, i.e., children who suffer from serious, chronic physical and/or mental illnesses who require constant medical care. The statement emphasizes that every child in Texas is entitled to individualized, appropriate, loving care:

“We believe it is our responsibility to assure that the policies of this state support families and ensure the availability of choices and options to meet the unique needs of each child and each family;

We want to ensure that the policies of this state support and preserve families through the availability of creative, flexible in-home and support services. We want to take all necessary actions to assess what is available, to fill the gaps that are identified and eliminate barriers to services that are in conflict with family unity; and

We want to ensure that safe, quality, nurturing out-of-home alternatives are available when they are necessary.

We therefore direct the appropriate state agencies to collaborate in developing an efficient comprehensive service delivery system with a single focus of responsibility, consumer-oriented access and an emphasis on quality of life provided for the children and their families.”¹¹

Number of Children in Nursing Facilities and Other Institutions

During the Oct. 28, 1999, Committee meeting, senators raised questions about Texas' progress in moving children out of nursing homes. The Committee unanimously adopted a motion to add the issue of children in nursing facilities to the Lieutenant Governor's interim charge.

As of February, 2000, approximately 200 children occupied Medicaid-funded beds in 60 Texas nursing homes. Although nursing home populations fluctuate on a daily basis, this figure represents a 42 percent drop from the 346 children who resided in nursing homes in 1993.¹²

Although the numbers have decreased over the last few years, children still are being placed in nursing homes. The Committee received information indicating that families lack adequate information regarding options for caring for their children at home and that there is a lack of available resources to do so. State agencies continue to make concerted efforts to prevent the placement of children in institutions. One example is the Medically Dependent Children's Program (MDCP) administered by TDH. MDCP provides services such as respite care, home modifications and adaptive aids for families with medically involved children and young adults as a cost-effective alternative to providing for their care in a nursing facility. Since 1984, MDCP has worked to move 10 children from nursing homes, and 1,802 children have been diverted from possible institutionalization, to community settings. "While development of alternate family options requires time, dedication and financial resources, the cost of caring for a child with disabilities is significantly less when that care is provided in a family setting as opposed to a congregate facility."¹³

Some Texas children reside in state mental retardation facilities or community-based intermediate care facilities (ICF-MRs). As with nursing homes, these numbers fluctuate on a daily basis and are based on Medicaid certified beds. As of May, 2000, there were 302 children under 21 years of age in state mental retardation facilities and 732 children living in community-based ICF-MR facilities.¹⁴

Permanency Planning

HHSC defines permanency planning as "a process undertaken by public and private agencies on behalf of children with developmental disabilities who are at risk of placement or in placement with the explicit goal of securing a permanent living arrangement that enhances the child's growth and development. Permanency planning for children with developmental disabilities is directed toward securing:

- a consistent, nurturing environment;
- an enduring, positive adult relationship; and
- a specific person who will be an advocate for the child into adulthood."¹⁵

Legislative permanency planning efforts

- House Bill 885 by Rep. Glen Maxey and Sen. Judith Zaffirini, 75th Legislative Session (1997), relating to required planning for the permanent placement of children not residing

with their families, required permanency plans for all children either currently in institutional care or at risk of being placed in institutional care.

- Senate Bill 118 by Sen. Judith Zaffirini and Rep. Elliott Naishtat, 75th Legislative Session (1997), relating to placement of children in long-term care institutions, required initial placement of a child in a long-term care facility to be temporary and reiterated the requirements of HB 885 by requiring agencies to ensure that permanency planning is provided for each child residing in an institution in this state or for whom institutional care is sought.
- House Bill 2873 by Rep. Glen Maxey and Sen. Judith Zaffirini, 76th Legislative Session (1999), relating to the operation of Medicaid waiver programs for children with disabilities or special health care needs, specified a core set of tasks to be carried out by agencies, including permanency planning to identify and establish the family support necessary to maintain a child's permanent living arrangement with a family, coordination of services, provision of a broad array of service options and establishment of an advisory committee to provide recommendations on the delivery of children's waiver services.

State agency permanency planning efforts

HHSC is heading up agency efforts to implement permanency planning procedures that include the following initiatives.

- Community Resource Coordination Groups (CRCGs) are defined as “local interagency groups composed of representatives from public and private agencies that develop service plans for children and adolescents whose needs can be met only through interagency coordination and cooperation.”¹⁶
- The Families Are Valued project is a pilot designed to support the creation of policies and practices directed to keeping families and their children with disabilities together.
- A permanency planning training curriculum “No Place Like Home” is designed to train permanency planning trainers at state agencies across Texas. To date there are 126 certified trainers and an estimated 5,000 participants have received the training.
- The “You Belong” brochure is designed to help introduce the philosophy of permanency planning to parents, providers and other community stakeholders.
- An interagency workgroup was formed to work toward standardized permanency planning implementation, quality assurance and monitoring.

Barriers to effective permanency planning

Despite these efforts to move forward, several obstacles to effective planning remain:

- *Lack of resources*
The ability to perform effective permanency planning is limited by the availability of

placement options. Available and appropriate foster care, adoption and other alternative care options are limited for children with special needs.

- *Problems with CRCG planning process*

When CRCGs assist with permanency planning, as directed by SB 118, it is unclear which agency is to maintain the plan. Because the state only provides technical support to the local CRCGs, there is no authority, resources or oversight to the process.

- *Lack of timely placement notification*

When hospitals discharge a child directly to a nursing home, they frequently do not notify DHS of the placement (currently there is no legal requirement for them to do so). As a result, DHS cannot ensure that a range of options is provided to the consumer or that the local CRCG is notified appropriately.

- *Lack of parental involvement*

When a child is placed, families often lose their connection with resource coordinators who facilitate access to community services. In fact, some families lose contact with their child completely. In 1994 HHSC tried to contact the parents of 180 children in nursing homes and were unable to make contact with 93 families.¹⁷

C *Standardization*

There is little consistency across state agencies in regard to permanency planning. Agencies differ widely in procedures, rules and implementation of permanency planning for children with disabilities.

Alternatives to Institutions

Other states have made significant progress with both permanency planning and providing a home for all children. For example, advocates report that “the state of Michigan has been very successful in developing a system of supports and services for children with disabilities. Their system no longer includes the option to institutionalize children with disabilities. They developed a specialized system of foster care as well as a comprehensive system of permanency planning.”¹⁸ In Michigan’s foster care system for children with disabilities, biological families retain full parental rights, as opposed to a protective and regulatory foster care system. In addition to the typical responsibilities of foster care, these foster families are paraprofessionals required to carry out specialized “skill acquisition” plans for the children placed in their homes. The foster parents must work to help the children achieve objectives that are part of a defined service contract.¹⁹

Recommendations

- 6. Recommend that the Legislature require HHS agencies to make permanency planning procedures more consistent across agencies and facilities for children in institutions or considering placement in an institution.**

This legislation supports prior legislative efforts aimed at reducing unnecessary institutionalization of children. It promotes statewide planning and consistency and encourages family care settings for every child.

- 7. Recommend that the Legislature revise the definition of abandonment to include cases where a family has placed a child in an institution, but has no further contact with the child.**

This legislation would allow the state to appoint a guardian in cases of child abandonment or at parental request. This would emphasize parental responsibility for children in institutions and would provide a disincentive to this type of neglect.

- 8. Recommend that the Legislature allow children with special health care needs, who would otherwise qualify for nursing home services, to qualify for Medicaid or equivalent benefits, to allow families to provide home care.**

This legislation would reduce the need for families to place children in institutions by increasing access to services for children with severe medical disabilities. Many families have insurance that does not cover the cost of a child with special needs or they earn too much money to qualify for Medicaid. Allowing these families to have access to Medicaid or equivalent benefits would prevent them from having to quit work to become Medicaid eligible to meet the needs of their child. Access to such benefits also would reduce the 9,612 children currently on Medicaid waiver wait-lists.²⁰

The TEFRA Option

The federal Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) allows states the option to give families access to Medicaid services for coverage of disabled children in the home, if they would qualify for Medicaid as residents in an institution (nursing home, ICF-MR, hospital). The care for the child in the community must not be higher than the estimated Medicaid cost of appropriate institutional care. Medicaid access is important for these children because the Medicaid package of covered benefits is the only care benefit that ensures access to the medically necessary services that a child's medical condition requires.

Source: 42 CFR § 435.225

- 9. Recommend that the Legislature direct HHSC to investigate “shared parenting,” “extend-a-family” and “friends of the family” concepts in other states’ systems of foster care for children with special health care needs outside of protective and regulatory agencies.**

Other states have different systems of foster care for children with special health care needs. Such services would reduce the placement of children in institutions and allow children to live in family settings. Options include using specialized foster home placements instead of nursing homes or using a dedicated “surrogate” family for extended respite care. Shared parenting involves a formal arrangement in which two families share the responsibility of caring for a person with a disability, allowing the biological family to keep the family member at home at least part of the time.

Access And Coordination Issues

The Committee heard testimony regarding the continuing problems encountered by consumers who attempt to access long-term care services at the local level. Most persons in need have multiple problems and require services from programs located in many different agencies. Such a consumer is not likely to be aware of all the services he or she is eligible for and, in many cases, staff of one program are unaware of services provided by other programs.

Previous Access and Coordination Efforts

Since 1978 more than 25 legislative or agency studies have focused on the problems of fragmentation and duplication in the state's long-term care system. These include:

- **HHSC Long-Term Care Task Force (1994)**

The task force recommended a single point of entry to the long-term care service system, eligibility based on functional needs, coordinated case management, increased local control of access and the creation of a single long-term care agency.

- **C Long-Term Care Legislative Oversight Committee (1998)**

The Committee's recommendations included provisions to strengthen the nursing facility regulatory system, improve nurse aide training and registration and create a single long-term care agency to deliver services with a single point of entry for those seeking services.

- **Senate Interim Committee on Home Health and Assisted Living Facilities (1998)**

The Committee's recommendations included transfer of home health services regulation from TDH to DHS, increased regulation of assisted living facilities and the creation of a single long-term care agency.

- **Sunset Advisory Committee (1998-1999)**

The Sunset Advisory Committee (SAC) staff report recommended the creation of a new long-term care agency over a six-year period, consolidating programs at DHS, MHMR, TDH, TDoA and TRC. In January, 1999, following extensive public testimony, the members of the SAC voted to adopt a modified recommendation that excluded MHMR services from the proposed long-term care consolidation.

- **C Senate Bill 374 (1999)**

Senate Bill 374 by Sen. Judith Zaffirini and Rep. Patricia Gray, the long-term care Sunset bill, transferred long-term care programs from TDH and TRC to DHS in 1999, and transfers TDoA to DHS in 2003, renaming it the Department of Aging and Disability Services and establishing an Aging Policy Council to focus on aging research and policy development.

SB 374 also requires HHSC to assist communities, at their request, in developing comprehensive, community-based support and service delivery systems for long-term care services. HHSC is to provide resources and assistance to enable the community to identify and overcome barriers to comprehensive community support systems, develop systems of

blended funds and develop local systems of access and assistance to a full range of long-term care services.

Implementation of SB 374's Local Access Provisions

HHSC is charged with receiving, reviewing and responding to proposals from communities for community-based systems of long-term care. The review process focuses on two issues: (1) ensuring appropriate community participation in the proposal development process, including the participation of stakeholders from both the aging and disability communities and (2) identifying needs and sources for providing technical assistance and resources for communities.

Community Initiatives Review Team

HHSC has established a Community Initiatives Review Team, including consumers, family members and advocates representing children with disabilities, adults with disabilities and the aging population, as well as state agency staff to review local proposals. As of July 1, 2000, 17 proposals had been submitted (with six more expected by Sept. 1) as a result of the efforts of Area Agencies on Aging to coordinate local access plans in each of their regions.

Common themes

HHSC staff reported to the Committee that several common themes have emerged from the review process to date:

- Communities assembled an array of public and private service providers, advocates, consumers and interested citizens to develop their plans.
- Most plans appeared to be inclusive of both the aging and disability communities' interests and needs.
- Most communities made a strong effort to fully utilize existing resources and services.
- Most plans included features such as integrated information and referral, multiple points of entry, standardized intake and care planning among the provider network, shared client databases, increased client choice in services and evaluation of program effectiveness and customer satisfaction.

Needed resources

Most plans proposed a service configuration that made maximum use of existing resources. Nevertheless, all communities indicate the need for some level of additional resources to fully implement their vision. Such additional resources include funding and/or technical assistance for:

- Case managers and other staff;
- Quality assurance/evaluation activities;

- Computer hardware and software;
- Telecommunications and information systems design, development and implementation;
- Training development and delivery; and
- Marketing development and delivery.

Additional access and coordination efforts

Texas is attempting to implement a variety of access initiatives and pilot projects, including:

- Cross-agency assessment of long-term services to identify specific areas for greater coordination, such as rate setting, access to services and service delivery approach;
- A waiver consolidation pilot aimed at improving access to long-term care waiver services;
- The STAR+PLUS pilot in Harris County to integrate delivery of long-term care services with acute health care services in the Medicaid managed care program;
- A functional needs assessment pilot to test the feasibility of agencies using a consistent eligibility process based on functional needs, rather than diagnosis;
- The Texas Information and Referral Network, aimed at developing, coordinating and publicizing a statewide network to provide local and state access points for health and human services information;
- Project CHOICE, a federal grant program to test the effectiveness of strategies designed to assist persons currently living in nursing facilities to transition back to the community and persons at risk of nursing facility placement who want to continue to live in the community;
- The Agency Coordination Task Force (ACT), aimed at increasing DHS and TDoA coordination by standardizing rates paid for home-delivered meals and coordinating contract monitoring activities of the two agencies;
- An interagency workgroup to study and report on the coordination of planning and services between DHS and MHMR, the development of consistent and standardized regulation, rate-setting processes and contractor monitoring for long-term care providers and services; and
- An interagency workgroup to study the coordination and funding of children's long-term care and health programs at TDH and DHS.

Recommendations

- 10. *Establish a long-term care local access fund, to be administered by HHSC, to support local initiatives to improve access to long-term care services established by SB 374. Prioritize initiatives that utilize Internet technologies to provide information, referral and assessment for local services.***

SB 374 included provisions directing HHSC to review proposals for improved local access systems submitted by communities, but did not include financial resources to assist with the effort. Such support would include a local match requirement and would emphasize better use of existing local and state resources.

- 11. *Expand statewide the Community Alzheimer's Resource and Education (CARE) program at DHS by adding four additional sites.***

The Community Alzheimer's Resources and Education (CARE) project at DHS uses interagency teams to work with the person with Alzheimer's, their caregiver and physician to develop a plan of care for the person and caregiver, increasing service coordination and decreasing duplication of services. The project was established by House Bill 2509 by Rep. Harvey Hilderbran and Sen. Judith Zaffirini, 75th Legislative Session (1997), relating to a pilot program for the treatment of Alzheimer's patients. The program operates in eight sites: El Paso, Lubbock, Fort Worth, Corpus Christi, Austin, Houston, Tyler and the Rio Grande Valley (the latter four were added by the 76th Legislature). In June, 2000, DHS was awarded a federal grant that will allow the department to develop a culturally and linguistically appropriate assessment process and system of care for Hispanic families who live in the San Antonio and Rio Grande Valley areas. The addition of four sites would make CARE program services available statewide.

- 12. *Recommend that the Legislature make a statutory change that would establish joint training for health and human services agency caseworkers to increase their awareness and knowledge of the services available to children within their agency and among other agencies.***

Joint training would improve the consolidation and integration of long-term services and supports for children. More efficient administration of programs, particularly Medicaid waiver programs, would allow more funds to be used for direct services.

State Regulatory Efforts

State licensing law requires that long-term care facilities or establishments that provide some specified care or service, plus food and shelter for at least four persons who are unrelated to the owner, must be licensed by DHS. These facilities include nursing facilities, intermediate care facilities for the mentally retarded (ICF-MR) or those with related conditions, assisted living facilities and adult day health care facilities. In September, 1999, DHS also assumed responsibility for licensure and regulation of home and community support services agencies, also known as home health agencies.

The long-term care regulatory division of DHS issues licenses to operate long-term facilities in Texas. The licensing process requires detailed information on the owner/operator and controlling persons and allows for denial of a license based on the applicant's previous history as a provider.

Senate Bill 190 by Sen. Judith Zaffirini and Rep. Elliott Naishtat, 75th Legislature (1997), relating to the regulation of nursing homes and similar facilities, increased the state's focus on licensure of nursing facilities and created new regulatory tools to ensure the highest possible quality of care. The bill increased the state's ability to impose prompt and effective remedies for noncompliance with licensing standards. SB 190 introduced the concept of "controlling person" to reduce the ability of decision-making entities to shield themselves from responsibility behind administrators and other employees, management contracts or family members.

Surveys and Inspections

DHS is mandated by state and federal statute to inspect and survey all long-term care facilities to ensure they are in compliance with state licensing laws. DHS also certifies facilities for participation in the Medicare and/or Medicaid programs by surveying for compliance with federal health and safety regulations. Nursing facilities are surveyed every nine to 15 months, depending on previous compliance with regulations. Other types of facilities are surveyed yearly. Survey teams of two to five skilled professionals in the health care, social work or other fields look into all areas and operations of the facility to ensure resident care is provided according to health and safety regulations. Survey teams also are responsible for investigating complaints and incidents reported to the department.

FY 1999 Enforcement Activities²¹

Administrative penalties

DHS regional offices *recommended* 777 administrative penalties against long-term care facilities (all but two against nursing facilities), with approximately one-third of these designated "right-to-correct." The department actually *imposed* (i.e., formally notified facilities of) 582 administrative penalties, since some are set aside upon review by regional or state office staff or upon correction of a "right-to-correct" violation. Two-hundred-twenty-two administrative penalties were finally *assessed* (i.e., notification was made of the final amount to be paid by a facility, following completion of any pending appeals). DHS currently is not authorized to levy administrative penalties against assisted living facilities.

OAG referrals

Referrals to the OAG for civil penalties were made against 55 nursing facilities, 12 ICF-MRs and 15 assisted living facilities in FY 1999.

License denial and revocation

Over 164 recommendations to deny licenses were made by DHS, nearly 100 of which were for assisted living homes. Only 34 denials were completed, however, with the others remaining under appeal. Likewise, although 25 revocation recommendations were made, only two were completed during the year, due to appeals.

Nursing Home Regulatory Enforcement Process

Following a yearly survey or a complaint investigation, the DHS survey team meets to evaluate and coordinate individual findings and decide on appropriate violations (deficiencies) in the licensing requirements.

Surveyors complete the survey/investigation process with an exit conference with the facility administrator to inform them of their findings. DHS program managers approve the deficiencies, and a regional enforcement committee decides on appropriate remedies (dependent upon the scope and severity of the deficiency).

A region may recommend, among the remedies and penalties, administrative penalties as a result of the licensing violations found at the facility. The department also may refer cases to the Office of the Attorney General (OAG) to pursue civil penalties. Some recommended actions allow the facility the right to correct the deficiencies, and the proposed penalties can be rescinded, while other actions do not allow corrections to rescind the penalties. The DHS regional director, or a designee, sends a letter to the facility with descriptions of violations and any proposed remedies. The facility has 10 days to respond.

A facility may request informal reconsideration, or informal dispute resolution, conducted by DHS state office staff, which can result in a reconsideration of the findings. Resolution usually takes 30 to 45 days. Facilities still may choose to request a formal hearing to seek changes to the survey/investigation findings and the enforcement recommendations.

DHS is able to utilize three types of *financial* penalties as deterrents to facilities operating in violation of state and federal regulations where the violations may cause injury or harm to a resident's health or safety:

Administrative penalties (state rules)—for violations of the Health and Safety Code. These require a hearing before a state administrative law judge and may be imposed in addition to civil and civil monetary penalties.

Civil penalties (state law)—for violations that threaten the health and safety of residents. These penalties are referred to the OAG, representing DHS, and are heard in a State District Court.

Civil Monetary Penalties (federal rules)—for noncompliance with Medicare/Medicaid participation requirements. These penalties for Medicare/Medicaid certified facilities are filed by HCFA and heard by federal administrative law judges.

Note: it is not unusual for the resolution of hearings and appeals for civil and civil monetary penalties to take as long as 36 months.

Source: DHS (<http://www.dhs.state.tx.us/programs/ltc/enforcement.html>)

Suspension of admissions

DHS has authority to order a nursing facility to suspend admission of residents if that facility has committed acts for which a civil penalty could be imposed. Suspensions of admissions were ordered against five facilities in FY 1999. While such orders are in effect, facilities must post a notice of the suspension on all entrance and exit doors.

Appointment of trustees

DHS is authorized to appoint trustees (upon court order) to take over the operation of a nursing facility in the event of a threat to the continued health and safety of the residents. In addition to the appointment of trustees, the department is authorized to collect fees from nursing facilities, assisted living facilities and ICF-MRs to maintain a trust fund for emergency use by the trustees. Fifteen nursing facilities, two ICF-MRs and one assisted living facility were placed under trusteeship in FY 1999. Three of the facilities were closed and residents moved to other facilities.

Emergency license suspension

Emergency (ten-day) license suspension usually coincides with the appointment of trustees. Two nursing facilities, one ICF-MR, one adult day care center and one assisted living facility received emergency license suspensions in FY 1999.

Sensitive Care Crisis

In February, 1999, DHS was forced to take over the operation of 13 nursing facilities owned by Sensitive Care, Inc., following the walkout of critical staff due to nonpayment of wages. Sensitive Care was unable to pay its bills following loss of its federal Medicare certification as a result of findings of fraud and mismanagement. DHS closed three of the homes and transferred residents to other facilities; it ultimately was able to find new buyers for the other facilities. DHS reported that statutory powers gained as a result of SB 190 enabled them to collect information on Sensitive Care's controlling parties and to research the regulatory compliance history of each corporation that came forward to take over operations of Sensitive Care facilities.

In the wake of the Sensitive Care crisis, the 76th Legislature (1999) passed three bills addressing nursing home insolvency issues:

- Senate Bill 1292 by Sen. Judith Zaffirini and Rep. Elliott Naishtat, relating to monitoring the financial condition of certain nursing facilities licensed by the Texas Department of Human Services, requires nursing homes to notify DHS of a significant change in the institution's financial condition that could adversely affect the delivery to residents of essential services and allows DHS to verify an institution's financial ability to deliver essential services.
- Senate Bill 1197 by Sen. Mike Moncrief and Rep. Elliott Naishtat, relating to consequences of appointment of a trustee or expenditure of emergency assistance funds for a nursing or convalescent home, provides that if the state is forced to appoint a trustee and expend emergency funds for a facility, renewal of that facility's license or licensure of new homes by the same operator is prohibited.

- House Bill 2909 by Reps. Elliott Naishtat and Rob Junell and Sen. Mike Moncrief, relating to the nursing and convalescent home trust fund, authorizes DHS to levy a per-bed assessment on nursing facilities, assisted living facilities and ICF-MRs to raise the amount of the trust fund from \$500,000 to \$10 million, to ensure that the state is adequately prepared for future emergencies.

Change of Ownership Process

DHS processed 453 change of ownership licensing applications in FY 1999 (171 of these were for nursing facilities). DHS rules require nursing facility license holders to notify DHS prior to a change of ownership of the facility, defined as a change of 50 percent or more in the ownership of the business entity licensed to operate the facility. The new owner is required to submit a license application at least 30 days prior to the effective date of the new license, allowing DHS time to complete its background check on the new owner. On the effective date of the new license, DHS places a “vendor hold” on the new facility owner, suspending Medicaid payments until the facility has passed a survey inspection for compliance with health and safety standards.

Representatives of the nursing home industry and DHS staff expressed concerns to the Committee regarding the current process and the disincentive it presents to new owners. A common change of ownership scenario is one in which an owner seeks a buyer to take over a financially troubled facility. Frequently the facility has numerous unresolved health and safety deficiencies. Under current rules, a new owner’s efforts to come in and “clean up” a troubled facility are hindered by the immediate suspension of Medicaid payments.

Employee Misconduct Protections

Long-term care consumer advocates, provider representatives and agency staff all expressed concerns to the Committee regarding the state’s procedures for protecting vulnerable consumers and facility residents from abuse, neglect or exploitation.

Criminal background check process

State law mandates that long-term care facilities and home health agencies must obtain a state criminal history record on new unlicensed employees who provide direct care to residents or consumers. Facilities may not employ such a person if the person has been convicted of one or more offenses specified as automatic bars to employment, such as homicide, sexual assault or injury to a child or an elderly or disabled person.

Although employers have the option of obtaining an instant criminal history check directly from the Department of Public Safety (DPS) via the Internet (for a \$4.29 charge), most submit typewritten background check requests to DHS at no charge. DHS in turn submits the request to DPS. If DPS identifies a criminal history, notification is sent to the employer, often six to eight weeks after the request is made. The employer receives no notice if the check reveals no criminal history. Employers meanwhile are permitted to hire an employee pending completion of the process. As a result, facility residents and home health consumers are placed in direct contact for up to eight weeks with persons who may have serious criminal histories. Additional concerns were expressed regarding the fact that no criminal background check is required of employees who may have access to residents, such as housekeepers or kitchen staff, but who do not provide “direct care” services.

Employee Misconduct Registry

Senate Bill 967 by Sen. Judith Zaffirini and Rep. Harvey Hilderbran, 76th Legislative Session (1999), created an Employee Misconduct Registry (EMR) at DHS. The purpose of the EMR is to ensure that unlicensed direct care personnel who commit acts of abuse, neglect, exploitation or misappropriation against residents and consumers are denied employability in DHS-regulated facilities. Employees who are found by DHS to have committed acts of abuse, neglect or exploitation are placed on the registry after the completion of any due process appeals. Employers are required to call DHS to verify that a direct care job applicant is not on the registry prior to hiring the person. Consumer advocates, providers and agency staff expressed concern to the Committee that the EMR does not capture misconduct committed by employees of home health agencies or MHMR facilities or community centers, since abuse in those settings is investigated by the Texas Department of Protective and Regulatory Services (PRS).

Restraint and Seclusion

The use of restraints and seclusions in long-term care and residential treatment and psychiatric facilities is a concern due to several recent deaths in such facilities that occurred during or soon after the use of restraints and seclusions.

Recent Deaths Related to Restraint and Seclusion

Two child deaths occurred within the space of a month in Texas psychiatric facilities in February and March of 2000. Both deaths occurred following the use of restraints by facility staff. In the first incident, a nine-year-old boy had begun to throw furniture and did not respond to staff's efforts to calm him. News accounts indicate that staff "wrestled the child to the ground and pressed his arms to the floor when he began vomiting and gasping for air." The boy was taken to the emergency room with injuries and died a day later.²²

In the second case a 14-year-old boy with autism and cognitive disabilities became upset during the afternoon and had not calmed down by bedtime. The boy became very agitated over a long period of time and eventually was restrained by three staff members. News reports stated that the boy "fought their every move for about 12 minutes until he abruptly stopped. That's when they rolled him onto his back. He had stopped breathing and had no pulse."²³

The precise cause of death in such cases is not always clear. Whether these deaths occur as a result of staff actions or inactions or from underlying medical conditions exacerbated by the stress of the incident, and regardless of the state agency charged with regulating the facility, the critical need for staff training and safety procedures remains.

Recommendations

13. Establish a temporary license for facility operators going through the change of ownership process.

A temporary license would restore the flow of Medicaid reimbursement to a new owner while providing that owner more time to fix prior deficiencies. The temporary license would convert to a conventional license upon a successful survey inspection, while continued health and safety violations would result in a vendor hold until their resolution. Such a license would facilitate the recruitment of good owners to take over troubled homes, thus avoiding the need for the state to appoint trustees or close the homes down.

14. Recommend that the Legislature require DHS to maintain a list of operators with excellent regulatory records to be made available in a change of ownership situation.

Maintenance of such a list would speed the change of ownership process for high quality owners, thus avoiding delays in resumption of Medicaid reimbursement to those facilities and reducing the need to appoint trustees.

15. Allow DHS, at the request of a facility owner, to conduct architectural reviews prior to the construction or remodeling of nursing facilities.

This legislation would allow DHS staff, at the request of a facility and for a reasonable fee, to review architectural plans for a new or renovated facility for compliance with health and safety regulations. Such a review would be less expensive to owners than their learning after the fact that the construction is out of compliance.

16. Amend state law to provide a full range of administrative penalties for use by the state to sanction assisted living facilities that do not meet standards.

The state currently has no enforcement options for an out-of-compliance assisted living facility other than revoking its license, closing the facility or referring the case to the Office of the Attorney General (OAG). This legislation would give the state greater regulatory flexibility while including “right-to-correct” and full due process appeal provisions.

17. Establish an advisory committee to develop a plan for dealing with emergency financial crises at institutions, particularly those serving large numbers of children, and address the problem of facilities with recurring violations.

The advisory committee would work with DHS to create a statewide strategy for effectively dealing with institutions in financial crisis. The committee would identify barriers and possible solutions regarding the state’s ability to close institutions when those institutions are in substantial noncompliance regarding protecting the health and safety of residents, including children.

18. Revamp the criminal history background check process for long-term care employees by expanding the number of employees covered under such requirements and expediting access to background information.

The current process is unwieldy and delays access to needed information to protect consumers. This legislation would streamline the background check process by requiring employers to use

Internet-based systems for obtaining instant background checks and would require a background check of all employees with potential access to residents.

19. *Add direct care staff employed by home health agencies, MHMR, local community mental health and mental retardation centers and other providers, as appropriate, to the list of employees covered by the DHS Employee Misconduct Registry.*

As noted above, abuse, neglect or exploitation by these employees is not captured by the EMR. Thus, if a perpetrator with a record of misconduct against a home health consumer seeks employment at a facility or agency, the employer has no way of learning about that record when they check the EMR. This legislation would close that gap by making all long-term care employee misconduct records (with full due process protections) available to employers via the EMR.

20. *Establish, in statute, guidelines for updated definitions and policies relating to restraints, seclusions and emergency medications in residential facilities (e.g., nursing homes, psychiatric hospitals, ICF-MRs, assisted living centers and residential childcare facilities).*

HCFA standards state that a patient has “the right to be free from restraints of any form that are not medically necessary or are used as a means of coercion, discipline, convenience, or retaliation by staff.”²⁴ This proposal would clarify what procedures agencies have to follow when developing rules on restraints, seclusions and emergency medications.

Long-term Care Business Climate in Texas

Long-term care providers have experienced tremendous economic swings over the last decade and enter the 21st century facing daunting challenges. A variety of factors influence the long-term care business climate in Texas, including low occupancy rates, changes in long-term care demand, Medicare reforms, corporate bankruptcies, high employee turnover, low Medicaid reimbursement and high insurance costs.

Decline in nursing home occupancy rates

Nursing home occupancy has declined significantly in recent decades, nationally and in Texas, despite the growing number of elderly. A comprehensive national survey found that nursing home use among elders 65 and over declined 8.2 percent between 1985 and 1995, even though the numbers of elderly grew during the same period.²⁵

In Texas, occupancy rates for Medicaid-contracted nursing home beds have fallen steadily from 81 percent in July, 1988, to 71 percent in July, 2000 (the rate is slightly higher for all licensed beds).²⁶ This decline in occupancy rates has occurred despite the state’s efforts to regulate the growth of Medicaid-funded nursing home beds. Since 1991, the Legislature has included a moratorium on the certification of new Medicaid beds as a rider to the appropriations bill. SB 190 required DHS to adopt rules for controlling the number of Medicaid beds in nursing facilities, decertification of unused Medicaid beds in nursing facilities and reallocation of decertified Medicaid beds to other nursing facilities.

Low occupancy can be attributed to several factors related to the demand for and supply of nursing home care:

- **Expansion of home and community-based alternatives to nursing home care**
According to the Legislative Budget Board, “the number of persons served in community care settings has significantly decreased the number who would have been served in nursing homes. By FY 2001, over 65 percent of long-term care clients will be served at home or in the community.”²⁷
- **Increasing longevity and health of elders**
A 1999 University of Chicago study found that the improving health status and longevity of the elderly, particularly elderly men, has boosted the supply of spousal caregivers and reduced the demand for nursing home care.²⁸

Rapid growth of the assisted living facility industry

The 1998 Senate Interim Committee on Home Health and Assisted Living Facilities reported estimates that the assisted living facility industry is growing at a rate of 17 percent per year. Expansion of the largest national assisted living corporations has been even greater, ranging from 21 percent to 96 percent in 1999.²⁹ Although it is difficult to document, a significant portion of the growth in this sector may be represented by persons who previously received services as low-acuity, private pay nursing home residents. National Nursing Home Survey data indicate that the proportion of nursing home residents who were private pay dropped from 44 percent in 1985 to 28 percent in 1995. Assisted living growth since 1995 likely has reduced this figure even more.³⁰

Medicare Reforms from the Balanced Budget Act (BBA) of 1997

In response to concern about the role of growing Medicare expenditures on rising federal deficits, Congress made significant changes to the system of Medicare reimbursements in 1997. The changes were designed to cut \$115 billion from the Medicare budget and imposed new payment methods on both nursing homes and home health agencies. The legislation changed the Medicare reimbursement methodology from cost-based reimbursement (seen as creating an incentive to increase costs) to a prospective payment system (PPS), designed to control costs by paying a pre-set payment for specific conditions. The BBA also placed a price cap on ancillary services, such as physical or occupational therapy, that cut profit margins on those services by 50 percent or more.³¹

The BBA had a particularly dramatic impact on the home health industry, with the number of Medicare-certified home health agencies in Texas dropping from approximately 2,000 in 1997 to around 900 in July, 2000.³² The new payment system placed low payment caps on the total per-patient Medicare reimbursement allowed to home health agencies. According to a recent George Washington University study, this payment system has created an incentive for home health agencies to limit services, especially to high-need (and thus high-cost) patients, such as complex diabetics and other chronically ill persons.³³

Balanced Budget Refinement Act of 1999

As a result of widespread concern regarding the impact of the cuts on providers and recognition that the amount of money saved by the federal government was far greater than anticipated, Congress passed the Balanced Budget Refinement Act (BBRA) of 1999 in November of that year. The bill

places a two-year moratorium on the BBA's therapy caps, increases payments for very sick patients in nursing homes, increases reimbursement rates across-the-board by four percent and delays 15 percent payment reductions to home health agencies by one year.³⁴

Nursing Home Bankruptcies

The following eight nursing home chains operating in Texas filed for Chapter 11 bankruptcy protection between January 1999 and April 2000: Sensitive Care, King/Walters, NewCare, Vencor, Sun Healthcare Corporation, Texas Health Enterprises, Mariner Post Acute Network and Integrated Health Systems. Collectively, these chains represent 279 facilities, 33,222 licensed beds and 25,935 residents. DHS analysis of these bankruptcy filings indicates that the reasons for the filings vary widely. Although cuts in Medicare reimbursement are cited uniformly, other reasons include fluctuating stock prices, high lease payments to landlords and increased fraud detection from regulatory bodies and fiscal intermediaries.³⁵

Nationally, the seven leading publicly owned nursing home companies in the United States had a market capitalization of \$35 billion in 1998. A year later, those seven companies were worth less than \$5 billion. As in the Texas cases, the changes in Medicare reimbursement appear to play a major role in the behavior of the market. By the early 1990s, long-term care corporations were able to take advantage of then-generous Medicare reimbursement categories, such as subacute care, and rehabilitative services, such as respiratory, physical and occupational therapies, many of which yielded profit margins of 30 percent or more. With an eye on these reimbursement areas, Wall Street "jumped" on the nursing home sector, in the early and middle 1990s encouraging many companies to borrow heavily to expand their investment in the profitable industry.³⁶

In 1997, however, Congress reacted to rapid growth in Medicare expenditures by passing

Mentoring: One Facility's Approach to Reducing Nurse Aide Turnover

Some private facilities are using innovative "best practices" to address turnover problems. Luther Manor nursing home in Dubuque, Iowa, initiated a mentor program for nurse aides that pairs each newly hired nurse aide with an experienced nurse aide from their staff. Each mentor is responsible for the initial orientation and training that the new hire receives and continues to serve as a resource for the new person throughout the first 90 days of employment. The best nurse aides from each shift are selected through an interview process and then provided with 16 hours of specialized education on training and communication skills. As an incentive, mentors receive an increase in wages for the five-day hands-on training process with the new staff and can receive a cash bonus when their assigned employees complete their probationary periods (the time when most turnover occurs).

The results were impressive. At the end of the first year of implementation, nursing assistant turnover dropped from 102 percent to 39 percent. Along with a boost in nursing staff morale, stability and career ladder development, the director estimates that the facility saved \$30,000 in turnover costs, subtracting out all applicable mentor program expenses. The training program for mentors has been published and is available to facilities nationwide.

Source: "Nursing assistant mentoring in long-term care," *LTC Insight*,

the BBA, as described above, severely cutting back those expenditures and eliminating cost-based reimbursement. Many of the largest companies found themselves saddled with heavy debt obligations based on reimbursement projections that were no longer valid, leading to steep declines in their stock values and, for some, bankruptcy. Worse still, several large operators, including Vencor, found themselves under investigation for federal billing fraud, further discouraging new investors.³⁷

Labor shortage/turnover

Texas has experienced low unemployment levels for most of the 1990s, due to strong state and national economies. This situation has made it more difficult for nursing homes and other long-term care providers to attract and retain a quality staff, especially nurse aides and personal attendants. Providers in urban regions experience fierce wage competition for high-quality workers, while in some rural areas providers report difficulty finding any staff to fill some shifts. Meanwhile, turnover rates in direct care staff positions are extremely high and appear to be increasing: DHS reports a nurse aide turnover rate of 180 percent, based on 1998 cost report data, up from approximately 155 percent in 1994.

Medicaid reimbursement rate

In addition to its Medicare changes, the BBA of 1997 repealed the “Boren amendment,” a federal provision enacted in 1980 that mandated that states enact Medicaid reimbursement rates that were “reasonable and adequate” to meet health and safety regulations. Repeal of the amendment removed restrictions on states’ abilities to limit Medicaid expenditures and eliminated a cause of action for providers concerned with inadequate rates.³⁸ Today Texas’ Medicaid reimbursement rate is among the lowest in the country. The FY 2000 average rate of \$81.22 per day ranked 45th in a comparison with other states’ FY 1999 rates and was well below the FY 1999 national average of \$103.27.³⁹

Liability insurance cost and availability

Texas Department of Insurance (TDI) staff testified at a TDI hearing on February 1, 2000, regarding the availability and affordability of medical liability insurance for nursing home, both for-profit and not-for-profit. They noted that some insurance companies writing in Texas indicate that, due to poor claims experience, they have restricted writing nursing home liability policies and in some cases have withdrawn from the market entirely. TDI staff testified that rate filings submitted to the department suggest that only three company groups are currently writing nursing home liability coverage through the admitted (licensed) market and that this number represents a significant decrease since 1976.

As a result of these findings, TDI Commissioner Jose Montemayor in February exercised his statutory authority to allow Texas’ nonprofit nursing homes to apply for medical liability insurance from the Texas Medical Liability Insurance Underwriting Association, a state-created insurer of last resort, commonly known as the “Joint Underwriting Association” (JUA). Created by the Texas Legislature in 1975, the JUA provides medical liability insurance on a self-supporting basis to physicians and health care providers who cannot find coverage in the voluntary admitted insurance market. All 500 insurers currently authorized to write liability insurance in Texas are required to participate in the JUA and pay assessments to cover its deficits, when needed. Commissioner Montemayor testified to the Committee

in April that statutory change is required to include for-profit nursing homes in the JUA and urged that the 77th Legislature examine the possibility of enacting such legislation.

Representatives of for-profit and not-for-profit nursing homes testified to the Committee in April, 2000, that many facilities have experienced dramatic increases in liability premium costs in the last two years. Some witnesses expressed concern that nursing facilities with no claims history are experiencing dramatic premium hikes as a result of high claims from lawsuits involving homes with poor records of care. The Committee heard testimony voicing a variety of perspectives on the causes of the premium increases, some calling for nursing home tort reform changes and others for increased efforts to improve health and safety conditions.

Recommendations

21. Allow for-profit nursing facilities to purchase liability insurance from the Joint Underwriting Association (JUA).

As noted above, very few insurance companies remain willing to underwrite nursing home liability coverage. Current law prohibits for-profit nursing facilities from joining the JUA to purchase liability insurance. This change would increase availability of liability insurance, though the cost of such coverage likely would remain high.

22. Clarify the appropriate admissibility of DHS survey documents in civil lawsuits against nursing homes.

This legislation would clarify existing law (from SB 190) that use of survey documents is allowable only if a judge determines that it is relevant under the Rules of Evidence. Clarification of these provisions would assist judges in making those determinations.

23. Provide tuition assistance for licensed vocational nursing students who agree to practice in long-term care settings.

This assistance would build on existing tuition assistance available to nursing students through the Texas Higher Education Coordinating Board and would be an incentive to LVNs entering or staying in the long-term care field. The existence of such an incentive would encourage development of a badly-needed career ladder in long-term care settings and, hopefully, reduce high employee turnover rates.

24. Recommend that the Legislature increase funding for nursing home reimbursements.

Nursing home providers cannot increase quality significantly if the basic reimbursement rate does not cover the costs of such services. New reimbursement methodologies adopted by the state will help ensure that such increases benefit nursing home residents.

25. Recommend that the Legislature increase funding for DHS audit staff to investigate the financial viability of nursing facilities.

Current statutes provide authority for DHS to monitor the financial condition of nursing homes, but the large number of homes in financial crisis requires expanded audit capacity. Better advance warning of nursing home failure can help the state minimize emergency trustee expenditures that are far more expensive in the long run.

Funding Methods for Medicaid Long-term Care

Nursing home rate methodology prior to May 1, 2000

Texas Medicaid rates are prospective and uniform by class of service. Prospective rates are determined in advance for a future period. There is no reconciliation of costs with payments once the rate period is concluded, as there is in a cost-based reimbursement method.

Under a uniform or “flat” rate, all providers receive the same rate for residents in a given category, regardless of geographic location or individual facility costs. DHS reports that prospective uniform systems have the advantages of being relatively simple to administer and providing strong incentives for provider cost-containment (since a provider who spends less than the prospective rate may retain the surplus), and thus greater containment of the state’s program costs. Flat rate systems, however, also tend to yield the greatest rewards to the lowest-spending providers and penalize the higher-spending providers (even if their higher spending is for better quality of care, e.g., increased nursing staff size).⁴⁰

Nursing facility rates have three components: resident care costs, general administrative and dietary expenditures (GAD), and fixed capital. The components of the rate are developed on the basis of two-year-old cost reports submitted by nursing facilities.

Cost reports are annual reports submitted by individual facilities documenting their spending during the previous year. DHS reviews the cost reports to ensure that all of the expenses submitted in the reports are allowable according to Medicaid regulations. The cost reports of each facility in the state are combined to calculate statistics representing statewide costs per patient, which are adjusted to cover the inflation that occurs between the time period of the cost report and the rate period.

The resident care component varies depending on the assessed characteristics of residents, with each resident assigned to one of 11 groups in the Texas Index for Level of Effort (TILE). Such a “case-mix” system accounts for the fact that residents have differing conditions and thus need differing levels of resources at any given time. A separate resident care rate is calculated for each of the eleven TILE categories. Facilities are reimbursed based on the number of patients they have each day (“patient-days”) in each of the eleven categories. The TILE system is based on a 1987 statistical time study, conducted by DHS with funding and technical support from the federal Health Care Financing Administration, that measured the resources allocated to residents of varying clinical need.

Proposals for methodology reform

The Long-Term Care Legislative Oversight Committee (LOC), chaired by Senator Zaffirini, adopted a rate reimbursement philosophy in its November 1998 report to the 76th Legislature. The LOC report stated that “the Medicaid rate reimbursement methodology for nursing facilities is a crucial factor in determining whether residents of nursing facilities receive quality care. While money is not the sole

solution, the method by which the state reimburses nursing facilities can influence strongly the quality of services delivered.” The LOC recognized a set of principles for promoting quality care in nursing facilities, addressing issues such as the need to tie reimbursement to staffing ratios and ensuring that reimbursement increases are used to improve patient care, among others.

In 1998, Sen. Bill Ratliff undertook a study of nursing home rate reimbursement, including discussions with DHS staff and in-depth data surveys of ten nursing facilities. Sen. Ratliff’s goal, consistent with the LOC’s rate reimbursement philosophy, was to propose a rate methodology that created an incentive for nursing homes to increase direct care staff-to-patient ratios and dietary spending. Sen. Ratliff’s proposal called for additional funding that would allow increased rates in return for increased direct care staff ratios. Providers would be held accountable for adherence to their chosen staffing level. A bonus also would be paid for facilities that met specified dietary spending levels.

76th Legislature appropriations and riders

The 76th Legislature appropriated an additional \$65.6 million for nursing facility rate increases for the FY 2000-2001 biennium. DHS was able to direct an additional \$10.4 million in earned funding, for a total biennial increase of \$76 million in general revenue (\$195.1 million including federal funds). Of the \$76 million, \$18 million in general revenue (\$46 million all funds) was directed toward a new direct care staffing program.⁴¹

Reflecting the intent of Sen. Ratliff’s proposal, Rider 38 of the appropriations bill stated that FY 2001 funds could be distributed only upon the adoption of a new rate methodology that “incentivizes increased direct care staffing and direct care wages and benefits in nursing homes.” Sen. Ratliff and House Appropriations Committee chair Rep. Rob Junell subsequently directed HHSC and DHS to develop the new incentive methodology by May 1, 2000, and to subject FY 2000 funds to the new rules as well as FY 2001 funds.

HHSC and DHS adopted the new methodology on May 1, 2000, per direction of Sen. Ratliff and Rep. Junell. The new methodology includes:

- **Enhanced payments for increased staffing**
Under the new rules, facilities that choose to participate in the program agree to maintain certain direct care staffing levels in return for increased reimbursement rates. At a minimum, participants must staff at a level equal to the statewide average staffing level for each TILE group. Those who choose to staff above the minimum will receive corresponding additional payments.
- **Accountability for participating facilities**
Facilities will submit six-month staffing reports, subject to DHS audit and verification. Those facilities that fail to maintain their required staffing levels will face recoupment of their enhanced funding and may be removed from participation.
- **Limited inflation adjustments for nonparticipating facilities**
As an incentive to participate, the component of reimbursement rates associated with direct care staff costs for facilities not participating in the enhanced direct care staff rate system

will increase at a rate no greater than the increase in the personal consumption expenditures (PCE) chain-type price index, a less generous adjustment than the one available to participants.

- **New direct care spending requirements, with dietary and fixed capital offsets**
All facilities, participants and nonparticipants alike, will face state recoupment of funds if they do not spend at least 85 percent of their direct care revenues on direct care expenses. Two exceptions to this rule will be allowed: facilities will be allowed to divert up to \$2.00 per resident day toward dietary expenses and up to \$2.00 per resident day toward fixed capital costs without incurring a recoupment penalty.
- **Quality performance bonus program**
\$4-6 million of the enhanced quality incentive funding will be used to provide bonus payments to homes that are found to be providing the highest levels of quality care, based on their performance on a set list of specific quality criteria, both clinical and regulatory.
- **Rate cycle changes**
Effective Sept. 1, 2000, nursing facility rates will be determined on a state fiscal year basis rather than a calendar year basis. FY 2001 rates will be based on the 1998 nursing facility cost reports. Nursing facility rates then will be recalculated once every two years, coinciding with the state biennium, rather than the current annual basis. This will allow the Legislature to set biennium funding levels with greater certainty.⁴²

Community Care Reimbursement

Community care (home health, personal assistance, adult day care, etc.) reimbursement rates are determined currently by a methodology similar to the one used for nursing homes, based on two-year-old cost reports of all providers combined and adjusted for inflation. The 76th Legislature appropriated a total of \$26.9 million for community care rate increases for each year of the FY 2000-2001 biennium. This included \$10.4 million in general revenue and \$16.5 million in federal funds for each year.

Attendant compensation rate enhancement program

Rider 37 of the appropriations bill directs that the FY 2001 funds only may be expended upon adoption of a new community care rate methodology that “incentivizes increased wages and benefits for community care attendants.” The new rules take effect Sept. 1, 2000 and include the following components:

- **Optional participation**
Participation in the attendant compensation rate enhancement is voluntary.
- **Rate enhancement**
Contracted providers choosing to participate in the attendant compensation rate enhancement agree to maintain a certain level of attendant compensation, including wages, benefits and payroll taxes, in return for increased attendant compensation revenues.

- **Spending accountability for participating contracted providers**
Participants will be required to document that the enhanced funds are spent on attendant compensation, according to DHS rules.
- **Rate setting to coincide with the state's biennium**
Beginning with payment rates effective Sept. 1, 2001, rates will be determined on a state fiscal year basis for a period of two years. This will allow rates to be determined at the same time that the Legislature is establishing program funding for the biennium.⁴³

Adult Day Care Services

The Committee received considerable information and testimony regarding adult day care services from providers and consumer advocates. Texas statute describes adult day care as a service that enables “elderly and handicapped persons with medical or functional impairments to maintain maximum independence and to prevent premature or inappropriate institutionalization.” Such programs are to “provide adequately regulated supervision for elderly and handicapped persons while enabling them to remain in a family environment and affording the family a measure of normality in its daily activities.”⁴⁴

Many families are unable to care for loved ones in need of assistance because there is no one to supervise the person in need of care during the day. The caretakers, unable to leave their jobs, may be forced to admit the person they are caring for to a nursing home when that person’s needs could be met by an adult day care facility. By utilizing adult day care services, the family members can care for the person needing assistance in their home at night while the adult day care facility provides a safe and supportive environment during the day.

Providers and advocates expressed concern that adult day care services are not distributed evenly across the state and that many regions have little or no access to such services. DHS statistics indicate that of the 174 adult day care centers in Texas, 47 percent are located in a single DHS region, the one encompassing Corpus Christi and the Lower Rio Grande Valley. As a result, lower wage costs in this region, relative to the rest of the state, tend to lower the statewide median costs that determine the state’s Medicaid reimbursement rate. Continuing low reimbursement rates (\$13.03 per 3-hour unit of service for FY 2000) provide a disincentive for the development of new facilities, especially in higher-cost regions of the state.

Several alternative remedies to this problem were presented to the Committee, in addition to an overall increased funding appropriation. These included development of a “modeled rate,” in which data is collected to determine the necessary level of expenditures to provide quality care and ensure positive client outcomes, and the use of a case-mix system, in which services are reimbursed based on the consumer’s acuity level, rather than the current flat rate.

Recommendations

26. Recommend that the Legislature direct DHS to evaluate the effectiveness of the new Medicaid nursing facility rate methodology to incentivize increased direct care staffing and consider the addition of incentives for increased dietary and other spending to improve quality of care and quality of life for residents.

HHSC and DHS have implemented a new nursing home rate methodology that provides enhanced funding for homes that staff nurse aides, LVNs and RNs at higher-than-average levels. DHS should evaluate the system to determine its effectiveness in increasing direct care staffing rates. Dietary services and, in some cases, fixed asset spending also are critical components of care quality and should be considered for the incentive program.

27. Recommend that the Legislature direct DHS to conduct a new time study/recalculation of the Texas Index for Level of Effort (TILE) or other case-mix system to better account for varying resource needs of nursing home residents, especially those with dementia.

The current TILE reimbursement system (developed from a 13-year-old time study) may not accurately reflect the true resource needs of all nursing home residents. For example, under the current system, many persons with Alzheimer's or related dementia may warrant more extensive staff time than they receive and for which providers are reimbursed.

28. Recommend that the Legislature direct HHSC to consider a modeled rate for adult daycare reimbursement with the possible inclusion of a case-mix reimbursement.

A modeled rate process would base the reimbursement rate on the actual costs of providing quality care, rather than a statewide average using two-year-old cost report data. A case-mix methodology (like the TILE system for nursing homes) would adjust reimbursement rates according to intensity of care required by the consumer.

Long-term Care Insurance

Two out of every five Americans age 65 and over today will enter a nursing home, with more than 20 percent of those staying more than five years.⁴⁵ Many more will need help with daily activities at home, in the community or in assisted living facilities. Most long-term care expenses are paid by persons until they deplete their savings and become eligible for Medicaid services.

Long-term care insurance can provide coverage for a continuum of long-term care services, including home-based assistance, assisted living facilities and nursing facilities. The average annual private pay cost of a nursing home stay is estimated at \$44,000, \$25,300 for assisted living and \$15,743 for home health care.⁴⁶ Medicare traditionally does not pay for custodial care needs, and persons in need of long-term care often are forced to "spend down" their assets to qualify for Medicaid.

The 1998 interim report of the House Committee on Pensions and Investments recommended that the following persons should consider long-term care insurance: persons who have significant assets to protect other than a homestead; persons who may have a risk of incurring long-term care expenses and stand to lose an unacceptable amount of personal assets due to a nursing home stay; and persons who want control over the type, location and quality of services rendered and want to choose private facilities over Medicaid facilities.⁴⁷

Although projections of future savings should be viewed with extreme caution, advocates for long-term care insurance estimate that wider purchase of long-term care insurance could reduce national

Medicaid expenditures by as much as \$40 billion via reduction in the number of persons having to enter nursing homes because of increased availability of home and community services and by coverage of expenses by nursing home residents. Additionally, they estimate that general tax revenues could increase by as much as \$8 billion per year as a result of the return to work of family caregivers currently forced to remain at home to care for a loved one.⁴⁸

As noted in the overview of this chapter, overall Medicaid spending in Texas is expected to grow by 82 percent between 2000 and 2030, from \$7.9 billion to \$14.4 billion. The dramatic projected increases in the state's elderly population underscores Texas' strong interest in encouraging alternative methods of financing long-term care, including private long-term care insurance.

Consumer concerns

Long-term care insurance may not always be a prudent or affordable choice for every person. Long-term care insurance premiums can range in price from \$541 per year for a three-year policy for a person age 40-44 to \$7,274 per year for a six-year policy for a person over age 75.⁴⁹ Saving money by purchasing a shorter period of coverage could expose a policyholder to an unplanned spend-down of assets if their need for care extends beyond the benefit period.

Inflation protection is another critical consumer protection, and one that typically must be added to a policy as an option. Because policies often are purchased decades in advance of their actual use, lack of such protection places the policyholder at tremendous risk of undercoverage. Consumers also should ensure, if possible, that the inflation adjustments are compounded, i.e., based on a percentage increase of *each previous year's* benefit, not the original benefit amount.⁵⁰

In some cases, companies seeking to increase market share have intentionally underpriced premiums, with the plan of raising those premiums at a later date.⁵¹ Such practices can cause policyholders to lapse in their coverage and potentially lose years of premiums they have paid. Insurers generally are required to offer "nonforfeiture" provisions, but such policy options pay only a very limited set of benefits in the event of a lapse, such as two or three months of coverage.

Tax incentives for long-term care insurance

20 states currently have some kind of tax incentive for the purchase of long-term care insurance. Most of these are personal income tax credits or deductions. Three of the states, Maine, Maryland and Oregon, also provide a tax credit for employers who contribute toward the cost of long-term care insurance for their employees. At the federal level, the 1996 Health Insurance Portability and Accountability Acts allows the same tax advantages for long-term care insurance policies as for accident and health insurance.

Recommendations

29. Enact state law to require TDI to produce and disseminate a consumer guide to long-term care insurance that includes information regarding the history of prices charged by insurance companies for long-term care insurance.

Some companies have a history of attracting customers with initial low rates and subsequently raising those rates prohibitively. A consumer guide would allow consumers to make more informed choices of long-term care insurance products.

- 30. *Provide a franchise tax credit for employers that contribute to long-term care insurance for their employees, employees' spouses or parents, equal to 20 percent of the costs incurred by the employer, with a maximum credit of \$5,000 or \$100 for each employee covered by the plan, whichever is lower.***

Tax credits would create an incentive to employers to provide long-term care insurance, ultimately reducing the state's need to provide Medicaid funding for those employees.

Charge 2: Welfare Reform

CHARGE 2: Evaluate services provided to hardest-to-serve adult welfare recipients and services provided to children receiving welfare. The Committee shall assess the state's ability to avoid long-term dependency on welfare for both of these populations and develop additional strategies to encourage self-sufficiency and movement from welfare to work.

Overview

State Welfare Reform

In 1995, the 74th Legislature enacted the state's landmark welfare reform bill, House Bill 1863 by Rep. Harvey Hilderbran and Sen. Judith Zaffirini, relating to eligibility for and the provision of services and programs for needy people, including children; to assistance in becoming or remaining self-dependent; and to the responsibility of parents and others to assist needy people, including children, in becoming or remaining self-dependent; providing penalties. To implement the provisions of HB 1863, Texas received a waiver, entitled "Achieving Change for Texans" (ACT), from certain federal rules and regulations. HB 1863 mandated a personal responsibility agreement, benefit time limits, transitional Medicaid and childcare, and increased child support enforcement. The emphasis of state welfare reform was to encourage work and personal responsibility.

Federal Welfare Reform

In August, 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), a comprehensive welfare reform plan intended to change the nation's welfare system by requiring work in exchange for time-limited assistance. This legislation ended welfare as an entitlement and promoted a philosophy of work and responsibility. Temporary Assistance for Needy Families (TANF), a block grant to the states, was created to replace Aid to Families with Dependent Children (AFDC) cash welfare payments, Emergency Assistance (EA) and the Job Opportunities and Basic Skills (JOBS) welfare employment programs. An intent of the federal law was to provide states with the flexibility to design and implement programs that meet their specific needs.

The federal welfare reform law allows states with approved waivers to continue to operate under their waiver provisions, even when the waivers conflict with federal law. As a result, Texas can continue to operate under the ACT Waiver until it expires in March, 2002. At that time, Texas must conform with federal law or use state funds to pay for variations to federal law with care to avoid any specific federal penalties.

Temporary Assistance to Needy Families (TANF) Funding

The federal portion of TANF program funds is block granted to states at a fixed funding level through 2002, based on historical federal welfare spending in the state. The block grant for Texas is \$486.3 million per year, with an additional annual supplemental grant based on Texas' population growth rates and low benefits. To receive federal TANF funds, states must spend specified amounts of their own funds on activities that meet one of the purposes of the welfare law. This maintenance-of-effort (MOE) requirement under TANF requires states to spend an amount equal to at least 80 percent of the amount

spent on AFDC programs in federal fiscal year (FFY) 1994. If the state meets targeted work participation rates the MOE requirement is reduced to 75 percent. Texas' TANF MOE requirement for the 1999-2000 biennium is \$502.9 million, based on the 80 percent requirement.⁵²

A state can spend TANF funds on a range of family supports that are reasonably calculated to accomplish one or more purposes of TANF. The purposes of TANF are to:

- provide assistance to needy families so that the children may be cared for in their homes or in the homes of relatives;
- end the dependency of needy parents on government benefits by promoting job preparation, work and marriage;
- prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- encourage the formation and maintenance of two-parent families.⁵³

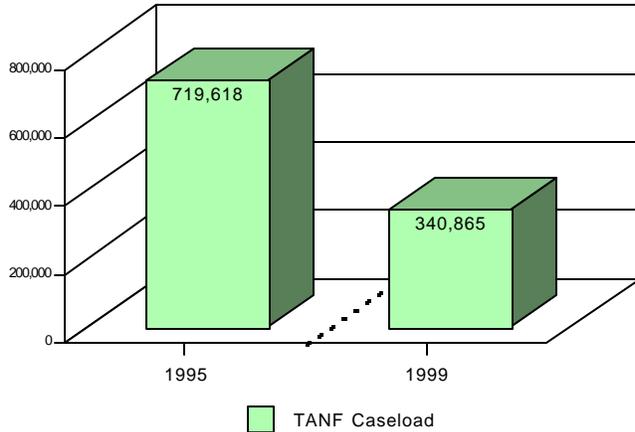
The Texas Legislature determines the amount of state money appropriated to the TANF program. Based on the appropriation, DHS then determines the maximum grant amount for each household size. In 1999, the 76th Legislature instructed DHS to adjust the TANF grant amount each year to ensure that the maximum monthly grant for a family of three is at least 17 percent of the federal poverty level (FPL). Currently, the federal poverty level for a family of three is \$14,150. This increase raised the maximum grant for a family of three from \$188 per month to \$201 per month.⁵⁴

Time-limited Benefits

Under HB 1863, TANF benefits in Texas are time-limited according to a three-tiered structure:

- **Tier 1**—Recipients with at least a high school diploma or equivalency or recent work experience of at least 18 months will receive 12 months of assistance and 12 months of transitional benefits (childcare and Medicaid provided after TANF benefits have ended);
- **Tier 2**—Recipients who have completed three years of high school or have recent work experience of not fewer than six or more than 18 months will receive 24 months of assistance and 12 months of transitional benefits; and
- **Tier 3**—Recipients who have completed fewer than three years of high school and have fewer than six months of work experience will receive 36 months of assistance and 12 months of transitional benefits.

Once a recipient has exhausted her benefits as a result of the state time limits, she may not reapply for assistance for five years. This state “freeze-out” period does not apply to children or to adults who meet specific hardship criteria. However, federal time limits prohibit any family containing an adult recipient from receiving benefits for more than five years over their lifetime. State and federal time limits run concurrently.

Fig. 2- Changes in TANF Caseload in Texas

Source: DHS

minimum sanctions but gives states broad authority to increase and extend sanctions within their own policies. Specifically, federal law requires states to reduce TANF benefits pro rata, or impose partial sanctions for families who do not adhere to work requirements or do not comply with child support enforcement. Additionally, states cannot impose a sanction on a single parent caring for a child under age six if childcare is not available. Federal regulations stipulate that states will be penalized for improper sanctioning; this includes failing to impose sanctions, as well as wrongly imposing sanctions.⁵⁶

When Texas designed its welfare reform legislation in 1995, policy makers chose to focus sanction policies on adults by removing their portion of assistance for specific infractions while leaving in place assistance for the children in the family. The rationale behind this decision was that children should not be penalized for the actions of their parents.

In recent years there has been some debate among policy makers about whether the current sanction structure is effective in enforcing compliance, particularly regarding work requirements. A number of local workforce boards are experimenting with alternatives to sanctions to improve compliance, including home visits and incentives for participation. It will be important to monitor these developments and current research on sanctioned clients to guide future decisions regarding state sanction policies.

Welfare Service Delivery

TANF benefits and related services to welfare clients are provided by various state and local entities. In Texas, the Texas Department of Human Services (DHS), the Texas Workforce Commission (TWC), the Health and Human Services Commission (HHSC) and the Office of the Attorney General are the primary agencies responsible for implementation of state welfare policy.

Health and Human Services Commission (HHSC)

HHSC has broad oversight responsibilities for all the programs and activities of the state's health and human services agencies. In 1999, House Bill 2641 by Sen. J. E. "Buster" Brown and Rep. Patricia Gray, the HHSC Sunset bill, assigned new responsibilities to HHSC, including coordination and oversight of agencies that administer childcare, TANF and Food Stamp Employment and Training programs.

Caseload

In fiscal year (FY) 1999, 101,426 adults and 268,512 children in Texas received TANF benefits monthly. The projected caseload for FY 2000 is 89,485 adults and 246,567 children. Texas has seen more than a 50 percent decrease in the total TANF caseload from October, 1995, to August, 1999 (see Figure 2).⁵⁵

Sanctions

Financial sanctions, or monetary penalties applied against families' cash aid, are designed to enforce compliance with specific TANF program requirements. Federal law establishes

HHSC is the single state agency for Medicaid in Texas, determining state Medicaid policies and operations. HHSC's State Medicaid Division responsibilities include serving as the primary point of contact with the federal government, establishing policy directions for the Medicaid program, administering the Medicaid State Plan, contracting with the various state agencies to carry out the technical operations of the Medicaid programs, approval of Medicaid policies, rules, reimbursement rates and operations of the state agencies contracted to operate Medicaid programs, organizing and coordinating initiatives to maximize federal funding and administering the Medical Care Advisory Committee (mandated by federal Medicaid law).⁵⁷

Texas Department of Human Services

DHS is the agency primarily responsible for determining and certifying the eligibility of clients for public assistance benefits such as Medicaid, Food Stamps and TANF. The agency administers more than 30 state and federally-funded programs designed to benefit low income families and children, persons who are elderly, persons with disabilities and victims of family violence.

Personal Responsibility Agreement

Before adults can receive TANF benefits, they must sign a Personal Responsibility Agreement (PRA) that requires them to:

- Cooperate with child support requirements to establish paternity and help obtain child support for their child;
- Ensure that their child gets a medical checkup;
- Ensure that their child is immunized;
- Ensure that each child or teen parent receiving benefits who does not have a high school diploma or GED, attends school regularly; and
- Ensure that each recipient attends parenting skills classes, if requested to do so.

Source: HB 1863

TANF eligibility

DHS is the agency responsible for determining eligibility for TANF cash assistance. Eligibility is determined by a variety of state and federal requirements.

A household's financial eligibility is based on a figure that represents 100 percent of the estimated cost necessary to meet basic needs for one month according to household size.

DHS determines benefits based on a figure that equals 25 percent of the budgetary needs amount and pays a maximum TANF grant that equals approximately 17 percent of the Federal Poverty Level (FPL). Countable income after allowable deductions must be under \$201 per month for a family of three. Eligible families cannot have more than \$2,000 in resources (or "assets"), or \$3,000 if the household includes a relative who is at least age 60 or has a disability. Certain resources, such as home, burial plots, personal possessions and vehicles worth less than \$4,650 are not counted toward this limit.⁵⁸

Texas Works

The Texas Works program at DHS helps people identify barriers to employment and find resources that will help them achieve economic and social self-sufficiency.

According to DHS the program's goals include:

- Helping people in need find and keep jobs;
- Helping families receive regular child-support payments and other assistance;
- Working in partnership with families, local communities and other agencies to assist clients;
- Providing cash assistance Medicaid and Food Stamp benefits to eligible families as they work toward independence;
- Ensuring that everyone who comes into a Texas Works office has the opportunity to learn about alternatives and resources that will lead them to self-sufficiency; and
- Providing accurate, timely and courteous service.

Additional activities include:

- Identifying ways to help working clients and former clients retain employment and advance toward a career;
- Acting as advocates for needed community services such as childcare and transportation;
- Promoting and advocating for community collaboration to identify, develop and expand resources needed to promote independence;
- Promoting transitional Medicaid and childcare services for those who qualify;
- Contacting employers to follow up on employment leads; and
- Following up with working clients and former clients to support their continued employment and career progress.⁵⁹

Medicaid eligibility

DHS is the agency responsible for determining Medicaid eligibility. DHS manages eligibility for Medicaid for low-income families and children separately from eligibility

for SSI recipients, elders, persons with disabilities and others in need of long-term care services.

Eligibility is determined by a variety of state and federal requirements. The 1996 federal welfare reform law now requires all states to make Medicaid available to eligible families whether or not they are receiving cash assistance. The minimum standard for this new mandatory federal Medicaid eligibility category is the state's AFDC standard as of July, 1996. The category is officially known as Section 1931 Medicaid, referring to the enacting clause in the Social Security Act. State TANF program requirements, such as the PRA, do not affect Medicaid eligibility. To keep eligibility systems as simple as possible, most states, including Texas, have chosen to deem all TANF recipients eligible for Medicaid, and to keep TANF income eligibility standards identical to those for the new, "de-linked" Section 1931 Medicaid category.

Also, the entitlement to transitional Medicaid is no longer linked to TANF cash assistance, but instead to the Section 1931 Medicaid category. As a result, when a TANF caretaker reaches a Texas time limit, he or she can continue to receive regular Medicaid benefits for as long as the household income remains at TANF levels. Transitional Medicaid is triggered when increased household earnings or child support move above the TANF-Section 1931 limits.

In addition to the family-based Section 1931 Medicaid, Texas provides Medicaid to children based on age, family income and resources. The income and resource (asset) limits applied to Section 1931 Medicaid are identical to those described above for TANF. For children's Medicaid categories, the resource limit is modified to completely disregard the value of one family vehicle. Pregnant women and infants born to a Medicaid-enrolled mother are eligible for Medicaid without an asset test. Income limits for children range from 100 percent of the FPL for children under age 19, 133 percent of the FPL for children under age six, and 185 percent of the FPL for infants under age one. Pregnant women may be covered with incomes up to 185 percent of the FPL. All income caps and asset limits described here are state-imposed, as federal law allows states to modify income and resource counting methodologies to make them less restrictive (but not more restrictive) than those in force in AFDC as of July, 1996.⁶⁰

Food Stamp eligibility

DHS determines eligibility for the Food Stamp program using criteria established by the United States Department of Agriculture (USDA). Food Stamp benefits are intended to help low income families purchase a nutritionally adequate diet. The federal government provides the total cost of food stamp benefits issued to participating households and contributes 50 percent of the state's cost in administering the program. Eligibility criteria are less restrictive than for TANF. Household gross income must be less than 130 percent of the FPL for its size (\$18,440 for a family of three). Countable income after allowable deductions must be under 100 percent of the FPL (\$13,880 for a family of three). Eligible families cannot have more than \$2,000 in resources, but

assets such as a home, burial plots, personal possessions and vehicles worth less than \$4,650 are not counted toward this limit.⁶¹

Unemployed, able-bodied adults ages 16 to 59 must register for employment services with TWC. However, families with children cannot be denied Food Stamps for failure to work. Families with children below the age of 6 are exempted from the requirement to register for employment services. An able-bodied person age 18 through age 50 without children who is not working or participating in a specified work program for an average of 20 hours per week is limited to three months of eligibility in a 26-month period, unless living in a county with 10 percent or greater unemployment.

The amount of monthly Food Stamp allotment a household receives depends on the number of persons in the household and the amount of income available after all allowable deductions are made from their gross income. The maximum amount of benefit a family of three with no income can receive is \$335 per month. Households receive their benefits via Electronic Benefits Transfer (EBT), known in Texas as the Lone Star Card. Benefits may only be used to purchase food and can be used at any participating food market and farmers' markets.

Texas Workforce Commission (TWC)

TWC is the agency responsible for Choices, the employment and training program serving applicants and recipients of TANF cash assistance. TWC also administers the Welfare-to-Work block grant targeting the hardest-to-serve, most disadvantaged TANF recipients. Childcare for low-income families including TANF recipients and former TANF recipients is administered through the TWC.

Local workforce development boards (LWDBs)

There are 28 workforce development boards covering 254 counties in Texas. LWDBs are comprised of persons from the business, education and labor sectors, as well as community-based organizations, childcare providers, economic development agencies, rehabilitation, adult education and literacy groups and public employment and human services agencies. The workforce boards are responsible for local oversight and evaluation of programs, including childcare services, Choices, Food Stamp Employment and Training, Workforce Investment Act (WIA) funded programs, and Welfare-to-Work (WtW) funded programs.

Choices program

TWC oversees Choices services, the successor program for Job Opportunities and Basic Skills Training (JOBS), delivered at the local workforce boards one-stop centers. The purpose of Choices is to provide work-related activities and support to assist eligible participants to prepare for and retain employment and avoid becoming or remaining dependent on public assistance. Because state and federal welfare reform legislation emphasize personal responsibility, time-limited cash assistance benefits and the goal of work instead of welfare, Choices was developed as a service delivery model with a primary emphasis on employment at the earliest opportunity for applicants and recipients of cash assistance.⁶²

All TANF applicants and recipients who are at least 13 years of age are eligible for Choices services funded through the TANF block grant funds. To be certified and to remain eligible for TANF benefits, applicants and recipients are required to attend a workforce orientation and must comply with employment services requirements, unless they meet one of several state-defined exemptions.

At all times, non exempt recipients are expected to participate from 20 to 35 hours per week in work activities. When a recipient completes the needed preparation for employment, he or she returns to the job search. Work is the goal, and the job search is resumed at every appropriate interval in a recipient's participation. Support services, including childcare, transportation and work-related expenses, are available, as needed, to assist recipients in going to work. Failure to participate in work activities, without good cause, results in immediate sanction/penalty for all nonexempt recipients.⁶³

Childcare Services

Childcare currently is delivered through TWC's local workforce boards' childcare contractors who assist clients with childcare, eligibility and handle payments to providers. Childcare services are provided to TANF recipients, former recipients and low-income parents who work or attend school or training. The local workforce development boards administer this program. Federal law caps income eligibility for childcare at 85 percent of the State's Median Income, but state rules allow Workforce Boards to establish lower income levels to serve area families. Local workforce boards have the ability to set many of their own eligibility levels within these guidelines.⁶⁴

Welfare-to-Work grants program

The Welfare to Work (WtW) grant program was created by Congress in 1997 as part of the Balanced Budget Act in response to concerns that those TANF recipients (and noncustodial parents) facing the greatest barriers to work were being left behind.⁶⁵

The purpose of the WtW grants program is to:

- provide additional resources to assist the most disadvantaged welfare recipients move from welfare into jobs, recognizing that this population may need extra services to succeed;
- supplement TANF funds with grants that are to be used primarily for post-employment activities, but may not be used for cash assistance;
- expand employment services to noncustodial parents of welfare children (mainly poor fathers), to improve their economic outcomes and thereby increase their ability to support their children; and
- target resources to poor communities.⁶⁶

WtW grants are intended to supplement, not duplicate or substitute for, TANF-funded services. WtW-funded programs are to be implemented within the context of relevant TANF programs and policies, but are to focus also on improving participants' job skills over the long run. To reinforce the employment focus of WtW, the programs fall under the authority of the U.S. Department of Labor. In Texas these funds are passed through TWC to the local workforce development boards.

The primary target population of the WtW grants is TANF recipients, but not all TANF recipients are eligible. At least 70 percent of all grant funds must be spent on persons who have received TANF or AFDC for 30 months or more, or are within 12 months of reaching a TANF time limit. Federal statutory changes expanded WtW eligibility criteria, enabling local workforce boards to serve more people. Original legislation required TANF recipients to have two of three specific employment barriers. This requirement was removed. WtW funds may also serve persons whose time-limited benefits have expired.

The eligibility for noncustodial parents to receive services also was expanded to include not only noncustodial parents with a child on TANF, but also noncustodial parents with a child receiving Food Stamps, SSI, Medicaid or CHIP. Up to 30 percent of the funds can be spent on TANF recipients or noncustodial parents who have characteristics associated with long-term dependency and youth aged 18-25 years who are emancipating from foster care. Custodial parents with incomes below the poverty level qualify as well.⁶⁷

Workforce Investment Act (WIA)

The WIA, which Congress passed in 1998, provides funding for job training programs and requires states to streamline and consolidate their workforce systems by creating a "one stop" approach to delivery of services. WIA not only replaces the Job Training Partnership Act (JTPA), but also reflects many of the features already established by the Texas Legislature under HB 1863, calling for the integration of workforce training and services and career centers under local control.

Food Stamp Employment and Training (FSE&T)

FSE&T was designed to assist Food Stamp recipients in obtaining employment. All Food Stamp household members, age 16 through 59, are subject to participation in FSE&T activities unless they are employed at least 30 hours a week or earning the equivalent, or have other federally defined exemptions. PRWORA placed additional requirements on able-bodied adults age 18-50 with no dependents. Able bodied adults without dependents (ABAWDs) must participate in specific activities or they are only eligible to receive food stamp benefits for three months in a 36-month period.⁶⁸

Office of the Attorney General (OAG)

The Office of the Attorney General is the official child support enforcement agency for Texas. The OAG determines, on a case-by-case basis, which of the child support services listed below are appropriate:

- locating a noncustodial parent;

- establishing paternity;
- establishing and enforcing child support orders;
- establishing and enforcing medical support orders;
- reviewing and adjusting child support payments; and
- collecting and distributing child support payments.

When a person applies for TANF benefits, she will automatically receive child support and paternity establishment services through the OAG. If an unmarried mother is receiving TANF or Medicaid, the law requires her to cooperate with the OAG by naming the father of the child and giving information that would assist in locating the father.⁶⁹ The mother signs her right to child support money to the OAG's office in exchange for TANF and Medicaid. If the mother fails to agree to this assignment of rights she would be disqualified under PRWORA.

Evaluate Services for Children

In spite of a strong economy, 1.5 million Texas children remain in poverty.⁷⁰ Welfare programs should strive to lift Texas children out of poverty and to create opportunities to ensure they can break the cycle of poverty.

Impact of Welfare Changes on Children

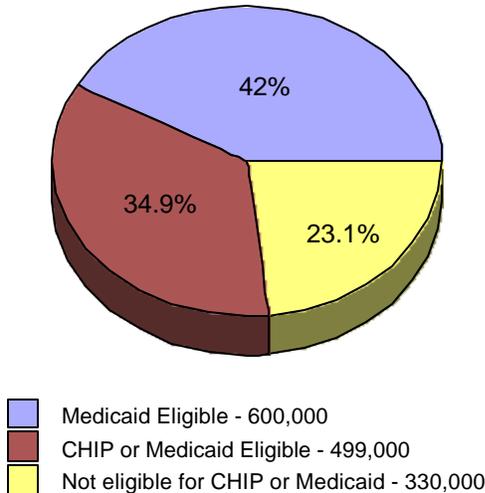
Welfare legislation affects the health and development of children living in poverty. Changes in welfare policies and programs frequently are driven by adult-focused goals, despite the fact that children constitute two-thirds of recipients of cash assistance. Young children who grow up in families with limited incomes face potential exposure to various environmental and biological risk factors, which put them at risk for poor outcomes.⁷¹ Needy children cannot access services on their own; they rely on their parents to seek assistance on their behalf. When parents face obstacles to obtaining financial assistance or other support services, their children suffer the consequences. Welfare changes that push children into low-quality childcare or that limit their access to health care or nutritional assistance can have significant harmful effects. Additionally, welfare changes that deprive families of needed social and service supports can intensify the stresses that contribute to family disintegration. In contrast, welfare reform initiatives that enable families to obtain high-quality childcare and continued or improved access to primary health care can improve future outcomes for Texas children.⁷²

Health Coverage for Children

Approximately 1.4 million Texas children lack health insurance⁷³ (see Figure 3). To address the high number of uninsured children in the state, the Legislature authorized the Children's Health Insurance Program (CHIP) during the 76th Legislative Session (1999). This program establishes a state child health plan for children under the age of 19 whose families are below 200 percent of poverty and who are not eligible for Medicaid or are not covered by another health plan. HHSC estimates that in 2000 roughly 600,000 uninsured children were below 100 percent of the FPL and presumed eligible for Medicaid, but not enrolled. About 499,000 were between 101-200 percent of the FPL, some of

whom would be Medicaid-eligible, and others who would qualify for CHIP. Another 330,000 uninsured children were believed to be above 200 percent of the FPL and not eligible for CHIP or Medicaid.⁷⁴

Fig. 3- Uninsured Children in Texas



Source: HHSC

While implementation of CHIP is expected to increase health insurance coverage of Texas children, those children who are eligible for Medicaid are not eligible for CHIP. In recent years, Texas has seen dramatic declines in Medicaid enrollment despite the fact that Medicaid eligibility is no longer linked to TANF eligibility. From January, 1996, to February, 2000, children's Medicaid enrollment has dropped 15 percent, despite the fact that welfare reform expanded eligibility for Medicaid during this period.⁷⁵ Medicaid can serve as an important support to a family transitioning from welfare to work. Therefore, the state should carefully assess why participation in the program has declined dramatically and take steps to ensure that children who are eligible for Medicaid receive services.

During the 76th Legislative Session (1999), legislators attempted to address the large declines in Medicaid caseloads. House Bill 820 by Rep. Elliott Naishtat and Sen. Judith Zaffirini, relating to requiring DHS caseworkers to automatically review children's eligibility for medical assistance when the family or adult leaves TANF, authorizes DHS to continue eligibility for up to one month while it attempts to get a family into the DHS office for a recertification review; however, the department has not exercised this option. The bill also requires DHS to revise client education materials and change the notices sent to families to ensure that parents are aware of their options for continued children's Medicaid. These new notices must be provided whenever a family is due for a regular eligibility recertification and when they are leaving TANF.

Nutrition Assistance for Children in Low-Income Families

According to HHSC, the overall number of children in poverty in Texas has decreased from 1.38 million in 1995 to 1.25 million in 1998.⁷⁶ Despite modest improvements in the child poverty rate, the percentage of children living in poverty in Texas is still higher than the national average (22 percent versus 18.95 percent in 1998),⁷⁷ and fewer poor children receive Food Stamps than five years ago.⁷⁸ Currently, DHS estimates that it is serving only 30 percent of the eligible Food Stamp population, down from 67 percent in 1995. Over half of the Food Stamp recipients in Texas are children. In 1999, 59 percent of poor children received Food Stamps, down from 79 percent in 1994.⁷⁹

Although a portion of the decline in Food Stamp enrollment can be attributed to eligibility restrictions imposed by federal welfare reform and an improved economy, research shows that as much as 60 percent of the decline is a result of confusion over eligibility requirements, welfare reform initiatives designed to deter people from applying for benefits and administrative barriers.⁸⁰ Inadequate nutrition

during early childhood can impede brain development and have lasting effects on a child's ability to learn, which results in lost knowledge, brainpower and productivity for Texas.⁸¹ Food Stamps provide an important support to families as they work toward self-sufficiency.

During the 76th Legislative Session (1999), legislators attempted to address the large declines in the Food Stamp caseload by appropriating up to \$2 million for a nutrition education and outreach program. In July, 2000, DHS selected an independent contractor to implement the outreach program statewide. In addition, DHS has been conducting its own outreach to address the decline in participation. If outreach efforts are to be successful in increasing participation among eligible families, then they must be coupled with steps to simplify application procedures and minimize barriers to participation.

Recommendations

- 31. *Recommend that the Legislature direct DHS, in conjunction with imposing any family-related sanction in the TANF program, to investigate why a family is being sanctioned, determine what resources could assist the family in meeting these requirements, make appropriate referrals and follow up with local support services. Recommend that the Legislature direct DHS to develop a service strategy, to be implemented at the local level, for addressing the needs of children in TANF families.***

Sanctions

Using sanctions to obtain compliance assumes that all clients have the capacity to understand the rules and the ability to comply with them. Several recent studies, however, suggest that there are some parents whose physical and mental disabilities reduce either their ability to appreciate what is required of them, or their ability to participate in required activities and secure and retain a job, or one or more of these requirements.⁸²

Opportunities exist to link the sanction process with more proactive investigations into the reasons for noncompliance as part of an effort to identify and assist hard-to-serve clients. Because a state generally loses its link to vulnerable families when they are sanctioned, it is important that Texas develop concrete steps to ensure an ongoing connection to families.

Currently, TANF caretakers who are having difficulty caring for their children or meeting requirements under the Personal Responsibility Agreement may be required to attend parenting classes and most likely will be sanctioned. When this happens it should trigger an intervention to help address the root problem the caretaker may be facing. At a minimum, child-related sanctions for school attendance, immunizations and health screens should trigger more intensive case management, referral to services, troubleshooting and follow-up.

Service strategy

When families come to DHS for services, the state has an opportunity to provide supports and services for the children. Currently, no coordinated and strategic statewide plan exists to serve TANF children. With a TANF surplus and new flexibility, the state should determine possible interventions, services and referrals that can be provided to children and teens in TANF families.

Examples include: early childhood intervention, health services, drop-out prevention and services through community-based organizations.

32. Recommend that the Legislature direct DHS to eliminate face-to-face interview requirements, allow mail-in eligibility or telephone recertification and eliminate the assets test for children's Medicaid eligibility.

Face-to-face interview requirements

Under the state's CHIP program, when a family submits a mail-in application that includes one or more children who appear to be Medicaid-eligible, the parents are contacted and told they must go to a DHS eligibility office for an interview. This is not required by federal law. In fact, 37 states plus the District of Columbia allow mail-in application for children. Three additional states, Georgia, New Mexico, and New York, allow community-based enrollment outside the welfare office.

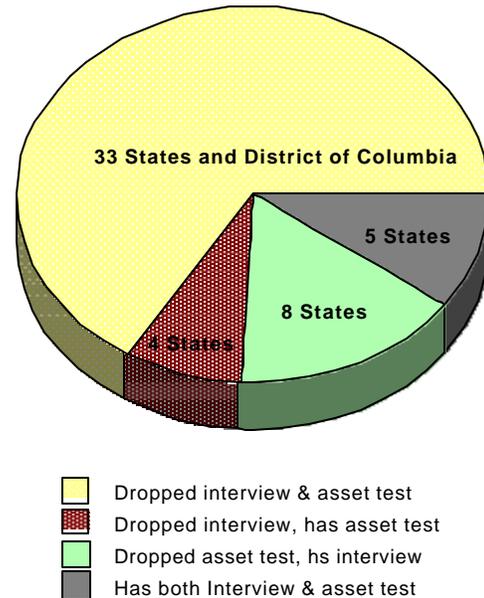
Assets Test

Currently, in addition to income, parents of Medicaid-eligible children in Texas must document the value of assets or resources, including savings, retirement accounts, automobiles and valuables. The asset limit is the same previously described for TANF, except that the value of one automobile is disregarded entirely. This test is not required by federal law. In fact, 41 states and the District of Columbia have already dropped the assets test for children.⁸³

These different requirements for the same health coverage place unfair burdens on our lowest-income families. For example:

- CHIP-eligible families making more than 133 percent of the FPL (\$22,677 for a family of four) have a simple application and eligibility process with a reasonable amount of paperwork and documentation and twelve months of continuous coverage.
- Medicaid-eligible families (those making less than 133 percent of the FPL) have to take off work to go to a DHS office for an appointment and return every six months to repeat the process.
- Many families, especially those between 100-133 percent of the FPL, may have one child eligible for Medicaid and another for CHIP, creating even more confusion. Even families up to 185 percent of the FPL must enroll that child in Medicaid if they have an infant under age one.

Fig. 4- Eligibility for Children's Medicaid



To insure as many low-income children as possible, the application process for CHIP and Medicaid should be seamless. To have a joint, mail-in application, the Medicaid and CHIP programs must have the same requirements for documentation.

33. *Adopt 12-month continuous eligibility for children's Medicaid.*

In Texas, children enrolled in CHIP remain enrolled for 12 months, regardless of any changes in income during that period. Families of Texas children enrolled in Medicaid must report any income changes within ten days and if the new income level surpasses the eligibility guidelines, Medicaid is cut off the next month. Once CHIP is fully implemented, if a child is no longer eligible for Medicaid, the child can enroll in CHIP. In many cases however this will require a transfer in providers, because the same health insurance plans may not participate in both Medicaid and CHIP.

Implementing a 12-month eligibility for children's Medicaid would alleviate disruptions in services. Currently, enrollment of children in Texas Medicaid is characterized by frequent loss of coverage for a significant portion of children, due to both fluctuations in family income and terminations for procedural reasons. A study of Texas Medicaid data found that about 40 percent of all the children enrolled in the children's Medicaid-only groups at a point in time will lose coverage within one year.⁸⁴ Twelve-month eligibility for Medicaid is a state option Congress created in 1997 to allow for identical policies in Medicaid and CHIP and promote continuity of health care. Sixteen states have adopted continuous eligibility for children's Medicaid.

34. *Recommend that the Legislature direct DHS to form an office standards workgroup (including legislative staff, advocates, service providers and stakeholders) to improve the TANF, Medicaid and Food Stamps eligibility, application and review processes at DHS by: reviewing client communication; establishing uniform standards across DHS regions; reviewing Food Stamp error rate reduction measures; developing comprehensive performance measures; exploring the use of extended hours based on regional needs; and reviewing TANF policy for counting resources. Recommend that the Legislature direct DHS to implement recommendations of the workgroup, where appropriate, and report to the Legislature on the findings of the workgroup.*

In recent years the emphasis of state welfare and workforce policy has been to move people quickly out of public assistance and into jobs. Unfortunately, a byproduct of this effort has been to create confusion and barriers for clients who may still be eligible for assistance and may even already be working. When eligible adults do not get the benefits they need, their children lose out. This recommendation would direct the agency to review all client interactions, communications, forms and procedures, in light of the last five years of state and federal policy changes and revamp them to be more accessible and supportive of clients seeking services.

Recently, DHS formed a workgroup made up of agency and legislative staff, advocates and service providers to revise the application and verification procedures currently used for TANF, Food Stamps, Medicaid and Medicaid verification policies. To date, the efforts of this workgroup have produced the draft of a simplified, user-friendly application and recommendations for simplifying the

verification requirements to apply for benefits. These initial steps lay the foundation for a workgroup process for improving all of the eligibility, application and review processes in order to make TANF, Medicaid and Food Stamps more accessible to working families.

- 35. Recommend that the Legislature direct DHS to revise the TANF vehicle resource limit to exclude the value of one vehicle when determining a family's assets, define "TANF related" services or programs, such as resource and referral services and allow families with vehicles above the Food Stamp resource limit who qualify for these services to also qualify for Food Stamps as allowed under expanded federal "categorical eligibility" rules. If federal legislation is enacted that gives states the option to exclude the value of one vehicle for the purposes of the Food Stamp asset test for all Food Stamp recipients, the state should exercise that option.**

Under current federal law, most families are allowed only \$2,000 in countable assets to be eligible for Food Stamps and the value of any car over \$4,650 is counted toward this limit. The vehicle allowance was originally set at \$4,500 in 1977.⁸⁵ In 1993, Congress enacted a graduated increase to \$5,000 and a requirement for annual indexing to reflect inflation beginning in FY 1997. However, the federal welfare reform act repealed these provisions in 1996 and froze the vehicle allowance at \$4,650. As a result, many low-income families cannot access Food Stamp benefits because they own a vehicle above the allowable limit.

Although the vehicle allowance limit for Food Stamps cannot be increased without a change in federal law, Texas does have the flexibility to change its TANF vehicle counting policy (currently the same as for Food Stamps) to exclude the value of one vehicle entirely for the purposes of the asset test. Texas can also allow families with children who are eligible for TANF-funded services or programs to qualify for Food Stamps using this more lenient vehicle counting policy. Texas should take advantage of this flexibility to allow families with children to have a reliable vehicle and still receive Food Stamp benefits.

Families living in rural areas and working families, in particular, would benefit most from this change in vehicle rules. Many working poor families who need reliable transportation to get to work may not be eligible for the Food Stamps they need to supplement minimum wage salaries. Families moving off of TANF into the workforce also may find themselves ineligible for Food Stamps because of a car. Thirty states have taken advantage of this option to expand their TANF-related categorical eligibility criteria to allow more families to qualify for Food Stamps using the more lenient resource counting rules of their TANF Programs. Texas should do so as well.⁸⁶

Legislation currently pending in Congress, the Kennedy-Specter Hunger Relief Act, would amend the Food Stamp Act to offer states the option to exempt the value of one vehicle for all Food Stamp recipients, regardless of their eligibility for cash assistance or other TANF services. This bill has the support of the President and bi-partisan support in Congress. Should the bill pass, Texas should exercise the vehicle exemption option.

36. Recommend that the Legislature direct DHS to allow phone-in recertification for Food Stamp clients who are working or in job training, and to require only one face-to-face DHS office interview annually for those clients.

Since the enactment of state and federal welfare reform, sharp caseload declines also have occurred in the Food Stamp program. Although tighter eligibility rules and an improved economy account for part of the decline in the Food Stamp rolls, the 44 percent drop in enrollment since January, 1996, is three times greater than the drop in the number of poor Texans.⁸⁷ Among the studies conducted to determine the factors responsible for the sharp decline in Food Stamp participation since the implementation of welfare reform, a report from the General Accounting Office (GAO) cited restrictive registration procedures as one of the reasons for falling enrollment.⁸⁸ For example, over half of the state's non-public assistance (NPA) Food Stamp caseload must reappear at an eligibility office at least every three months to recertify for benefits. DHS began imposing shortened certification periods on Food Stamp households in response to legislation passed by the 74th Legislature (1995) requiring the department to implement measures to improve payment accuracy in the Food Stamp program. Certain administrative requirements pose greater barriers for working families, who must take time off from work for their recertification interview which can last several hours.⁸⁹ The percentage of Food Stamp caseload subject to short certification periods (three months or less) has grown from seven percent in 1994 to over half in 1999.⁹⁰

This recommendation would reduce barriers to participation among working families by minimizing the number of trips recipients must make annually to DHS offices to recertify for benefits. This change would ensure that working families get the support services they need, while allowing for continued error rate control in the Food Stamp program.

Hardest-to-serve TANF clients

Texas, like other states across the nation, has succeeded in moving significant portions of the welfare caseload into the labor market. As more and more job-ready welfare recipients become employed and leave welfare, the people who remain are likely to have the most barriers to work. These "hardest-to-serve" recipients may have a limited work or education history or have personal or family issues that make achieving economic self-sufficiency difficult. Some will have been previously exempt from participation in welfare-to-work programs, while others will have participated only briefly in the past or had difficulty making the transition from program activities to jobs.

Hardest-to-serve clients are defined as persons or families who face multiple barriers to self-sufficiency. These unique barriers may include:

- learning disabilities;
- physical or mental disabilities;
- chronic health problems;

- substance abuse problems;
- domestic violence;
- incapacitated family members;
- children with behavioral problems;
- criminal history;
- lack of education, training or experience; and
- housing instability.

TANF recipients with learning disabilities, mental health problems or addictions to alcohol or drugs typically are in need of a combination of specialized and coordinated services, treatment or workplace accommodations to make a successful transition to employment. Similarly, persons who speak little or no English tend to require services that increase their employability by improving their language skills and helping them to understand and cope with unexpected cultural differences.

Some barriers to employment, such as physical ailments and problems with childcare or transportation, are easy to identify. Other barriers are less visible but equally problematic. Issues such as high levels of illiteracy and learning disabilities, domestic violence and substance abuse can impede a successful and stable transition to employment.

Nationwide, up to 50 percent of TANF recipients report facing multiple barriers to employment.⁹¹ One of the strongest predictors of nonparticipation in work activities is the presence of multiple barriers. An Urban Institute study found that almost a third of current welfare recipients are at high risk of remaining on welfare and losing benefits when time limits expire unless state programs can help them overcome their multiple work obstacles. In Texas the figures are even higher:

- In 1999, over 66 percent of single-parent recipients in Texas had worked fewer than six of the previous 24 months;
- 56 percent had less than a high school education;
- 17 percent were caring for children under age one; and
- High regional unemployment ranged from 6.0 percent in Anderson County to 28.9 percent in Presidio County in January, 2000.⁹²

Recipients in South Texas faced the most severe obstacles:

- Over 73 percent had poor work histories; and
- 66 percent had less than a high school education.

Initiatives to Meet Needs of Hardest-to-Serve

The barriers that make a person hard to serve do not necessarily make participation or employment impossible. Many recipients may be able to participate in employment or training programs without special intervention, while others may need extra support. Programs that involve participants in activities that build job readiness at the same time they address a barrier may create a better environment in which the person can succeed.

Employment Retention and Advancement (ERA) demonstration project

Texas became one of 13 states awarded a planning grant from the U.S. Department of Health and Human Services to develop strategies that foster job retention and advancement for TANF recipients. The ERA project combines team-based case management and a post-employment stipend to ensure access by participants to a comprehensive array of services designed to support employment retention and advancement.⁹³

The team-based case management consists of a DHS eligibility worker, a TWC Choices worker and an additional local case manager contracted by DHS and the local workforce development board. The team provides employability assessments, client education, long-range goal setting, service brokering, employment and post-employment service planning, participant advocacy, benefit error resolution, sanction mitigation, outreach to participants and coordination with the local business community.⁹⁴

In addition, ERA participants can receive a \$200 payment per month for up to 12 months to assist with the additional expenses associated with post-employment activities such as childcare, transportation and clothing. To receive each payment, participants must be in compliance with their post-employment plan and must be employed at least 30 hours per week or employed at least 15 hours per week and participating in a qualified work activity for at least 15 hours a week.⁹⁵

Local innovation projects

The 76th Legislature appropriated \$7.5 million dollars to DHS to fund local innovation projects. Local community and faith-based organizations identified local barriers to self-sufficiency and submitted proposals for funding to DHS. The local innovation projects that were selected for funding provide services including after school tutoring for at-risk children, evening transportation services for persons with nontraditional working hours, intensive case management and referral to households at-risk of needing TANF, auto repair vouchers, survival skills and chemical abuse and dependency prevention and counseling. As of July, 2000, 16 of these projects were active. The effectiveness of these pilot projects will be evaluated, with a goal of replicating successful programs around the state.⁹⁶

Local workforce development board activities

Workforce development boards are responsible for implementing TWC programs aimed at helping the hardest-to-serve. Some examples include:

- The Bridges to Success program in the Permian Basin area provides transportation to the most in-need clients. Transportation is provided to job interviews, childcare, medical appointments and other necessary locations.
- The Gulf Coast board subsidizes the wages of TANF recipients who cannot find work because of a lack of work experience and job skills. In addition to subsidizing the wages of these workers, an on-the-job mentoring program helps to address both job-related problems and other barriers that might affect work.
- The Rural Capital Area board has located GED centers within its Workforce Centers to provide educational opportunities to its clients.⁹⁷

While significant program development has occurred to meet the needs of the hardest-to-serve, the challenge that remains is to set in place state policies that support such local developments, foster replication of the most promising practices and provide specific guidance and requirements for improved practices in both the welfare and workforce systems.

Texas' investment in the hardest-to-serve clients today will allow these persons to become productive members of society tomorrow. Welfare reform will only be a complete success if we provide persons with the tools necessary to become self-sufficient.

Recommendations

37. Recommend that the Legislature direct HHSC, DHS and TWC to define federal time-limit hardship exemptions that adequately address circumstances and barriers some clients may face exiting TANF.

Under federal law, a state may exempt up to 20 percent of the TANF caseload from federal time limits. This exemption is applied based on a state's definition of hardship. This recommendation would allow Texas to define its hardship exemption criteria to ensure that those least able to support themselves or who may require additional time to develop the tools needed to become employed still have a basic safety net of assistance and services.

38. Recommend that the Legislature direct DHS to implement a new screening/assessment process, based on a review of best practices, to help identify clients with highest level of need and barriers to work. The screening/assessment process is to be used to improve case management, referral to community-based services and to help local workforce contractors design appropriate employability plans and support services.

Texas must develop innovative approaches that prepare for employment a much larger and far needier segment of the population. So far in Texas, the response to these challenges has been limited. Four years after Texas began its welfare reform initiative, the state began funding to support pilot projects to address barriers among TANF recipients. Several local workforce development boards, charged with overcoming barriers in their communities, now are developing programs targeting these issues.

This recommendation would improve the up-front needs assessment process for TANF clients at DHS. An improved assessment process should be implemented to better address individual needs

and identify potential barriers when clients are referred to employment assistance. The results of this initial screening could provide crucial information to the workforce system as it designs an employability plan for the client that takes into account any special circumstances that need to be addressed. Not every client will need a detailed assessment, but new, simple screening tools have been developed to identify key problems that can then lead to more effective referrals and services.

39. *Recommend that the Legislature direct DHS and TWC to develop a cross-agency plan, especially at the local level, for identifying and addressing barriers to work among the hardest-to-serve clients.*

This recommendation would improve coordination between agencies, help to address significant barriers many clients may have to becoming and staying employed and foster cross-agency case management of the neediest families at the local level. It is essential that local DHS offices and local workforce boards work together to address specific client needs and ensure a successful transition from public assistance to self-support.

40. *Recommend that the Legislature require that local DHS, workforce board and TWC staff have a minimum of four hours training about domestic violence and its impact on the ability of TANF clients to meet requirements.*

Basic provisions are in place in federal and state law to identify TANF applicants and recipients for whom domestic violence is a barrier to employment and a safety threat. TANF applicants and recipients are to be informed they may be eligible for temporary exemptions from certain requirements and for assistance in overcoming family violence as a barrier to self sufficiency.

Additional steps are necessary. Research has shown that without special training about family violence and options available to TANF applicants and recipients whose safety and employability are threatened by violent partners, TANF staff may not explain those options or raise the issue in a manner that would allow women to acknowledge being in a violent relationship.⁹⁸ Appropriate staff training is an essential component of the state's commitment to assist women in overcoming family violence as a safety threat and an employment barrier.

41. *Recommend that the Legislature direct DHS and TWC to create incentives for local offices that design and implement effective case management tools for identifying hardest-to-serve clients and addressing their needs.*

This recommendation would provide financial incentives to welfare offices to enable strong policies and procedures to help hardest-to-serve persons such as battered women. This recommendation would help DHS and TWC to identify and serve the most at-risk clients and their families and refocus DHS casework on client-oriented and needs-driven services and supports.

42. *Recommend that the Legislature direct TWC to develop a Choices incentive program that encourages placement of TANF clients in higher wage jobs by local workforce board contractors. Recommend that the Legislature direct TWC to develop program guidelines for local workforce boards on post-employment services that recognize the difficulty many*

working clients will have in acquiring additional education and training once they are employed. Recommend that the Legislature direct TWC to encourage local workforce boards to provide post-employment case management for the hardest-to-serve clients.

Local workforce contractors are evaluated on their ability to place Choices participants in a job. The quality of the job and the adequacy of wages are not used to evaluate contractor performance. As a result, adult education and literacy programs and Welfare-to-Work funds for recipients are underutilized and many former welfare recipients who do find work remain in poverty. Opportunities in the current labor market suggest that many clients could benefit substantially from strategic post-employment education and training. Adding incentives for higher wage placement could foster the provision of more actual education and training and increase the likelihood of steady employment and wage growth.

Short-term assistance alone will not yield a skilled, competitive workforce. Welfare reform should not limit a recipient's access to education and training at a time when there is increased emphasis on high-performance workplaces staffed by versatile, flexible workers. Research continues to support the positive relationship between education, skills and wages.⁹⁹ Final TANF rules and federal Welfare-to-Work funds present an opportunity for some significant rethinking around when and how training services are provided. Rather than providing training only before placement, once on the job many clients could receive an array of services and supports aimed at helping them stay employed or advance to higher paying positions.

- 43. *Recommend that the Legislature direct DHS to develop a plan to roll-out the Employment Retention and Advancement (ERA) pilot project to all regions over a seven-year period. The statewide roll-out of this project should occur only if the data collected from the current sites indicates a positive effect on the employment outcomes of current and former TANF recipients served by this project.***

Studies indicate that most TANF recipients find work in the service sector where wages are typically low, fringe benefits are poor, jobs are short-term and unreliable and opportunities for advancement are limited. Therefore, the state should adopt career and wage advancement strategies, as well as employment retention strategies.¹⁰⁰

Expansion of the ERA project statewide would address several gaps in the current system, including coordinating case management between DHS and TWC. The project is designed to increase job stability and wages among former welfare recipients. It also is expected to reduce reliance on cash assistance in Texas, lower the TANF recidivism rate and produce strategies that can be replicated in other Texas communities.¹⁰¹

- 44. *Amend state law to include state recognition of nonresidential family violence centers and to authorize their funding with state appropriations to DHS for the Family Violence program.***

This recommendation would allow nonresidential family violence centers that have focused on serving family violence victims for a minimum of two years, to receive funding from DHS. Recognizing and authorizing funding for nonresidential domestic violence centers is important

because many domestic violence victims do not need residential shelter, but do benefit from other domestic violence services. Funding for nonresidential family violence programs will expand the availability of services and will allow community-based services to be designed to fit the needs of specific populations, which is vital to reaching many of the women on welfare.

Charge 3: Federal Developments

CHARGE 3: Monitor federal developments related to long-term care and welfare issues. In the event that significant developments occur, the Committee shall evaluate their impact on Texas.

Overview

The most significant federal development relating to long-term care was the U.S. Supreme Court decision in the case of *Olmstead v. L.C.*, regarding the right to be free from unnecessary institutionalization. The decision and Texas' response are detailed in this section.

Several major developments in the area of Temporary Assistance for Needy Families (TANF) will affect Texas' compliance with federal requirements. In April, 1999, the federal government issued their final regulations for TANF. In October, 1999, Governor Bush certified inconsistencies between state welfare reform and federal welfare reform to the Administration for Children and Families (ACF), U.S. Department of Health and Human Services, as required by federal rule. The Achieving Change for Texans (ACT) waiver is set to expire in March, 2002. Congress has relaxed eligibility restrictions under the Welfare-to-Work (WtW) funds. These developments provide the state with additional opportunities and responsibilities in the area of welfare reform.

United States Supreme Court Decision in *Olmstead v. L.C.*

On June 22, 1999, the Supreme Court ruled in *Olmstead v. L.C.*¹⁰² that unnecessary institutionalization of persons with disabilities in state institutions is unconstitutional under the Americans with Disabilities Act. The 6-3 decision was authored by Justice Ruth Bader Ginsburg and came in a case brought against the state of Georgia on behalf of two mentally retarded and mentally ill women who sought state care outside the Georgia Regional Hospital, where they had lived off and on for years. Both remained in the hospital for several years after state doctors had concluded that they could be more appropriately cared for in small group homes. The two women filed suit in federal court seeking community placement and alleging discrimination on the basis of their disability.

Americans with Disabilities Act

The Americans with Disabilities Act (ADA) was passed by Congress in 1990. Key provisions in Title II of the ADA and the federal regulations implementing it include provisions that:

- The ADA covers “services, programs and activities provided or made available by public entities”;
- A qualified individual cannot be excluded from participation in programs “on the basis of disability”;
- A public entity must provide services “in the most integrated setting appropriate to the needs” of the person (the Department of Justice defines this as “a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible”); and

- A public entity must “make reasonable modifications in policies, practices or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity.”¹⁰³

District and Appeals Court Rulings

The District Court ruled in favor of the women, rejecting the state’s argument that the failure to place them was due to lack of funding and that such placement would “fundamentally alter” the state’s system of services. The District Court agreed with the plaintiffs that the lack of community placement constituted discrimination under Title II of the ADA. The United States Court of Appeals for the Eleventh Circuit upheld the District Court’s findings and the State of Georgia appealed the case to the U.S. Supreme Court. Texas was one of several states that filed a “friend of the court” brief in support of Georgia’s position, arguing that states should be able to make their own Medicaid funding decisions.

U.S. Supreme Court Decision

The Supreme Court ruled that states are required to place persons with mental disabilities in community settings, rather than in institutions, when:

- The state's treatment professionals have determined that community placement is appropriate;
- The transfer from institutional care to a less restrictive setting is not opposed by the affected individual; and
- The placement can be reasonably accommodated, taking into account the resources available to the state and the needs of others with mental disabilities.

The decision does not require states to abolish institutions and allows some flexibility for states to maintain a waiting list for community services. Justice Ginsburg wrote that if the state demonstrates that it has a “comprehensive, effectively working plan for placing qualified persons with mental disabilities in less restrictive settings, and a waiting list that move[s] at a reasonable pace not controlled by the state’s endeavors to keep its institutions fully populated,” persons cannot move to the top of the waiting list by filing a discrimination lawsuit.¹⁰⁴

The Governor’s Executive Order

Texas Governor George W. Bush issued an executive order on Sept. 28, 1999, with the following directives:

- The Texas Health and Human Services Commission (HHSC) is to conduct a “comprehensive review of all services and support systems available to persons with disabilities in Texas,” analyzing the “availability, application and efficacy of existing community-based alternatives for persons with disabilities.” The review is to “examine these issues in light of the recent United States Supreme Court decision in *Olmstead*.”

- HHSC is to “ensure the involvement of consumers, advocates, providers and relevant agency representatives” in the review.
- HHSC is to submit a written report of its findings to the Governor, Lieutenant Governor, Speaker of the House and the appropriate Committees of the 77th Legislature no later than January 9, 2001, including “specific recommendations on how Texas can improve its community-based programs for persons with disabilities” by legislative or administrative action.¹⁰⁵

The “Promoting Independence” Plan

HHSC Commissioner Don Gilbert issued a report entitled “Promoting Independence: A Plan to Expand Opportunities for Texans with Disabilities” on Jan.12, 2000, pursuant to the Governor’s executive order. The plan stated its intent to “assure that the state moves deliberately and decisively toward a system of services and supports that fosters independence and productivity and provides meaningful opportunities for people with disabilities to live in their home communities.” The report outlined plans for identification and community placement of institutionalized persons residing in state schools, large (14 beds or more) ICF-MR facilities, state hospitals and nursing homes, under the *Olmstead* guidelines.¹⁰⁶

Promoting Independence Advisory Board

Commissioner Gilbert established the Promoting Independence Advisory Board (PIAB) to “provide recommendations to the Promoting Independence implementation process, including guidance with respect to all aspects of evaluating and planning for system enhancements.” The twelve-member board is comprised of seven consumer/family representatives, three representatives of service providers and two agency board members representing DHS and MHMR. The board meets on a monthly basis and has identified four areas of concentration: (1) identification and assessment of institutionalized persons who want to and are able to receive community-based services; (2) capacity to serve identified persons in the community; (3) barriers to implementation; and (4) funding.¹⁰⁷

Federal Guidance to States

On Jan. 14, 2000, the federal Health Care Financing Administration (HCFA) and the Office for Civil Rights (OCR) issued a letter to state Medicaid directors stating that the decision “confirms what this Administration already believes: that no one should have to live in an institution or a nursing home if they can live in the community with the right support.” The letter identified states’ obligations under Medicaid rules to review the placements of persons institutionalized with Medicaid funding. The letter reiterated HCFA’s position that *Olmstead*’s interpretation of the ADA applies to all persons with disabilities, not just mental disabilities. HCFA also stated that “the requirement to provide services in the most integrated setting appropriate applies not only to persons already in institutional settings but to those being assessed for possible institutionalization.”¹⁰⁸

Unresolved Issues

Several issues remain unresolved regarding interpretation and implementation of the *Olmstead* decision, pending the outcome of future legal test cases. Some of these issues include:

- The balance between a state's obligation to make "reasonable accommodations" to avoid discrimination and its right to avoid "fundamental alteration" of its programs and activities;
- The definition of the "reasonable pace" at which a state's waiting list for community services must move; and
- The rights of persons currently in the community who could qualify for institutional care, but who desire community-based services. HCFA has indicated its belief that such persons should not be required to enter institutions solely to gain the opportunity to be placed in the community, yet providing community-based services to all such persons could require a major financial commitment on the part of the state.

Recommendations

45. Recommend that the Legislature endorse the process utilized by the "Promoting Independence" plan to direct HHSC and HHS agencies to ensure the appropriate care setting for persons with disabilities. Recommend that the Legislature direct agencies to ensure that such efforts provide for timely and appropriate transfer of consumers from institutional to community placements and prevent the unnecessary institutionalization of those in the community who are at imminent risk. Require HHSC to report on the status of implementation to the Legislature and make recommendations for needed statutory and appropriation action.

This legislation would demonstrate the Legislature's intent that state agencies move toward the elimination and prevention of unnecessary institutionalization and that the state comply with federal law. The Legislature is and should remain an essential partner in the state's efforts to ensure the provision of appropriate care and the promotion of maximum independence.

TANF and MOE Funding

TANF Spending in Texas

The federal TANF block grant for Texas, including supplemental funds, is \$524.1 million in FY 2000 and \$537.8 million in FY 2001. House Bill 1, the General Appropriations bill, 76th Legislative Session, included \$1.2 billion in TANF federal funds and \$502.9 million in TANF maintenance-of-effort (MOE) spending for the biennium.¹⁰⁹

Texas met the annual MOE requirement in FFY 1999 by spending 80 percent (\$251.4 million) of the MOE baseline. TANF dollars were spent for welfare-related purposes such as monthly cash grants, eligibility determination and employment services for TANF adults, as well as child protective services, early childhood development and other human services programs.¹¹⁰

States are allowed to maintain a TANF balance, that is an estimated amount of unspent, unobligated federal funds allocated and available to Texas by the end of the FY 2000-01 biennium.¹¹¹ The state's TANF balance grew during the FY 1998-1999 biennium, but decreases over FY 2000-2001, as funds carried forward from previous years are expended. Texas now has an available TANF balance of

\$175.3 million, assuming no penalties and no changes to current federal and state appropriations.¹¹²
Table 2 illustrates the FY 2000-2001 allocation of TANF funds among state agencies.

Table 2 - TANF Federal Funds by Agency (in Millions)		
Agency	Budgeted 2000	Appropriated 2001
Department of Human Services	\$ 216.9	\$ 188.5
Texas Workforce Commission	\$ 147.2	\$ 155.7
Department of Protective and Regulatory Services	\$ 189.3	\$ 183.6
Department of Health	\$ 21.4	\$ 21.4
Texas Commission on Alcohol and Drug Abuse	\$ 12.0	\$ 0.0
Texas Education Agency	\$ 9.1	\$ 9.5
Department of Mental Health and Mental Retardation	\$ 1.8	\$ 1.8
Early Childhood Intervention	\$ 3.0	\$ 3.0
Employee Benefits	\$ 25.1	\$ 24.9
Total	\$ 625.7	\$ 588.5
Prepared by the Legislative Budget Board, July 10, 2000		

Table 3 illustrates the FY 2000-2001 appropriations of state MOE funding.

Table - 3 Appropriated Maintenance of Effort (MOE) for TANF:		
Agency	Appropriated 2000	Appropriated 2001
Texas Department of Human Services	\$131.3	\$131.4
Protective and Regulatory Services	\$ 75.5	\$ 76.5
Texas Workforce Commission	\$ 27.7	\$ 27.7
Texas Education Agency	\$ 8.9	\$ 8.9
Employee Benefits	\$ 3.1	\$ 2.1
Child Support Supplemental Payment	\$ 2.8	\$ 2.8
Local (Transit)	\$ 2.1	\$ 2.0
Total	\$251.4	\$251.4
Prepared by Legislative Budget Board, July 10, 2000.		

Final TANF regulations

The U.S. Department of Health and Human Services (HHS) issued final regulations for the TANF block grant in April, 1999. Significant changes from the proposed regulations offer states expanded flexibility in the use of TANF and TANF MOE funds. The final regulations clarify allowable spending and broaden the circumstances under which a state may aid families without that aid being tied to

TANF restrictions, such as time limits or work requirements. TANF funds can be used for services to families that are no longer on TANF or that have never received TANF, and the state can set separate income eligibility guidelines for such services.

FINAL TANF REGULATIONS

Under the new regulations and guidance, it is now clear that a state may:

- spend TANF and MOE funds for an array of benefits and services for low-income working families;
- help low-income working families even if those families have incomes above welfare eligibility levels; and
- use its resources to design programs to help working families outside the welfare system, even if the families have never received welfare.

Final TANF regulations confirmed flexibility for use of TANF in several areas:

- states may vary income criteria for different types of assistance;
- services to prevent out-of-wedlock pregnancies or encourage the formation and maintenance of two-parent families can be provided regardless of income level;
- a service that indirectly supports prevention of out-of-wedlock pregnancies is an allowable use of TANF (e.g., at-risk youth programs, self-esteem building activities, school performance improvement programs, etc.); and
- services can be provided to noncustodial parents without impacting the custodial families' benefit levels or time limits.¹¹³

TANF Reauthorization Issues

Texas faces several challenges with TANF reauthorization by Congress in 2002. Members of Congress are considering cuts in federal TANF funds to states because of declining caseloads across the nation. Legislation moving through Congress as of July, 2000, would cut federal welfare-reform funding for 16 states by \$240 million, even though these states generally have higher rates of child poverty than other states and already receive less per poor child than other states. Texas would be affected by these proposed cuts. In addition, Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, Tennessee and Utah would lose TANF funding if this legislation passes.¹¹⁴

Congress has warned states against using TANF MOE dollars in place of existing state spending. A National Governors' Association report notes that "expenditures where the link is found to be questionable by a single state audit could be deemed a misuse of funds and result in a penalty to the state."¹¹⁵ Texas should develop an overall strategy for TANF spending in Texas to defend against cuts in federal funds. Texas should make the most strategic use of TANF to combat poverty in Texas.

Work Participation Rate and Two-Parent Families

Federal law requires states to meet specific performance expectations or work requirements, for Choices participants. The rate is calculated by dividing the number of those who meet work requirements each month by the total number of TANF cases with a work requirement (those mandated to participate in Choices activities). The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) established a work participation requirement for "all families" (35 percent for Texas) that includes all single and two-parent families with an adult or minor head of household and established a separate "two-parent" work requirement for TANF families with two eligible parents. In Federal Fiscal Year (FFY) 1999 Texas had an average of 92,914 TANF adult recipients eligible for Choices services. Of those, an average of 8,845, or 9.5 percent, were members of a two-parent family.¹¹⁶

The required participation rate for two-parent families remains at 90 percent through FFY 2002. If Texas fails to meet its targeted work participation rate, it is penalized with a reduction in its federal funds and an increase in the amount of state MOE funds it is required to provide.

Recommendations

46. Recommend that the Legislature utilize TANF maintenance-of-effort (MOE) funds for assistance and services to two-parent families.

States may use MOE funds rather than federal funds to support their two-parent TANF programs. Using state MOE funds to provide assistance to two-parent families can help to avoid the federal penalty described above. Targeting these funds to assist two-parent families will help ensure Texas meets its "all families" participation rate. This change would also allow local workforce boards to focus their federal resources on the larger part of their caseload, which consists of single-parent families. States currently using MOE for two-parent families include: Alabama, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Nebraska, Maryland, New Jersey, Rhode Island, South Dakota, Utah and Virginia.

Waiver Expiration Issues

State-Federal Welfare Inconsistencies

Federal rules required governors in states operating under welfare waivers to identify inconsistencies between their state laws and federal law, and to submit a list of those inconsistencies no later than Oct. 1, 1999. If a state did not cite an inconsistency, the federal provision would apply.

Governor George W. Bush certified several inconsistencies with federal law to continue the state's waiver. Work exemptions, work requirements, work participation rate calculations, work activities and

sanctions for failure to comply with employment services requirements were all identified as inconsistent with federal law.¹¹⁷

Governor Bush, however, did not certify state law regarding time limits as inconsistent with federal law, which imposes a five-year lifetime limit on TANF benefits. Committee records indicate Rep. Harvey Hilderbran supported Governor Bush's decision. Other legislators, including Sen. Judith Zaffirini, Rep. Elliott Naishtat and Rep. Garnet Coleman, disagreed with his decision, noting that in 1995, during final deliberations of HB 1863, the conference committee decided that Texas should impose a five-year "freeze out" for recipients of TANF benefits, rather than a lifetime limit. As a result of the Governor's decision, the five-year federal lifetime limit was applied retroactively to October, 1996 (when the federal welfare bill became law) for TANF clients enrolled in the Choices program. For other recipients of TANF the federal five-year clock began Oct. 1, 1999.

States that have received welfare waivers, such as Texas, may follow their waiver-based reforms instead of provisions in federal law that are inconsistent with the waiver, for the duration of the waiver. Texas' waiver expires in March, 2002, at which time state TANF policies must come into alignment with federal TANF policy, except in certain cases where the state may continue its own policies. These post-waiver policies must be in place upon the ACT waiver expiration in March, 2002.

Senate Bill 666

Texas took a major step toward federal compliance with the passage of Senate Bill 666 by Sen. Judith Zaffirini and Rep. Glen Lewis during the 76th Legislative Session (1999). SB 666, relating to exemptions from work or employment activity participation requirements for certain Temporary Assistance for Needy Families (TANF) recipients, brings Texas into compliance with federal law by gradually phasing out the current state welfare waiver exemptions from work requirements for TANF recipients with children under age four.

When Texas created its own welfare reform in 1995, it did so with specific characteristics of Texas in mind. Even though the state must come into compliance with federal law, there still remains a great deal of flexibility within those provisions for state-designed TANF policy. The state should take advantage of that flexibility to build a program for the future that fits Texas' unique needs and challenges.

There are additional steps to be taken during the 77th Legislative Session to bring the state into compliance with federal welfare law. The recommendations below address many of these issues.

Recommendations

47. Amend state law to impose a greater penalty for noncompliance with the child support program for families of seven or more for single-parent households and families of six or more for two-parent households.

Federal law requires a 25 percent reduction of the TANF grant for noncompliance with the child support program. Currently, Texas law is consistent with federal law in regard to child support compliance, with the exception of cases that include families of seven or more for single-parent households and families of six or more for two-parent households. These families are currently

penalized at a lower rate and must be brought into compliance with federal law.

- 48. Amend state law to continue to assess a \$25 financial penalty for six months for a drug-related or alcohol-related misdemeanor conviction. Enact state law allowing TANF/Food Stamp clients with nontrafficking drug felonies who have completed any sentencing, are in compliance with parole/probation and are participating in or have completed a substance abuse treatment program to receive assistance. The law should include limits to how many times such clients may access benefits.**

Federal law requires permanent disqualification from TANF and Food Stamps for any person convicted of a felony drug offense. The federal law, however, allows states to opt out of this provision or modify it in a number of ways. Currently, 23 states opted out of the provision and modified their state law. Of these states four have opted out completely, allowing persons to continue to receive benefits.¹¹⁸

Currently, under the ACT waiver, Texas assesses a \$25 financial penalty for a duration of six months for a drug- or alcohol-related felony or misdemeanor conviction. This \$25 penalty should be maintained for those with misdemeanor convictions. The state should continue assistance for those persons with felony drug convictions, if the conviction is a nontrafficking offense and the conditions listed above are met. It would be reasonable for the state to place limits on how many times a client may access benefits under these circumstances.

Drug-related convictions among the TANF population are infrequent. According to the most recent data from DHS, in April, 2000, only 184 penalties were being imposed under the current law, including both misdemeanor and felony offenses. This amounted to a total \$4,600 monthly reduction in TANF grants.

The criminal justice system already has a process in place to address felony convictions. Furthermore, caretakers automatically lose their benefits if they are incarcerated. For those persons who meet the conditions of their sentencing and parole, who complete treatment, and who attempt to overcome drug or alcohol dependence, a lifetime ban on receiving TANF may impede their ability to become self-reliant. Additionally, if a person is deemed ineligible for TANF, they also would be ineligible for employment assistance under the Choices program, further limiting their ability to support themselves and their families.

- 49. Enact state law to require all adults receiving cash assistance to participate in work activities within 24 months. For those clients with significant and continuing barriers to work, DHS and TWC should be directed to design activities to overcome those barriers. If barriers to work persist, assistance should be continued for those unable to work within the 24-month deadline.**

Under federal law, adults receiving cash assistance are required to participate in work activities as soon as the state deems the person ready or when the family has received 24 months of cash assistance, whichever is earlier. Currently, Texas law has no similar provision. To comply

with federal law, legislation should be adopted requiring adults receiving cash assistance to participate in work activities within 24 months.

Some persons face barriers to seeking employment and may need additional assistance. These hardest-to-serve persons face barriers such as learning disabilities, physical or mental disabilities, chronic health problems, substance abuse problems, domestic violence, incapacitated family members, children with behavioral problems, criminal history, lack of education, training or experience, housing instability and lack of health insurance. These persons should receive assistance designed to help them overcome these barriers.

A variety of studies have been conducted that document the existence of barriers to employment among the current welfare population. For example, a report issued by the Urban Institute revealed that almost 90 percent of welfare recipients between the ages of 27 and 36 experienced one of five potential barriers to employment. These barriers were low basic skills, substance abuse, a health limitation, depression or a child with a chronic medical condition or serious disability.¹¹⁹ This data reinforces the conclusion that a large portion of the remaining welfare population may face significant obstacles to achieving self-sufficiency. For these persons facing barriers to employment, the state should continue to fund services with state MOE funds after the twenty-four month limit has been reached, until barriers to employment have been addressed.

50. *Enact state law to define allowable work activities for TANF recipients.*

Federal regulations allow states to retain flexibility in designing a variety of work activities to best meet participants' needs and abilities. Currently, Texas' work activities are defined by rule and include:

- unsubsidized employment;
- subsidized private sector employment;
- subsidized public sector employment;
- work experience (including work refurbishing publicly-assisted housing);
- on-the-job training;
- job search and job readiness assistance;
- community service programs;
- vocational education training;
- job skills training directly related to employment;

- education directly related to employment (for a person without a high school degree or certificate of high school equivalency);
- education leading to a certificate of general equivalence;
- secondary and post secondary education; and
- the provision of childcare services to a person who is participating in a community service program.

This legislation would codify current state practice into law.

Transitional Supports

Several welfare reform-related policy changes are necessitated by the expiration of the ACT waiver in 2002. The expiration of the waiver, however, should not dictate policy for low-income families in Texas. With the flexibility of the final TANF regulations, Texas has the opportunity to develop a creative package of services that assists Texans receiving TANF in achieving self-sufficiency and permanently leaving public assistance. In addition, the state has additional opportunities to design programs that prevent at-risk, low-income persons from having to apply for TANF.

Recommendations

51. *Recommend that the Legislature increase the supply and capacity of quality childcare for current and former TANF clients, as related to infant care, weekends, shift hour and other services.*

Federal welfare reform fundamentally altered federal childcare assistance programs for low-income families. A single block grant program, the Child Care and Development Fund (CCDF), was created to give states greater flexibility in designing their childcare assistance programs.¹²⁰

Despite the changes, accessible childcare remains a major barrier to seeking and holding a job for the working poor. Many jobs that are available have nontraditional hours, such as jobs in the service industry. The lack of availability of childcare providers during the evening hours and on weekends can prevent current welfare recipients from obtaining employment. Increasing the supply of quality childcare, including those providers who operate during nontraditional hours, can reduce barriers to employment faced by current and former TANF clients.¹²¹

The average monthly waiting list for childcare services between September, 1999, and May, 2000, consisted of 33,517 families. A family may remain on a waiting list from 45 days to 12 months. TWC estimates that it would require approximately \$128.6 million to serve an additional 33,500 children.¹²² While this funding would increase the availability of subsidized childcare, it also may be necessary to implement specific policies to foster an increase in the supply of certain types of

childcare. Local workforce boards now have authority to modify childcare reimbursement rates for special needs such as infant care or off-hours care. The state should review the progress being made in this area and explore options for state level policy to support such capacity-building initiatives.

52. Recommend that the Legislature should expand transitional supports for those leaving welfare for work to include: ongoing educational opportunities, job coaching, emergency assistance, transportation assistance, housing-related supports, health care, better access to childcare that meets work hours and other supports.

As previously stated, a large percentage of the welfare caseload in Texas is likely to face multiple barriers to seeking and maintaining employment. These hardest-to-serve persons, and all former TANF recipients, may need additional supports to help them maintain their employment status once they find a job.

Currently in Texas, the only benefits received statewide when a person moves from TANF to the workforce are childcare and transitional Medicaid benefits. Some local workforce boards provide post-employment services such as intensive case management, transportation assistance and mentoring.

The state has the opportunity to provide additional supports to help these persons remain on the job and prevent them from cycling back onto welfare. Assessing the supports a client may need to succeed in the workforce and developing additional transitional supports to help clients stay employed could move more persons off welfare and into the workforce. These supports could include additional education and training, services to address specific barriers such as learning disabilities or mental health issues and even temporary housing assistance to help a client become stable enough to get and keep a job.¹²³ All of these types of services could be supported through Welfare-to-Work (WtW) funds, TANF funds or other resources. One approach to exploring options in this area would be to implement pilot projects or targeted initiatives with a few local workforce boards.

53. Recommend that the Legislature continue to provide an additional six months of transitional Medicaid benefits to exempt Choices volunteers .

Currently in Texas, transitional Medicaid benefits are provided to persons who either exhaust their state time limit or lose eligibility due to earnings or child support. These benefits are provided for 12 months except in the case of persons who volunteer to participate in Choices despite an exempt status. These persons can receive up to 18 months of transitional Medicaid as an incentive to participate in employment services. This additional six months of transitional Medicaid benefits provides needed coverage and prevents participants from being penalized for participating in Choices despite an exemption. DHS estimates that during FY 2002 and FY 2003, 12,593 persons would receive 18 months of transitional Medicaid with the continuation of this benefit.

Welfare-to-Work Changes

Welfare-to-Work (WtW)

As noted earlier in the Charge 2 section of this report, WtW is a federal program designed to support state and local efforts to move the hardest-to-serve TANF recipients into lasting jobs and promote their self-sufficiency. WtW is based on a “work first” strategy that supplements state and local use of TANF funds to provide transitional assistance for recipients engaged in employment-based activities.

Texas is eligible to receive \$147 million in federal WtW funds (1998-2002), requiring a state match of \$73.5 million. The state has three years to spend the grant. As of July, 2000, the Legislature has appropriated a total of \$31 million of general revenue (1998-2001) to serve as matching funds with an additional \$11.2 million needed. TWC is asking local boards to raise the additional \$31.2 million required in state matching funds.¹²⁴

Changes to Welfare-to-Work Funding

Tight eligibility restrictions under previous law hindered states’ use of funds. Recent amendments adopted by Congress, however, remove the criteria on work impediments and broaden eligibility for noncustodial parents to include those who are unemployed, are underemployed or have difficulty meeting child support commitments. These noncustodial parents can receive services if their children are eligible for Medicaid, Supplemental Security Income (SSI), Children’s Health Insurance Program (CHIP) or Food Stamps. Additionally, the amendments open eligibility to include custodial parents within 100 percent of the federal poverty level and to include children aged 18-25 who have been in the state’s foster care system.

NEW WELFARE-TO-WORK BLOCK GRANT RULES

Up to 30 percent of the state’s WtW award now can be used to provide services to:

- custodial parents within 100 percent of the federal poverty limit (\$17,050 for a family of four);
- children aging out of the foster care system; and
- persons who have characteristics associated with long-term welfare dependence or significant barriers to self-sufficiency (as defined by local workforce development boards).

These provisions became effective July 1, 2000, but related federal expenditures cannot be claimed until Oct. 1, 2000.¹²⁵

Charge 4: Monitor the Implementation of Legislation, Funding and Child Abuse Prevention

CHARGE 4: Monitor the implementation of the following bills enacted during the 76th Legislature, Regular Session: Senate Bill 30, relating to parental notification before an abortion may be performed on a minor; Senate Bill 374, relating to the provision of certain long-term care services, to the continuation and functions of the Texas Department on Aging, and to the eventual consolidation of the Texas Department of Human Services and the Texas Department on Aging into a new agency on aging and disability services; and House Bill 2641, relating to the continuation and functions of the Health and Human Services Commission. The Committee shall also monitor the effects of the additional resources provided to the Department of Protective and Regulatory Services.

MONITOR THE IMPLEMENTATION OF SENATE BILL 30

Overview

The 76th Legislature passed Senate Bill 30 by Sen. Florence Shapiro and Rep. Dianne Delisi, relating to parental notification before an abortion may be performed on certain minors. Prior to SB 30 a physician could perform an abortion on a minor without notifying her parent, managing conservator or guardian. SB 30 adds Chapter 33 to Subtitle A, Title 2, of the Family Code. This addition requires notification of a parent, managing conservator or guardian before an abortion may be performed on a minor. A minor may alternately seek judicial approval to have an abortion. This act took effect Sept. 1, 1999. The changes to the Family Code added by this act apply to an abortion performed on or after Jan. 1, 2000.

Provisions

SB 30 requires one of three conditions before a physician may perform an abortion on a minor. First, the physician must notify the parent or guardian in person or by phone 48 hours prior to the procedure. Second, if the minor chooses not to have her parents notified, she may instead seek judicial approval. A judge may authorize a minor to consent to an abortion if:

- The judge deems the applicant mature and sufficiently well informed to make the decision to have an abortion; or
- Notifying either of the applicant's parents, managing conservator or guardian would not be in her best interest; or
- Notifying either of the applicant's parents, managing conservator or guardian may lead to physical, sexual or emotional abuse of the applicant.

Lastly, a physician may perform an abortion without the notification of the parents or the court if a medical emergency exists and there is not sufficient time to obtain the consent. Any physician found in violation of these requirements is subject to criminal penalty.

Agency Requirements

SB 30 includes requirements of the Texas Department of Health (TDH) and the Supreme Court of Texas. TDH is charged with developing a form for physicians to use when reporting abortions performed due to an emergency, without parental notification. TDH also must reimburse the courts for the costs associated with the judicial bypass procedure. Finally, TDH must produce and distribute informational materials, including a Spanish version, that explain a minor's rights and the risk and alternatives to abortion.

The Supreme Court of Texas was required to issue the rules necessary for the judicial bypass procedure. The Supreme Court appointed a rules advisory committee to develop these rules, which were adopted in December, 1999.

Texas Supreme Court Appeals

As of Aug. 7, 2000, the Texas Supreme Court had heard six appeals on parental notification cases. All cases were pursued by minors who had been denied permission by the lower courts to have an abortion without parental notification.

First Appeal

In February, 2000, the Supreme Court ruled on an appeal involving the "sufficiently well-informed" standard. The Court ruled that a minor must show:

- That she has obtained information from a health-care provider about the health risks associated with an abortion and that she understands those risks, including the risks associated with the particular stage of the minor's pregnancy;
- That she understands the alternatives to abortion and their implications; and
- That she also is aware of the emotional and psychological aspects of undergoing an abortion, which can be significant, if not severe, for some women.

The Court's conclusion that a minor must make these three showings now will have to be considered by trial courts.¹²⁶

Second Appeal

The second appeal made to the Court involved two other standards: (1) whether notification is in the best interest of the minor; and (2) whether notification of a pending abortion will lead to physical, sexual or emotional abuse of the minor. Regarding determining a minor's best interests, the Court determined that four factors should be considered:

- The minor's emotional or physical needs;
- The possibility of emotional or physical danger to the minor;

- The stability or instability of the minor's home and whether notification of her parents would cause lasting harm; and
- The relationship between the parent and the minor and the effect of notification on that relationship.

Trial courts will now have to consider these four factors when determining whether having an abortion is in the best interest of the minor.

Regarding whether notification of a pending abortion will lead to physical, sexual or emotional abuse, the Court ruled that “on remand the trial court must determine whether, based on all the evidence presented at the subsequent hearing, a *preponderance* of the evidence supports a finding that notification *may* lead to abuse. For meaningful appellate review the trial court must make specific findings concerning the potential for abuse. Similarly, if the trial court determines that the minor's testimony about potential abuse is not credible, it should also make specific findings in that regard.”¹²⁷

Third Appeal

In re Jane Doe 3 also dealt with the third standard of whether notification may lead to physical, sexual or emotional abuse of the minor. Justices Gonzales and Phillips, concurring in the judgment, stated that “in the absence of the Legislature defining physical or emotional abuse, this Court should look to but not adopt in whole the definition for abuse in chapter 261 of the Family Code.” Justice Enoch stated:

the stronger argument is that the Legislature didn't intend for a minor to have to prove ‘mental or emotional injury . . . that results in an observable and material impairment in the child's growth, development, or psychological functioning’ to obtain a parental notification waiver. For had the Legislature intended that result, Justice Hecht would not have had to read all the way to section 33.008 to find it. Instead, the relevant part of the parental notification statute, section 33.003(i), would read ‘If the court finds that . . . notification may lead to physical, sexual, or emotional abuse of the minor, as defined by section 261.001. But it doesn't.’¹²⁸

Fourth Appeal

In the fourth appeal to the Supreme Court, the “mature and sufficiently well informed” and the “best interest” standards were reviewed again. Responding to the fourth appeal, the Court reiterated the three facts, mentioned above, that lower courts must consider when determining whether a minor is sufficiently informed. In regard to the best interest standard, the concern related to whether the court can disregard a witness's uncontroverted testimony. The Court established that “if the minor's uncontroverted testimony . . . is clear, positive, and direct, and not impeached or discredited by other circumstances, the trial court would have to accept it as fact.”¹²⁹ The Court ruled that “if an interested witness's uncontroverted testimony meets this test, the trial court is not free to disregard it merely because the court does not believe the witness to be credible.”¹³⁰

Fifth and Sixth Appeal

The Supreme Court affirmed the Court of Appeals' judgment to deny an application to consent to an abortion without parental notification to Jane Doe 5 (June 29, 2000) and Jane Doe 6 (Aug. 4, 2000). The Court affirmed these decisions without opinion.

In response to the Supreme Court decisions a Special Subcommittee on the Implementation of Family Code Chapter 33 met on April 18, 2000, to address various technical and procedural issues that have arisen under the parental notification rules and forms. The purpose of this meeting was to address procedural and administrative matters by updating the rules and forms, not to address substantive legal issues.

Recommendations

A variety of concerns regarding SB 30 have been raised during the ongoing litigation. Due to these challenges, the Committee made no interim recommendations regarding SB 30.

MONITOR THE IMPLEMENTATION OF SENATE BILL 374

Overview

The 76th Legislature passed Senate Bill 374 by Sen. Judith Zaffirini and Rep. Patricia Gray, relating to the provision of long-term care services, to the continuation and functions of the Texas Department on Aging (TDoA), and to the eventual consolidation of the Texas Department of Human Services (DHS) and the Texas Department on Aging into a new agency on aging and disability services. SB 374, the long-term care Sunset bill, reflects the recommendation of the Sunset Advisory Commission to improve the coordination and reduce the fragmentation of long-term care services in Texas. The bill transfers several long-term care programs to DHS and contains a number of provisions to improve the coordination of long-term care services at the state and local level. Combining the functions of DHS and TDoA, the bill creates a Texas Department on Aging and Disability Services (DADS) in 2003. SB 374 issues related to access and coordination are detailed in the Charge 1 section of this report.

Provisions

Completed and Initiated Provisions

Transfers

In September, 1999, the licensing and regulation of home and community support services agencies and home health medication aides at the Texas Department of Health (TDH) and the functions and activities of the Texas Rehabilitation Commission's (TRC) Deaf-Blind Multiple Disabilities program, Personal Attendant Services program and voucher payment pilot program were transferred to DHS.

Workgroups

Two workgroups were established as a result of SB 374. The Texas Department of Mental Health and Mental Retardation (MHMR) and DHS will study and report on the coordination of planning and services, the development of consistent and standardized regulation, rate-setting processes and contract monitoring for long-term care providers and services. Members of HHSC and TDoA also will participate. The workgroups will report to the commissioners of DHS and MHMR annually, with the first report due Sept. 1, 2000.

SB 374 mandates a workgroup with TDH, DHS and HHSC to study the coordination and funding of children's long-term care and health programs. The workgroup is assisting in the creation of a system for families and children to administer long-term care and health programs for children. The workgroup also must report its findings to the commissioner of HHSC by Sept. 1 of each even-numbered year.

Nursing home administrator licensing

The bill requires DHS to issue provisional nursing home administrator licenses and establishes standard time frames for licensees who are delinquent in renewal of licenses. DHS has implemented this provision.

State Office of Administrative Hearings

SB 374 mandates an interagency contract between DHS and the State Office of Administrative Hearings (SOAH) to conduct contested case hearings. DHS and the chief administrative law judge of SOAH adopted a memorandum of understanding (MOU) under which SOAH conducts all contested case hearings authorized or required by law.

Ambulance use

SB 374 requires authorization by a Medicaid agency for the use of an ambulance for nonemergency transportation if a physician submits a written statement that such use is medically necessary.

Local access

HHSC has begun to assist Texas communities in developing comprehensive, community-based support and service delivery systems for long-term care services. A health and human services agency that receives or develops a proposal for a community initiative submits the initiative to HHSC for review and approval to ensure consistency among programs and avoid duplication. SB 374 directs the commissioner of HHSC to maintain no fewer than 28 Area Agencies on Aging to ensure the “continuation of a local system of access and assistance that is sensitive to the aging population.”

TDoA provisions

TDoA must conduct research and long-range planning regarding long-term care, community care and other issues that affect elderly persons and make recommendations to the Governor, Legislature and state agencies. Along with DHS, TDoA will develop standardized assessment procedures to share information on common clients served in a similar service region. TDoA and DHS will jointly develop the state’s plan on aging, as required by the federal Older Americans Act of 1965. Lastly, TDoA and DHS must jointly conduct a statewide needs assessment for long-term care services. TDoA and DHS have initiated these activities.

Provisions to be completed prior to the 77th Legislative Session

Reports

The Texas Planning Council on Developmental Disabilities and other disability-related agencies are required to develop and issue a biennial report on the “State of Services to Persons with Disabilities in Texas,” to be distributed to the HHSC commissioner, the Legislature, Governor and Lieutenant Governor every even numbered year, beginning in 2000.

HHSC is responsible for two reports, due prior to the 77th Legislative Session. First, the HHSC commissioner will report to the Lieutenant Governor and the Speaker of the House on his evaluation of service coordination between TDoA and DHS in November, 2000. HHSC also must evaluate the feasibility of establishing an integrated local system of access and services for elderly persons and persons with disabilities. A report is due November, 2000, to the Lieutenant Governor and the Speaker of the House.

Provisions to be completed after the 77th Legislative Session

Medically Dependent Children's Program (MDCP)

All powers, duties and functions related to MDCP, assigned to or performed by TDH, are transferred to DHS. The transfer takes place on Sept. 1, 2001.

Children with Special Health Care Needs Program

Eligibility requirements for the Children with Special Health Care Needs program (CSHCN) at TDH, formerly known as the Chronically Ill and Disabled Children's (CIDC) program, will change from diagnosis-specific criteria to functional criteria. The maximum asset test will be eliminated. These changes take effect July, 2001. The Texas Board of Health will adopt all rules necessary to implement the changes in law by July 1, 2001.

Single long-term care agency

SB 374 renames DHS as the Texas Department on Aging and Disability Services (DADS), effective September, 2003, to reflect its focus on aging and disability needs. At that time the functions of TDoA will be transferred to DADS.

Until DHS and TDoA become a single agency, they will work to reduce duplication and fragmentation of services at the state and local levels. The new department will take on the responsibilities previously delegated to the separate agencies. DADS will develop the state's plan on aging as required by the federal Older Americans Act of 1965; conduct a statewide needs assessment for long-term care services; and appoint an advisory committee to be known as the Aging Policy Council to advise the department on matters related to elderly persons, including policy, research and planning. Existing TDoA board members at the time of transfer will become advisory members of the Aging Policy Council. December 1 of each even-numbered year, the Aging Policy Council will prepare a report, "The State of Aging in Texas," to include consumer satisfaction surveys, long-term care insurance use reports, demographics and other related issues and submit the report to the Governor, Lieutenant Governor and the Speaker of the House. The first report is due Dec. 1, 2004.

Recommendations

Recommendations for SB 374 were included in the Charge 1: Long-term Care section, page 19, recommendations 10 - 12.

MONITOR IMPLEMENTATION OF HOUSE BILL 2641

Overview

House Bill 2641(76th Legislative Session, 1999) by Rep. Patricia Grey and Sen. J. E. “Buster” Brown, relating to the continuation and functions of the Health and Human Services Commission (HHSC), was the HHSC Sunset bill. The bill strengthens the role of the commissioner, redefines the commission’s relationship with other health and human services agencies and prescribes specific functions to the commission. HB 2641 continues HHSC for eight years, until Sept. 1, 2007.

Provisions

Requirements of HB 2641

Commissioner responsibilities

As a result of HB 2641 the HHSC commissioner has newly defined responsibilities. They include:

- supervising the administration and operation of the Medicaid program;
- supervising information systems planning and management for HHS agencies; and
- monitoring the use of federal funds.

The commissioner is to evaluate annually each agency director and has entered into a Memorandum of Understanding (MOU) with each director that defines responsibilities, supervision and the delegation of power. The HHSC commissioner also entered into a MOU with each agency policy board to define the authority of the policymaking bodies and the commissioner.

Community-based services

HB 2641 provides a framework for more comprehensive, community-based services by designating HHSC as the lead agency responsible for developing support systems for health and human services. HHSC will conduct the following activities:

- HHSC will be the single point of contact for communities seeking to overcome institutional barriers to more comprehensive community support systems, particularly barriers tied to state agency policies and procedures;
- HHSC will assist communities to develop a system of blended funds from state health and human services agencies to allow local communities to customize services to fit individual community needs;

- HHSC has identified staff at HHS agencies to provide resources and assistance to a community to perform the commission's duties;
- HHS agencies are required to work with HHSC in supporting the development of more comprehensive local services and to submit any proposals for new community initiatives to HHSC for review and approval to ensure consistency and guard against duplication; and
- HHSC is required to study the existing state/local authority model, used in the MHMR system, as a guide in developing an approach to assisting communities with improved service delivery.

Operational control

HB 2641 increases HHSC's operational control over health and human services programs. HHSC has formed an advisory committee of county and local government representatives to contribute to the policy and planning activities of HHSC.

Information resource systems planning and management

HHSC developed a five-year coordinated strategic HHS information resources management plan in June, 2000. HHSC will establish and ensure compliance with policies, procedures and technical standards and review and approve the information resources and biennial operating plans of agencies under the authority of HHSC. An advisory committee will be appointed to consult HHSC on information resource management.

Federal funds

HB 2641 authorizes HHSC to plan and manage the use of federal funds to ensure maximum federal funds are available to the state while promoting delivery of services. As the established lead agency in managing federal funds, HHSC may transfer appropriated amounts, within limits set by the Legislature, to enhance receipt of federal funds and respond to client needs. HHSC will develop and implement a strategic plan that sets priorities across agencies for the use of federal funds in coordination with the strategic plan and strategic budget. HHSC will submit an annual report to the Legislature and the Governor on federal funding issues.

Texas Information and Referral Network

HB 2641 improves access to information about health and human services by requiring the Texas Information and Referral Network, the General Services Commission and the Records Management Interagency Coordinating Council to establish a single, consistent method of defining and organizing information about health and human services for public access, including presenting the information in local telephone directories.

Transportation

HB 2641 requires HHSC to establish a system to collect information about client transportation and provide for community participation. The bill requires that:

- The Texas Information and Referral Network collect and include information regarding transportation services;

- The HHSC Office of Community Transportation Services examine and coordinate transportation services at all HHSC agencies;
- Each HHS agency that provides, purchases or funds client transportation annually report on transportation services; the report must comply with a standard system of reporting and accounting;
- HHSC and Texas Department of Transportation (TxDoT) enter into a MOU regarding the function of each agency working with HHSC Office of Community Transportation Services; and
- A report be provided to the Governor, Secretary of State, Legislative Budget Board and the HHSC commissioner on the results of reviewing the statewide coordination plan, due September of each even-numbered year.

TIERS

The 76th Legislature renamed the Texas Integrated Enrollment Services (TIES) project as the Texas Integrated Eligibility Redesign System (TIERS) project based at DHS. HHSC retains oversight of the project. The oversight committee will meet quarterly. The TIERS project is designed to develop a new process and an automated system to integrate eligibility determination and enrollment for programs that provide health, nutrition, cash assistance and employment services to Texans.

Purchasing and Contracting

HB 2641 strengthens HHSC's oversight of purchasing and contracting by requiring HHSC to:

- Develop a single statewide risk analysis of HHS contracts to prioritize contract monitoring activities and coordinate contract monitoring efforts among HHS agencies;
- Develop a single contract management handbook that establishes consistent contracting policies and best practices to be followed by HHS agencies;
- Develop a single contract management database in cooperation with the Comptroller of Public Accounts that identifies all HHS agency contracts;
- Review and approve the procurement and rate-setting process of all HHS agencies to ensure that amounts paid to contractors are consistent and represent the best value for the state;
- Develop and implement a statewide plan to ensure that contractors and subcontractors are in compliance with the accessibility requirements of the Americans with Disabilities Act of 1990; and
- Prepare, with the assistance of the state auditor, an annual report to the Legislature and the Governor that assesses the performance of each HHS agency in complying with purchasing

and contracting requirements established by the commission and identifies any material risk to the state or to clients resulting from the agencies' contracting practices.

- By Sept. 1, 2001, the state auditor must conduct the initial HHSC review.

Coordination and planning of mental health and substance abuse services

All state agencies that provide mental health or substance abuse services are required to work with HHSC to develop a comprehensive services report that lists all services, populations served and resources expended. Additionally, the coordination efforts should assess overlap of clients served and describe collaborative initiatives among agencies.

Health-related regulatory programs

HB 2641 requires HHSC to consider consolidation and/or organizational alternatives for TDH regulatory programs. A draft of the report to the Governor, Lieutenant Governor and Speaker of the House, is due by Dec. 15, 2000.

Regional management

HB 2641 requires HHSC to assess the potential benefits and costs of consolidating support services across HHS agencies in both regional offices and in Austin and to develop a plan and schedule for co-locating offices and consolidating support services where clear benefits have been identified to improve the regional management of health and human services agencies. HHSC must develop and implement an annual business services plan for each HHS region that establishes business performance objectives across HHS agencies and measures agency efficiency and success in achieving those objectives.

Guardianship Advisory Board

HB 2641 strengthens the role of the Guardianship Advisory Board to plan and coordinate services. The board will advise and assist HHSC and PRS in the development of a statewide guardianship program and conduct an annual review on policies, procedures, rules, minimum standards and services provided in relation to guardianship.

Transfer of the Empowerment Zone and Enterprise Community Grant program (EZ/EC) to the Department of Economic Development (TDED)

HHSC has transferred the EZ/EC Grant program from HHSC to TDED, as required by HB 2641.

Medicaid managed care

HB 2641 strengthens HHSC's operational control over Medicaid managed care and requires the Health Care Information Council to assist HHSC in assessing the system's performance.

- HHSC may direct the Health Care Information Council, to examine the success of Medicaid managed care based on the criteria established by the Legislature.
- HHSC will develop and implement an expedited process for determining eligibility for enrolling pregnant women and newborns in managed care plans.

- HHSC also may contract with other managed care organizations in a region who hold a certificate of authority as a Health Maintenance Organization (HMO) under the Texas HMO Act.
- HHSC shall study the feasibility of an electronic method of enrollment. If feasible, HHSC shall develop and implement a system no later than Sept. 1, 2000.
- HHSC completed the implementation of the expedited process for determining eligibility for and enrollment of Medicaid recipients on Jan. 1, 2000.
- TDH shall contract with an independent auditor to perform annual external financial and performance audits of any Medicaid contractor used by the department in operation of the state Medicaid program. The audits are due at the end of each fiscal year.

Medicaid managed care pilot moratorium

HB 2641 establishes a moratorium on Medicaid managed care pilot programs until outstanding administrative and financial issues are resolved. On Nov. 1, 2000, HHSC will report to the Governor and the Legislature on whether these issues are resolved. The bill prohibits the moratorium from being construed to affect the duty of HHSC to plan the continued expansion of the Medicaid pilot projects in health care regions after July 1, 2001. HHSC shall adopt rules regarding the sharing of profits earned by a managed care organization providing services under contract with HHSC.

Coordination of services provided by TWC

HHSC will coordinate services provided by Texas Workforce Commission and HHS agencies regarding childcare services, Temporary Assistance to Needy Families work programs and Food Stamp Employment and Training.

Legislative oversight

The standing committees of the House and the Senate that have jurisdiction over HHSC will report to the Governor, Lieutenant Governor and Speaker of the House by Dec. 31, 2000, on the consolidation and integration of health and human services.

Subacute care pilot project

A workgroup is studying and has drafted a report on the feasibility of a Subacute Care Pilot Project with the assistance of DHS and TDH, as required by HB 2641.

Abuse and neglect workgroup

HHSC has formed a workgroup to review definitions of abuse and neglect in state facilities, as required by HB 2641.

Rules regarding marriage and divorce

HB 2641 requires HHSC to adopt rules ensuring agencies do not discourage marriage or encourage divorce. Rules were adopted in January, 2000.

Substance abuse services

HB 2641 requires that HHSC report on mental health and substance abuse services in the state to the Governor, Lieutenant Governor and Speaker of the House, Dec. 15, 2000. This task has been assigned to MHMR.

Recommendation

54. Recommend that the Legislature require HHSC to submit advance copies of official submissions to the federal government including waiver application submissions and state plan amendments to the Senate Human Services, Senate Health Services, House Human Services and House Public Health Committees.

Currently HHSC can submit documents to the federal government that have significant policy implications to the state and that could require the state to conform to federal requirements, without benefit of the legislative process. This legislation would facilitate appropriate legislative involvement in the submission of documents by the HHSC to the federal government.

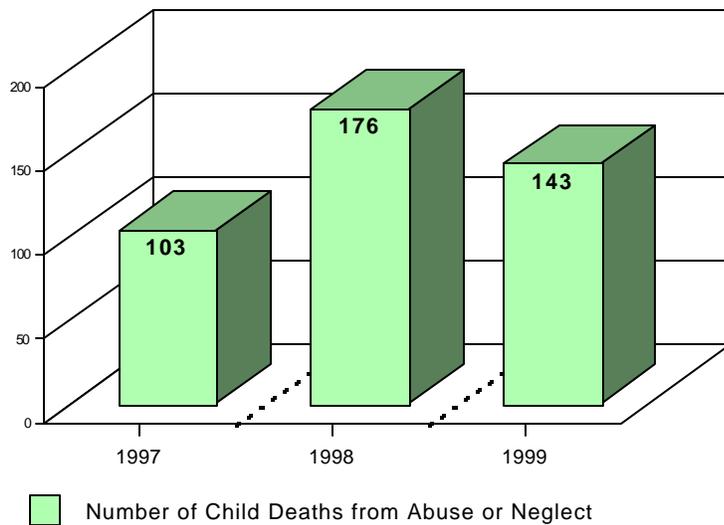
MONITOR THE EFFECTS OF THE ADDITIONAL RESOURCES PROVIDED TO THE TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES.

Overview

The Department of Protective and Regulatory Services (PRS) is the state agency charged with protecting children, elderly adults and adults who have disabilities, and licensing group day-care homes, day-care centers and registered family homes. Children's Protective Services (CPS) is the division of PRS that investigates reports of the abuse and neglect of children. CPS makes the difficult

determination of when to investigate a complaint of abuse or neglect and what sort of action is required to protect the child when allegations are proven to be true.

Fig. 6- Child Deaths in Texas, 1997-1999



CPS reports that, on average, 100,000 investigations of abuse and neglect are conducted each year. In FY 1997 PRS reported 103 child fatalities attributed to abuse or neglect. During FY 1998, 176 children died from abuse or neglect. In FY 1999 the number dropped slightly to 143. The department has high ratios of cases to staff; the ratio of caseworkers to investigate charges of abuse and neglect is one caseworker for approximately twenty-four cases. The number of caseworkers to supervisors is also high at seven-to-one.

Source: PRS

Problems Associated with a Lack of Resources

Prior to the 76th Legislative Session Judge Scott McCown submitted a petition in behalf of "The Forsaken Children of Texas" to the Governor and the 76th Legislature. His report alleged that lack of resources had resulted in: (1) CPS classifying too few calls about children as reports of abuse or neglect; (2) of those classified as reports of abuse or neglect, CPS assigning too few for investigation and completing the assigned investigations too slowly; (3) of those investigations completed, CPS confirming too few cases; and (4) of those cases confirmed, CPS removing too few victims.¹³¹

Emergency Funding Appropriation

The report by Judge McCown highlighted the need for an emergency PRS appropriation early in the session. Senate Bill 472 by Sen. Bill Ratliff and Rep. Robert Junell, relating to making emergency general appropriations, appropriated \$8.9 million to PRS. The funding to PRS consisted of \$2.8 million from the general revenue fund and \$6.1 million of federal funds for a two-year period beginning March 18, 1999. The appropriation was to be used to reduce the number of cases per worker, reduce the number of workers per supervisor, increase purchased services for families and children, and purchase computer equipment to support additional employees. PRS allocated the funding as follows:

Child and family services

- \$3.9 million for additional caseworkers and related staff includes salaries, one-time setup costs and ongoing operating costs for 220 full-time employees (FTEs);
- \$100,000 for job fairs and other recruiting efforts;
- \$136,890 for screening and background checks;
- \$471,450 to make a cash purchase of computer equipment to support additional employees;
- \$196,668 to merge and link CPS case files; and
- \$100,000 for caseworker study.

CPS purchased services

- \$2.5 million for protective day-care services; and
- \$2 million for other client services such as evaluation, therapy, parent training and homemaker services.

General Appropriations

A total of \$138.3 million in additional funding was appropriated to PRS through HB 1, the General Appropriations Act for the 76th Legislature as introduced. These funds were allocated for the following purposes:

Child and family services

- *Reduce CPS Caseload and Supervisory Ratios*
Provides funding for 327 FTEs to help reduce the average weighted caseload for CPS workers from 24 to 21.1 in FY 2000 and to 21.3 in FY 2001 and to reduce the ratio of workers per supervisor in certain stages of service from seven to one, to six to one. (\$23.0 million for the 2000-2001 biennium)
- *Upgrade Salaries for CPS Caseworkers*
Provides an increase in the salaries for CPS caseworkers with the objective of reducing turnover and developing a more experienced and stable workforce in the program. (\$4.8 million for the 2000-2001 biennium)
- *Improve CPS Assessments During Investigations*
Provides 53 FTEs to improve CPS assessments during investigations to assure that appropriate services continue to be provided when there are uncontrolled risk factors present regardless of a determination of abuse or neglect. (\$3.6 million for the 2000-2001 biennium)

- *Maintain the Child and Adult Protective System (CAPS) Automation Support Contract*
Continues the help desk and technical support for the PRS automation hardware and software infrastructure, and upgrades the automated equipment on the PRS network to Pentium-type workstations under a proposed services contract. (\$3.1 million for the 2000-2001 biennium)
- *Improve the CAPS Application*
Provides funds to improve the functionality and ease of use of CAPS. (\$3.0 million for the 2000-2001 biennium)

CPS purchased services

- *Provide Additional CPS Purchased Services*
Addresses the demand for more protective/foster care day-care and other CPS purchased client services. (\$26.5 million for the 2000-2001 biennium)
- *Develop Foster Care Respite Services*
Develops a system of respite services for children placed with PRS foster parents. (\$2.4 million for the 2000-2001 biennium)
- *Expand Residential Treatment for the Post-Adoption Program*
Provides funds for additional residential treatment for an additional year under specific circumstances. (\$901,040 for the 2000-2001 biennium)
- *Provide Additional Funding for the Children's Advocacy Centers (CAC)*
Provides additional funding for CACs. Transfers \$5 million in funding for the CACs and one FTE from PRS to the Office of the Attorney General for contract administration of the program. (\$2.0 million for the 2000-2001 biennium)

Intensified family preservation

- *Provide Additional CPS Purchased Services for Family Preservation*
Addresses the demand for more protective/foster care day-care and other CPS purchased client services. (\$723,742 for the 2000-2001 biennium)

Foster Care/Adoption Payments

- *Provide a Rate Increase for Foster Care Providers*
Provides an across-the-board percentage increase in the reimbursement rates for foster care providers. (\$29.3 million for the 2000-2001 biennium)

At-Risk Prevention Services

- *Develop an At-Risk Mentoring Program*
Provides funding and one FTE for mentoring and professional case management services targeting at-risk youth in single-parent families and other families meeting other specified criteria. (\$3.0 million for the 2000-2001 biennium)

- *Continue the Second Chance Teen Parent program*
Provides funding and one FTE to continue an interagency cooperative pilot program to assist teen parents in finding appropriate adult-supervised living situations and to provide support services to assist these teens to achieve independent living skills. (\$3.3 million for the 2000-2001 biennium)
- *Expand the Healthy Families Program*
Provides funds to expand the Healthy Families program by contracting with a development center and adding five new planning grants in FY 2001. (\$1.8 million for the 2000-2001 biennium)
- *Develop the Right Choices Program*
Provides for the development of a case manager/broker approach to the delivery of prevention services. (\$6.7 million for the 2000-2001 biennium)
- *Provide Additional Funding for the Community Youth Development (CYD) Program*
Provides additional funding to increase the number of CYD sites from 13 to 15. (\$2.0 million for the 2000-2001 biennium)

Adult Protective Services

- *Expand the Adult Guardianship Program*
Provides 26 FTEs in FY 2000 and 3 additional FTEs in FY 2001 to expand and improve the guardianship program by reducing caseloads and adding specialized support staff to assist with the financial aspects of the program. (\$2.6 million for the 2000-2001 biennium)

Childcare regulation

- *Automate Childcare Licensing*
Provides funds to develop a new automated system to meet the needs of the Childcare Licensing program and other users of the program data. (\$8.4 million for the 2000-2001 biennium)
- *Add Childcare Licensing Specialists*
Provides 11 FTEs to provide more technical assistance for Texas childcare providers to improve the quality of care provided in the state. (\$854,000 for the 2000-2001 biennium)

Maintain automated system

- *Maintain the CAPS Automation Support Contract*
Provides funds to continue the help desk and technical support for the PRS automation hardware and software infrastructure. (\$7.1 million for the 2000-2001 biennium)

- *Upgrade the CAPS Infrastructure*
Provides funds to convert to the NT operating system and for other network system upgrades. (\$3.3 million for the 2000-2001 biennium)

Central administration

- Provides funds to update and support PRS automation hardware and software infrastructure. (\$146,757 for the 2000-2001 biennium)

Program Transfers

The Legislature transferred three programs to PRS as a result of Senate Bill 1574 by Sen. Royce West and Rep. Patricia Gray, relating to the administration of certain programs for at-risk children and their families:

- The Parents as Teachers program from MHMR to PRS, \$750,000 in funding;
- The Buffalo Soldiers program from the Juvenile Probation Commission to PRS, \$500,000 in funding; and
- The Communities in Schools program and 16 full time equivalents from the Texas Workforce Commission to PRS, \$35.3 million in funding.

Health Care and Special Needs Issues

Medical Needs of Youth Transitioning from Foster Care

Access to medical care has been identified as a major problem for youth aging out of the foster care system. While in foster care, youth with medical needs, such as asthma or mental illness, have access to needed medications. These persons often lose their Medicaid coverage when they age out of foster care and have a difficult time obtaining necessary medication and medical services. Often these youth need several years to establish themselves financially in order to access resources for medical needs on their own. Typically youth do not have medical insurance during these years.

Special Needs Adoptions

Low subsidy payments create a barrier for children with special needs waiting to be adopted. Children with special needs also comprise a large percentage of the number of children in need of adoptive families. The Child Welfare League of America estimates that approximately 61 percent of children placed for adoption have serious physical, developmental or emotional problems as a result of neglect, abuse, prenatal exposure to drugs, alcohol, HIV and other conditions.¹³²

Recommendations

55. Recommend that the Legislature support efforts to transition children from the foster care system by amending the state plan to allow health care funding options for foster children until age 21.

The federal Foster Care Independence Act of 1999 gives states a new flexibility to provide assistance to young persons ages 18 to 21 who are transitioning from foster care to independent living. The act establishes this group as a new optional Medicaid eligibility group.

Allowing foster children to stay on Medicaid until age 21 would require the state to designate a general revenue match to draw federal matching funds; at the Texas Department of Health (TDH). This funding would provide benefits for a total of 2,469 foster children, ages 18, 19 and 20 years old.

56. *Recommend that the Legislature increase the subsidy given to families who adopt children with special needs to remove the disincentives to adopt these children.*

The subsidy given to foster parents of a child with special needs decreases significantly if they adopt that child. Families who are foster parents for a child with special needs are reimbursed for expenses at a rate of approximately \$1,089 a month. If the family chooses to adopt their foster care child with special needs, the level of assistance rate falls to approximately \$516 a month. Lack of resources prevents some families from adopting children with special needs.

PRS notes that the current adoption assistance rate does not address the costs of children with special care needs because the current single rate is tied to the lowest-level foster care rate. This rate assumes that the child needs only basic care. Of children waiting for adoptive placement, slightly over 50 percent have needs that are greater than the basic level. A tiered rate system would better meet the needs of these children. The National Conference of State Legislatures (NCSL) reported that “adoption subsidies positively affect the rates of special needs adoptions. Adoption subsidies are cost-effective, primarily because of savings in administrative costs associated with foster care and court review of foster care cases.”¹³³

PRS Regulatory Issues

PRS is responsible for protecting the health, safety and well being of children who attend or reside in regulated childcare facilities and homes. PRS develops minimum standards for regulated facilities and homes, as well as policies and procedures for enforcing those minimum standards. By ensuring that the facilities and homes licensed to care for children abide by state law and PRS regulations, PRS helps to prevent child abuse and neglect by caretakers.

The Committee received information from PRS, advocates and providers regarding a wide range of regulatory issues. The Committee adopted the following recommendations.

Recommendations

57. *Recommend that the Legislature direct PRS childcare licensing staff to increase unannounced inspections of childcare facilities designated as high risk.*

Currently regulations only require PRS to preform a limited number of unannounced visits to facilities with a history of problems and most visits are announced. Regarding increasing the

ratio of unannounced visits, research shows that unannounced visits are especially effective when targeted to providers with a history of low compliance.¹³⁴

58. Amend statute to include registered drop-in day care centers in the training requirements for childcare providers.

Current law leaves out drop-in day care centers from the training requirements of childcare providers who care for young children. These centers should be included in the statute regarding childcare training requirements.

59. Recommend that the Legislature direct PRS to amend agency rule to add child abuse prevention information to the posters displayed at business organizations providing childcare.

Prior legislation requires childcare facilities to display signs with information on child abuse reporting procedures. This recommendation would update signs by adding new information on child abuse prevention to all new signs. Signs would be informative for both the facility staff and parents.

60. Expand the authority for PRS to obtain criminal background information on certain applicants, employees, volunteers or persons living in an adoptive or foster home where a child in CPS conservatorship will reside.

There are several categories of persons who may have contact with clients that PRS protects that are not within the current statutory authorization for criminal history release by the Department of Public Safety (DPS). Revisions in statute are needed to better protect adults and children from abuse and neglect. PRS would like to expand authority to obtain criminal background information on the following:

- any applicant or employee and any volunteer or applicant volunteer with the agency;
- persons seeking employment through a contract with the estate of an adult ward, or a friend or relative of a ward who seeks unsupervised visitation with the ward away from the ward's placement; and
- any person living in an adoptive or foster home where a child in CPS conservatorship will reside and any person living in the home of an alleged victim.

Prevention of Abuse and Neglect

Efforts in preventing child abuse and neglect are critical. In a February, 2000, article the *Dallas Morning News* highlighted the severity of the need for child abuse and neglect prevention, estimating "the direct cost of child abuse and neglect just in Dallas County to be at least \$55 million annually." They noted that "costs involve not only local Child Protective Services expenditures, but also related staffing costs for the police departments, district attorneys, courts, shelters, therapists and other services providers."¹³⁵ The article continues to cite the costs of not protecting our children by noting that childhood abuse increases the odds of criminality overall by 40 percent, maltreated children are more

likely to perform poorly in school and to have mental health problems.¹³⁶ In an effort to alleviate some of the difficulties in protecting children, PRS has worked with other health and human service agencies to coordinate prevention efforts. This effort needs to be continued, especially regarding programs that serve children at high risk.

Because schools are the place where children spend the majority of their day, schools need to become involved in prevention efforts. Children often spend more time with teachers than with their parents. Because students spend so much time in school, it makes sense not only to ensure that teachers and counselors know how to recognize signs of abuse, but also to educate students about abuse.

Recommendations

61. *Recommend that the Legislature require appropriate institutions of higher education and state agencies to report to the Legislature and HHSC on efforts to serve children age zero to three and make recommendations to enhance coordination and collaboration.*

The agencies and groups that emphasize the importance of the first three years in a child's life should work together to prevent child abuse and promote positive outcomes for children and families. PRS has identified the need to review and coordinate statewide efforts in prevention as part of its FY 2000 strategic plan. Additionally, HHSC has a strategic plan involving coordination and collaboration of prevention efforts, although that focus is on children and youth of all ages.

62. *Recommend that the Legislature direct PRS and Children's Trust Fund (CTF) to develop and implement an infant mortality prevention education program throughout the state using persons and organizations with specific experience, such as the Child Fatality Review Teams or the Sudden Infant Death Syndrome (SIDS) Alliance.*

PRS and CTF coordinate to prevent Shaken Baby Syndrome; this legislation would require them to do the same with SIDS and other infant mortality issues.

63. *Recommend that the Legislature direct the Texas Education Agency (TEA) to amend current rules requiring teachers to report child abuse and neglect by adding a requirement to inform teachers about how to recognize child abuse or neglect.*

In rules adopted by TEA (TAC 61.1051), school districts are required to ensure that teachers are familiar with child abuse reporting requirements. This recommendation would require TEA to adopt rules ensuring teachers know how to recognize abuse and neglect as well as report it. Each district could determine the means of implementing the requirement.

64. *Recommend that the Legislature direct the PRS prevention division and the State Board of Education to collaborate to include child abuse prevention and awareness information in the state's education curriculum for students.*

Young parents are more likely to commit acts of abuse and neglect. Exposing teenagers to child abuse prevention as a part of their formal school education targets child abuse prevention information at young persons who may already be parents or are contemplating starting a family

upon completion of school. Information could be available for inclusion in the health class curriculum.

Expansion of Current Programs

PRS has specific programs to pilot different models of intervention. These recommendations call on the Legislature to support expansion of those programs that have proven most effective.

Recommendations

65. Recommend that the Legislature establish a statewide PRS respite care program based on the respite care pilot.

Respite care programs provide childcare for families that are experiencing financial or emotional difficulties. The number of child-care hours available to each family is time-limited and provided either through day-care or residential care. The programs provide ancillary services such as, parent education, and concrete services, such as help with rent or utility payments. Evaluation of three respite care pilot sites shows that the rate of abuse decreased in counties receiving respite care services and a decrease in the stress level for families that receive this service.¹³⁷

66. Recommend that the Legislature increase funding to expand PRS home visiting services and offer a menu of programs based on identified community need and support.

Home visiting programs serve families in their homes instead of making the family come to an agency or other facility for services. There currently are three models of home visiting programs that receive some PRS funding: Healthy Families, Parents as Teachers (PAT) and Home Instruction Program for Pre-school Youngsters (HIPPY). Each home visiting model has demonstrated positive outcomes for the parents and children they serve. Communities should be allowed to support a home visiting model to meet the needs of families.

67. Recommend that the Legislature increase funding to PRS for drug testing of certain clients.

A variety of substance abuse testing is needed and is sometimes court ordered to verify client use or abstention from use of controlled substances. CPS caseworkers face particular dilemmas when working with extremely troubled families whose complex and multiple problems include substance abuse and child maltreatment. Often CPS-mandated testing is the catalyst needed to prompt a substance-abusing parent to seek treatment.

Conclusion

In keeping with its historical mandate, the Texas Senate Committee on Human Services continued to focus its attention this interim on the state's most vulnerable populations: the elderly, adults and children with disabilities, families receiving welfare and children at risk of abuse and neglect. Although the state currently is experiencing strong economic growth and prosperity, Texas must ensure that full opportunity to experience that prosperity is available to all its citizens.

In response to charges by Lieutenant Governor Rick Perry, the Committee adopted 67 recommendations relating to the continuum of long-term services and supports; services provided to children receiving welfare and the hardest-to-serve adult welfare recipients; federal developments related to long-term care and welfare reform; implementation of Senate Bill 374, the long-term care Sunset bill; House Bill 2641, the Health and Human Services Commission Sunset bill; and the protection of children from abuse and neglect. The related draft legislation in Appendices D through G represent initial starting points for legislation that will be amended prior to and during the 77th Legislative Session.

Additionally, the Committee monitored the implementation of Senate Bill 30, relating to parental notification before an abortion may be performed on certain minors and the effects of the additional resources provided to the Texas Department of Protective and Regulatory Services. The Committee will continue to monitor any developments relating to these issues.

Members of the Committee worked diligently to address these important charges and will continue to work with representatives of state agencies, organizations, interested parties and other legislators and their staffs to ensure that Texas' human services needs are met.

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Acknowledgments

The Texas Senate Committee on Human Services appreciates the opportunity provided by Lieutenant Governor Rick Perry to study and make recommendations regarding human services issues that affect the lives of Texans. We also appreciate greatly the leadership and sentiments of all who devoted their time and expertise to preparing this report.

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Texas Department on Aging—Executive Director Mary Sapp, Christy Fair, Mark Sizemore, Joy Weeks and John Willis;

Texas Department of Health—Commissioner William "Reyn" Archer, Susan Penfield and Lesa Walker;

Texas Department of Housing and Community Affairs—Sarah Dale and John Garvin;

Texas Department of Human Services—Commissioner Eric Bost, Becky Beechinor, Renee Clack, Anthony Chapple, Nick Dauster, Judy Denton, Marc Gold, Amy Harper, Lea Isgur, Jackie Johnson, Jim Lehrman, Steve Lorenzen, J.B. McReynolds, Debbie Morris, Rosemary Patterson, Anne Sapp, Jessica Shahin and Chris Traylor;

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Texas Department of Mental Health and Retardation—Commissioner Karen Hale, Don Henderson, Barbara Miller and Penny Steele;

Texas Department of Protective and Regulatory Services—Executive Director Jim Hine, Rick Coaxum, Karen Eells, Paula Mixson, Kingsbery Otto and Jean Wallace;

Texas Workforce Commission—Commissioner Diane Rath, David Duncan, Rebecca Robinson and Larry Temple;

Office of State and Federal Relations—Executive Director Laurie Rich and Jon Hinojosa;

Supreme Court of Texas—Bob Pemberton; and

Texas Council for Workforce and Economic Competitiveness—Executive Director Cheryl Halliburton.

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AARP, American Disabled for Attendant Programs Today (ADAPT), Adult Day Care Association of Texas, Advocacy, Inc., Advocates for Nursing Home Reform, Alzheimer's Association, Center for Public Policy Priorities, Children's Medicaid Waiver Advisory Committee, Citizens Commission on Human Rights, Disability Policy Consortium, Enterprise Foundation, Equity and Independence Coalition, Justice for Children, LBJ School of Public Affairs - Dr. Jacqueline Angel, National Training Center on Domestic and Sexual Violence, Parent Association of the Retarded of Texas, Private Providers Association of Texas, Senior Citizens of Greater Dallas, Shaken Baby Alliance, Texans Supporting State Schools, Texas Advocates for Nursing Home Residents, Texas Advocates for Special-needs Kids, Texas Association of Area Agencies on Aging, Texas Association of Home Care, Texas Association of Homes and Services for the Aged, Texas Association of Leaders in Children and Family Services, Texas Association of Life and Health Insurers, Texas Association of Residential Care Communities, Texas Council on Family Violence, Texas Health Care Association, Texas Legal Services Center, Texas Respite Resource Network, Texas Senior Advocacy Coalition and Texas Silver-Haired Legislature.

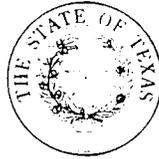
We appreciate the hard work of Senior Legislative Counsel Carolyn Hall and all of the other staff attorneys at Texas Legislative Council who drafted the Committee's recommendations into bills.

We also appreciate Secretary of the Senate Betty King, Senate Committee Coordinator Rebecca Gregg, Senate Sergeant-at-Arms Carleton Turner, Senate Media Director Kathryn Staat and the members of their staff for helping to facilitate our hearings during the interim.

Most importantly, we acknowledge the hardworking and devoted staff members of the Senate Committee on Human Services. They wrote this report, developing drafts for the Committee's review and feedback. Under the direction of Chris Hudson, PhD, chief of staff, and Jon Weizenbaum, legislative director, the following committee staff members coordinated our interim study and were critical to meeting our charges: Anne Ray Betz, Scott Caffey, Stacy Gaston, Micol Giovanella, Liz Garza-Goins, Karen Hilton and Amy Mizcles.

Appendix A

Interim Charges



Rick Perry

Lieutenant Governor of Texas

President of the Senate

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September 2, 1999

The Honorable Judith Zaffirini
Chair, Senate Committee on Human Services
State Capitol Building, Room 1E.5
Austin, Texas 78701

Dear Senator Zaffirini:

Attached are the interim charges I have issued to your committee. Please note the following:

1. Subcommittees did not receive charges in an effort to lessen the number of committees examining issues in order to improve efficiency and effectiveness and assure broader geographic representation in examining critical subject areas. Subcommittee staff should be called on to provide expertise in their subject areas to the full committee.
2. I am asking each committee to submit a preliminary outline and plan of work to me at the earliest practical date; it should include the number of hearings to be held, the location of hearings, and a timeline for final disposition of each charge.
3. In accordance with Senate rules and tradition, any senator may participate in the activities of any committee, but voting will be limited to members of the committee.
4. All Senate committees will continue to manage their areas of continuing responsibility, in addition to addressing the interim charges.

Please keep me and my staff personally posted on your committee's progress in addressing these important matters.

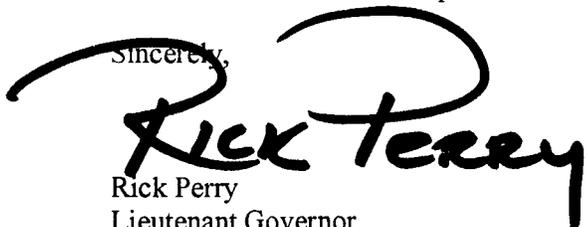
The Honorable Judith Zaffirini

Page 2

9/2/99

If you receive calls from the public for additional copies of the charges, they may be obtained from the Secretary of the Senate. I will be sending a copy of the interim charges of each of our Senate committees under separate cover to every senator next week.

Sincerely,

A large, stylized handwritten signature in black ink that reads "Rick Perry". The signature is written in a cursive, flowing style with a large loop at the top.

Rick Perry
Lieutenant Governor

Attachment

cc: Governor George W. Bush
Speaker Pete Laney
Mrs. Betty King, Secretary of the Senate
Julie Valentine, Senate Research

SENATE COMMITTEE ON HUMAN SERVICES

Interim Charges

The Committee shall:

1. Examine the continuum of care and support options available to Texans in need of long-term care. The Committee shall evaluate the effectiveness of state regulatory efforts to ensure quality services as well as analyze the long-term care business climate.

The Committee, working in cooperation with the Senate Finance Committee, shall analyze the current state funding method for Medicaid long-term care and develop alternatives that both ensure quality service and control costs to the state. The Committee shall also develop recommendations to ensure individual and family choice in long-term care decisions and encourage more private sector and community involvement in the delivery of long-term care.

2. Evaluate services provided to hardest-to-serve adult welfare recipients and services provided to children receiving welfare. The Committee shall assess the state's ability to avoid long-term dependency on welfare for both of these populations and develop additional strategies to encourage self-sufficiency and movement from welfare to work.
3. Monitor federal developments related to long-term care and welfare issues. In the event that significant developments occur, the Committee shall evaluate their impact on Texas.
4. Monitor the implementation of the following bills enacted during the 76th Legislature, Regular Session: SB 30 relating to parental notification before an abortion may be performed on certain minors; SB 374 relating to the provision of certain long-term care services, to the continuation and functions of the Texas Department on Aging, and to the eventual consolidation of the Texas Department of Human Services and the Texas Department on Aging into a new agency on aging and disability services; and HB 2641 relating to the continuation and functions of the Health and Human Services Commission. The Committee shall also monitor the effects of the additional resources provided to the Texas Department of Protective and Regulatory Services.

Reports

The Committee shall submit copies of its final report as soon as possible, but no later than September 1, 2000. This date has been chosen so that the work of the Committee can be considered when the Legislative Budget Board is developing performance and budget recommendations to the 77th Legislature. Copies of the final report should be sent to the Lieutenant Governor, Secretary of the Senate, Legislative Council and Legislative Reference Library.

The final report of the Committee should be approved by a majority of the voting members of the Committee and include any recommended statutory changes. Draft legislation containing any recommended statutory changes should be attached to the report. Recommended agency rule changes should also be attached to the report.

Budget and Staff

The Committee shall use its existing staff, including any subcommittee staff, and the budget that will be approved by the Senate Committee on Administration. Where appropriate, the Committee should obtain assistance from the Senate Research Center and legislative agencies, including the Legislative Budget Board, the Legislative Council and the State Auditor. The Committee should also seek the assistance of appropriate Executive Branch agencies with responsibilities in the areas of the Committee's interim charges.

Appendix B

Agendas and Lists of Witnesses

Texas Senate Committee on Human Services
Organizational Meeting and Briefing

Texas State Capitol
Lt. Governor's Committee Room, 2E.20
Austin, Texas

Thursday, October 28, 1999
9 a.m.

Agenda

- I. **Call to Order**
- II. **Roll Call**
- III. **Welcome and Introductions**
- IV. **To Consider the Following: Organization, rules, procedures, schedule**
- V. **Review and Briefing of Interim Charges by Lt. Governor Rick Perry**
 - A. Briefing regarding the continuum of care and support options available to Texans in need of long-term care and the implementation of SB 374 by Sen. Judith Zaffirini and Rep. Patricia Gray, relating to the provision of certain long-term care services, to the continuation and functions of the Texas Department on Aging, and to the eventual consolidation of the Texas Department of Human Services and the Texas Department on Aging into a new agency on aging and disability services.

Panel

Don Gilbert, commissioner, Texas Health and Human Services Commission
Eric Bost, commissioner, Texas Department of Human Services
Karen Hale, commissioner, Texas Department of Mental Health and Mental Retardation
Dr. William "Reyn" Archer, commissioner, Texas Department of Health
Mary Sapp, executive director, Texas Department on Aging
Kim Stokes, senior associate commissioner, Life, Health & Licensing, Texas Department of Insurance

- B. Briefing regarding the services provided to hardest-to-serve adult welfare recipients and services provided to children receiving welfare.

Panel

Don Gilbert, commissioner, Texas Health and Human Services Commission

Eric Bost, commissioner, Texas Department of Human Services
Diane Rath, commissioner, Texas Workforce Commission
Cheryl Halliburton, director, Texas Council for Workforce and Economic Competitiveness
Patrick Bresette, associate director, Center for Public Policy Priorities

- C. Briefing regarding federal developments related to long-term care and welfare issues.

Panel

Don Gilbert, commissioner, Texas Health and Human Services Commission
Eric Bost, commissioner, Texas Department of Human Services
Diane Rath, commissioner, Texas Workforce Commission
Jon Hinojosa, legislative liaison, Office of State and Federal Relations

- D. Briefing regarding the implementation of SB 30 by Sen. Florence Shapiro and Rep. Dianne Delisi, relating to parental notification before an abortion may be performed on certain minors.

Panel

Dr. William “Reyn” Archer, commissioner, Texas Department of Health
Robert Pemberton, rules attorney, Supreme Court of Texas

- E. Briefing regarding the implementation of HB 2641 by Rep. Patricia Gray and Sen. Buster Brown, relating to the continuation and functions of the Health and Human Services Commission.

Don Gilbert, commissioner, Texas Health and Human Services Commission

- F. Briefing regarding the effects of the additional resources provided to the Texas Department of Protective and Regulatory Services.

Panel

Karen Eells, deputy director for programs, Texas Department of Protective and Regulatory Services
Drew Thigpen, deputy director for finance, Texas Department of Protective and Regulatory Services

VI. Other Business

VII. Recess

Senate Committee on Human Services
Interim Hearing
List of Witnesses

October 28, 1999

The following persons registered as resource witnesses and provided oral testimony regarding the continuum of care and support options available to Texans in need of long-term care and the implementation of SB 374 by Sen. Judith Zaffirini and Rep. Patricia Gray, relating to the provision of certain long-term care services, to the continuation and functions of the Texas Department on Aging, and to the eventual consolidation of the Texas Department of Human Services and the Texas Department on Aging into a new agency on aging and disability services:

Don Gilbert, commissioner, Texas Health and Human Services Commission

Eric Bost, commissioner, Texas Department on Human Services

Karen Hale, commissioner, Texas Department on Mental Health and Mental Retardation

Dr. William “Reyn” Archer, commissioner, Texas Department of Health

Mary Sapp, executive director, Texas Department on Aging

Kim Stokes, senior associate commissioner, Life, Health & Licensing, Texas Department of Insurance

The following persons registered as resource witnesses and provided oral testimony regarding the services provided to hardest-to-serve adult welfare recipients and services provided to children receiving welfare:

Don Gilbert, commissioner, Texas Health and Human Services Commission

Eric Bost, commissioner, Texas Department of Human Services

Diane Rath, commissioner, Texas Workforce Commission

Cheryl Halliburton, director, Texas Council for Workforce and Economic Competitiveness

Patrick Bresette, associate director, Center for Public Policy Priorities

The following persons registered as resource witnesses and provided oral testimony regarding federal developments related to long-term care and welfare issues:

Don Gilbert, commissioner, Texas Health and Human Services Commission

Eric Bost, commissioner, Texas Department of Human Services

Diane Rath, commissioner, Texas Workforce Commission

Jon Hinojosa, legislative liaison, Office of State and Federal Relations

The following persons registered as resource witnesses and provided oral testimony regarding the implementation of SB 30 by Sen. Florence Shapiro and Rep. Dianne Delisi, relating to parental notification before an abortion may be performed on a minor:

Dr. William “Reyn” Archer, commissioner, Texas Department of Health

Robert Pemberton, rules attorney, Supreme Court of Texas

The following person registered as a resource witness and provided oral testimony regarding the implementation of HB 2641 by Rep. Patricia Gray and Sen. Buster Brown, relating to the continuation and functions of the Health and Human Services Commission:

Don Gilbert, commissioner, Texas Health and Human Services Commission

The following persons registered as resource witnesses and provided oral testimony regarding the effects of the additional resources provided to the Texas Department of Protective and Regulatory Services:

Karen Eells, deputy director for programs, Texas Department of Protective and Regulatory Services

Drew Thigpen, deputy director for finance, Texas Department of Protective and Regulatory Services

Texas Senate Committee on Human Services
Public Hearing

Texas State Capitol
Senate Chamber
Austin, Texas

Wednesday, April 19, 2000
9 a.m.

Agenda

- I. Call to Order**
- II. Roll Call**
- III. Approval of October 28, 1999, Minutes**
- IV. Progress Reports, Recommendations and Possible Action Regarding Interim Charges from Lt. Governor Rick Perry:**
 - A. Continuum of care and support options available to Texans in need of long-term care and the implementation of SB 374 by Sen. Judith Zaffirini and Rep. Patricia Gray, relating to the provision of certain long-term care services, to the continuation and functions of the Texas Department on Aging, and to the eventual consolidation of the Texas Department of Human Services and the Texas Department on Aging into a new agency on aging and disability services.

Panel

Don Gilbert, commissioner, Texas Health and Human Services Commission
Eric Bost, commissioner, Texas Department of Human Services
Karen Hale, commissioner, Texas Department of Mental Health and Mental Retardation
Dr. William "Reyn" Archer, commissioner, Texas Department of Health
Jim Hine, executive director, Texas Department of Protective and Regulatory Services
Mary Sapp, executive director, Texas Department on Aging
Kim Stokes, senior associate commissioner, Life, Health & Licensing, Texas Department of Insurance

- B. Services provided to hardest-to-serve adult welfare recipients and services provided to children receiving welfare.

Panel

Don Gilbert, commissioner, Texas Health and Human Services Commission
Eric Bost, commissioner, Texas Department of Human Services
Diane Rath, commissioner, Texas Workforce Commission

Patrick Bresette, associate director, Center for Public Policy Priorities

- C. Federal developments related to long-term care and welfare issues.

Panel

Don Gilbert, commissioner, Texas Health and Human Services Commission

Eric Bost, commissioner, Texas Department of Human Services

Diane Rath, commissioner, Texas Workforce Commission

Laurie Rich, executive director, Office of State and Federal Relations

Kathy Eckstein, team manager, Federal Funds, Legislative Budget Board

Patrick Bresette, associate director, Center for Public Policy Priorities

- D. Implementation of SB 30 by Sen. Florence Shapiro and Rep. Dianne Delisi, relating to parental notification before an abortion may be performed on certain minors.

Panel

Dr. William “Reyn” Archer, commissioner, Texas Department of Health

Robert Pemberton, rules attorney, Supreme Court of Texas

- E. Implementation of HB 2641 by Rep. Patricia Gray and Sen. Buster Brown, relating to the continuation and functions of the Health and Human Services Commission.

Don Gilbert, commissioner, Texas Health and Human Services Commission

- F. Effects of the additional resources provided to the Texas Department of Protective and Regulatory Services.

Jim Hine, executive director, Texas Department of Protective and Regulatory Services

V. Public Testimony

VI. Other Business

VII. Recess

Senate Committee on Human Services
Interim Hearing
List of Witnesses
April 19, 2000

The following persons registered as resource witnesses and provided oral testimony regarding the continuum of care and support options available to Texans in need of long-term care and the implementation of SB 374 by Sen. Judith Zaffirini and Rep. Patricia Gray, relating to the provision of certain long-term care services, to the continuation and functions of the Texas Department on Aging, and to the eventual consolidation of the Texas Department of Human Services and the Texas Department on Aging into a new agency on aging and disability services:

Don Gilbert, commissioner, Texas Health and Human Services Commission

Eric Bost, commissioner, Texas Department on Human Services

Karen Hale, commissioner, Texas Department on Mental Health and Mental Retardation

Dr. William "Reyn" Archer, commissioner, Texas Department of Health

Jim Hine, executive director, Texas Department of Protective and Regulatory Services

Mary Sapp, executive director, Texas Department on Aging

Jim Lehrman, associate commissioner, Long-Term Care Regulatory, Texas Department of Human Services

The following person registered as a resource witness and provided oral and written testimony regarding the continuum of care and support options available to Texans in need of long-term care and the implementation of SB 374 by Sen. Judith Zaffirini and Rep. Patricia Gray, relating to the provision of certain long-term care services, to the continuation and functions of the Texas Department on Aging, and to the eventual consolidation of the Texas Department of Human Services and the Texas Department on Aging into a new agency on aging and disability services.

Jose Montemayor, commissioner, Texas Department of Insurance

The following persons registered as resource witnesses but did not testify regarding the continuum of care and support options available to Texans in need of long-term care and the implementation of SB 374 by Sen. Judith Zaffirini and Rep. Patricia Gray, relating to the provision of certain long-term care services, to the continuation and functions of the Texas Department of Aging, and to the eventual consolidation of the Texas Department of Human Services and the Texas Department on Aging into a new agency on aging and disability services.

Susan Penfield, division director, Children with Special Needs, Texas Department of Health

John F. Willis, state ombudsman, Texas Department on Aging

The following persons registered as resource witnesses and provided oral testimony regarding the services provided to hardest-to-serve adult welfare recipients and services provided to children receiving welfare:

Don Gilbert, commissioner, Texas Health and Human Services Commission

Eric Bost, commissioner, Texas Department of Human Services

Diane Rath, commissioner, Texas Workforce Commission

The following person registered as a resource witness and provided oral and written testimony regarding the services provided to hardest-to-serve adult welfare recipients and services provided to children receiving welfare:

Patrick Bresette, associate director, Center for Public Policy Priorities

The following persons registered as resource witnesses but did not testify regarding the services provided to hardest-to-serve adult welfare recipients and services provided to children receiving welfare:

Judy Denton, director of Texas Works, Texas Department of Human Services

Larry Temple, director, welfare reform, Texas Workforce Commission

The following persons registered as resource witnesses and provided oral testimony regarding federal developments related to long-term care and welfare issues:

Don Gilbert, commissioner, Texas Health and Human Services Commission

Eric Bost, commissioner, Texas Department of Human Services

Diane Rath, commissioner, Texas Workforce Commission

The following persons registered as resource witnesses and provided oral and written testimony regarding federal developments related to long-term care and welfare issues:

Laurie Rich, executive director, Office of State and Federal Relations

Kathy Eckstein, team manager, Federal Funds, Legislative Budget Board

Patrick Bresette, associate director, Center for Public Policy Priorities

The following person registered as resource witnesses and provided oral testimony regarding the implementation of SB 30 by Sen. Florence Shapiro and Rep. Dianne Delisi, relating to parental notification before an abortion may be performed on a minor:

Dr. William “Reyn” Archer, commissioner, Texas Department of Health

The following person registered as a resource witness and provided oral and written testimony regarding the implementation of SB 30 by Sen. Florence Shapiro and Rep. Dianne Delisi, relating to parental notification before an abortion may be performed on a minor:

Robert Pemberton, rules attorney, Supreme Court of Texas

The following person registered as a resource witness and provided oral testimony regarding the implementation of HB 2641 by Rep. Patricia Gray and Sen. Buster Brown, relating to the continuation and functions of the Health and Human Services Commission:

Don Gilbert, commissioner, Texas Health and Human Services Commission

The following person registered as resource witness and provided oral testimony regarding the effects of the additional resources provided to the Texas Department of Protective and Regulatory Services:

Jim Hine, executive director, Texas Department of Protective and Regulatory Services

The following persons registered as public witnesses and presented oral testimony regarding the continuum of care and support options available to Texans in need of long-term care and the implementation of SB 374 by Sen. Judith Zaffirini and Rep. Patricia Gray, relating to the provision of certain long-term care services, to the continuation and functions of the Texas Department on Aging, and to the eventual consolidation of the Texas Department of Human Services and the Texas Department on Aging into a new agency on aging and disability services and to federal developments relating to long-term care services:

Jody Becker, owner, Adult Day Care Association of Texas

Rendy Box

Paula Brashear

Jennifer M. Cernoch, director, Texas Respite Resource Network

Jim Cowgill, speaker pro tempore, Texas Silver-Haired Legislature

Victoria Davis, president, Adult Day Care Association of Texas

Anne Denton, director, The Enterprise Foundation

Barbara Earp

Darlene Evans, administrator, Texas Health Care Association

Lauren Fecher, Citizens Commission on Human Rights

Frank Genco, public policy director, Texas Council for Developmental Disabilities

Lucinda Harman, consultant, Development Disability Project of Central Texas

Gail A. Harmon, executive director, Alzheimer's Association

John R. Hawkins

Aaryce Hayes, program specialist, Advocacy, Incorporated

Brad Holbert, executive director, Texas Association of Area Agencies on Aging

Bert Holmes, chair, Advocacy and Education for the Elderly

Libby Edwards James, president, Texas Advocates for Nursing Home Residents

Paul R. Jarry

Paula Johnson, director, Coordinated Senior Advocacy

Kim Kirchoff, director of health and human services, Texas Association of Area Agencies on Aging

David Latimer, president, Texas Association of Homes and Services for the Aging

Alvin Loewenberg, chair, Texas Association on Homes and Services for the Aging

Jennifer McPhail, ADAPT of Texas

Albert Metz, ADAPT of Texas

Susan Murphee, program specialist, Advocacy, Incorporated

Jerry Smith

Wayne A. Spahn, ADAPT of Texas

Chris Spence, president, Wesleyan Homes

Lue Taff, social worker, Alzheimer's Association

Steve Womack, deputy CEO, Adult Day Care Association of Texas

Betty Wright

The following persons registered as public witnesses and provided oral and written testimony regarding the continuum of care and support options available to Texans in need of long-term care and the implementation of SB 374 by Sen. Judith Zaffirini and Rep. Patricia Gray, relating to the provision of certain long-term care services, to the continuation and functions of the Texas Department on Aging, and to the eventual consolidation of the Texas Department of Human Services and the Texas Department on Aging into a new agency on aging and disability services and to federal developments relating to long-term care services:

Patty Anderson, executive director, United Cerebral Palsy of Texas

Bruce P. Bower, chair, Texas Senior Advocacy Coalition

David Bragg

Beth Ferris, legislative representative, Texas Advocates for Nursing Home Residents

Charlotte Flynn, Texas coordinator, Gray Panthers

Karen Friend, president, Texas Managed Care Coalition of Adult Day Service Providers

Gavin Gadberry, counsel, Texas Health Care Association

Alan Hardy, chair, Long-Term Care and Health Committee, AARP

Colleen Horton, Texas Advocates Supporting Kids with Disabilities

Bob Kafka, chair, Equity and Independence for Long-Term Care

Sandy Klein, senior vice president of operations, Texas Health Care Association

Chris Kyker

Bettina Lang, director of programs, Senior Citizens of Greater Dallas

Pater Nicolaou, executive, Lutheran Social Services of the South, Inc.

Keith Perry, president/CEO, Sears Methodist Retirement System

Ray Thomas, president, Bunker Hill/Gulf Insurance Group

Jan Weaver, director of services and education, Alzheimer's Association

Heather Vasek, director of public policy and regulatory affairs, Texas Association for Home Care

Marie B. Wisdom, president, Advocates for Nursing Home Reform

Darrell Zurovec, associate general counsel, Texas Health Care Association

The following persons provided written testimony but did not testify regarding the continuum of care and support options available to Texans in need of long-term care and the implementation of SB 374 by Sen. Judith Zaffirini and Rep. Patricia Gray, relating to the provision of certain long-term care services, to the continuation and functions of the Texas Department on Aging, and to the eventual consolidation of the Texas Department of Human Services and the Texas Department on Aging into a new agency on aging and disability services and to federal developments relating to long-term care services:

Ruben Salazar, CEO, Sunglo Fellowship Centers, Inc.

Carole Lynn Smith, executive director, Private Providers Association of Texas

Stephanie Thomas, organizer, ADAPT of Texas

The following persons registered as public witnesses and provided oral testimony regarding the services provided to hardest-to-serve adult welfare recipients and services provided to children receiving welfare and to federal developments relating to welfare reform:

Paige Flink, executive director, The Family Place

Mary Lee Hafley, executive director, The Women's Shelter

The following persons registered as public witnesses and provided oral and written testimony regarding the services provided to hardest-to-serve adult welfare recipients and services provided to children receiving welfare and to federal developments relating to welfare reform:

Pat Cole, National Training Center on Domestic and Sexual Violence

Jennifer Corrigan, public policy specialist, Texas Council on Family Violence

The following person registered as public witnesses but did not testify regarding the services provided to hardest-to-serve adult welfare recipients and services provided to children receiving welfare and to federal developments relating to welfare reform:

Patty Anderson, Promoting Independence Board

The following person registered as a public witness and provided oral testimony regarding the implementation of SB 30 by Sen. Florence Shapiro and Rep. Dianne Delisi, relating to parental notification before an abortion may be performed on a minor:

Gerry Anne Markham

The following person registered as a public witness and provided oral testimony regarding the additional resources provided to the Texas Department of Protective and Regulatory Services:

Bill Barrows, president, The Shaken Baby Alliance

The following person provided written testimony regarding the additional resources provided to the Texas Department of Protective and Regulatory Services:

Curtis Mooney, president, Texas Association of Leaders in Children and Family Services

Texas Senate Committee on Human Services
Public Hearing

Texas State Capitol
Senate Chamber
Austin, Texas

Wednesday, June 14, 2000
2 p.m.

Agenda

- I. Call to Order**
- II. Roll Call**
- III. Approval of April 19, 2000, Minutes**
- IV. Recommendations and Possible Action Regarding Interim Charges from Lt. Governor Rick Perry:**
 - A. Continuum of care and support options available to Texans in need of long-term care and the implementation of SB 374 by Sen. Judith Zaffirini and Rep. Patricia Gray, relating to the provision of certain long-term care services, to the continuation and functions of the Texas Department on Aging, and to the eventual consolidation of the Texas Department of Human Services and the Texas Department on Aging into a new agency on aging and disability services.
 - B. Services provided to hardest-to-serve adult welfare recipients and services provided to children receiving welfare.
 - C. Federal developments related to long-term care and welfare issues.
 - D. Implementation of HB 2641 by Rep. Patricia Gray and Sen. Buster Brown, relating to the continuation and functions of the Health and Human Services Commission.
 - E. Effects of the additional resources provided to the Texas Department of Protective and Regulatory Services.

V. Other Business

VI. Adjourn/Recess

Senate Committee on Human Services
Interim Hearing
List of Witnesses
June 14, 2000

The following persons registered as resource witnesses and provided oral testimony regarding the continuum of care and support options available to Texans in need of long-term care and the implementation of SB 374 by Sen. Judith Zaffirini and Rep. Patricia Gray, relating to the provision of certain long-term care services, to the continuation and functions of the Texas Department on Aging, and to the eventual consolidation of the Texas Department of Human Services and the Texas Department on Aging into a new agency on aging and disability services:

Don Gilbert, commissioner, Texas Health and Human Services Commission

Eric Bost, commissioner, Texas Department on Human Services

Don Henderson, legislative liaison, Texas Department of Mental Health and Mental Retardation

Susan Penfield, Children with Special Needs Division, Texas Department of Health

Mary Sapp, executive director, Texas Department on Aging

David Durden, associate commissioner, governmental relations, Texas Department of Insurance

The following persons registered as resource witnesses regarding the services provided to hardest-to-serve adult welfare recipients and services provided to children receiving welfare:

Don Gilbert, commissioner, Texas Health and Human Services Commission

Eric Bost, commissioner, Texas Department of Human Services

Diane Rath, commissioner, Texas Workforce Commission

Patrick Bresette, associate director, Center for Public Policy Priorities

The following persons registered as resource witnesses regarding federal developments related to long-term care and welfare issues:

Don Gilbert, commissioner, Texas Health and Human Services Commission

Eric Bost, commissioner, Texas Department of Human Services

Diane Rath, commissioner, Texas Workforce Commission

Kathy Eckstein, team manager, Federal Funds, Legislative Budget Board

Patrick Bresette, associate director, Center for Public Policy Priorities

The following person registered as a resource witness regarding the implementation of HB 2641 by Rep. Patricia Gray and Sen. Buster Brown, relating to the continuation and functions of the Health and Human Services Commission:

Don Gilbert, commissioner, Texas Health and Human Services Commission

The following person registered as resource witness and provided oral testimony regarding the effects of the additional resources provided to the Texas Department of Protective and Regulatory Services:

Karen Eells, deputy director of programs, Texas Department of Protective and Regulatory Services

The following person registered as a resource witness regarding the effects of the additional resources provided to the Texas Department of Protective and Regulatory Services:

Don Gilbert, commissioner, Texas Health and Human Services Commission

Appendix C

Recommendations Adopted by the Committee

Charge 1 - Long-term Care

1. *Recommend that the Legislature increase funding for the full range of home and community-based services, including adult day care, home health services, respite services, attendant care and other services.*
2. *Recommend that the Legislature require agencies to implement procedures to ensure that people with disabilities (or their parent/guardians) residing in institutions or at risk of such a placement have access to information about the full range of care options and assistance in utilizing those options if they choose to do so.*
3. *Expand housing options for the elderly and persons with disabilities by establishing a housing vouchers program at HHSC for those who move from institutional to community care settings.*
4. *Modify the Primary Home Care (PHC) and Frail Elderly programs to:*
 - Ⓒ *Allow three medications per month for Frail Elderly program clients;*
 - Ⓒ *Allow greater nurse delegation of tasks to home health aides; and*
 - Ⓒ *Allow presumptive eligibility to speed the initiation of services for new clients.*
5. *Include routine preventive dental services to nursing home residents as basic services under the Texas Medicaid program, contingent upon federal waiver approval.*
6. *Recommend that the Legislature require HHS agencies to make permanency planning procedures more consistent across agencies and facilities for children in institutions or considering placement in an institution.*
7. *Recommend that the Legislature revise the definition of abandonment to include cases where a family has placed a child in an institution, but has no further contact with the child.*
8. *Recommend that the Legislature allow children with special health care needs, who would otherwise qualify for nursing home services, to qualify for Medicaid or equivalent benefits, to allow families to provide home care.*
9. *Recommend that the Legislature direct HHSC to investigate “shared parenting,” “extend-a-family” and “friends of the family” concepts in other states’ systems of foster care for children with special health care needs outside of protective and regulatory agencies.*

10. *Establish a long-term care local access fund, to be administered by HHSC, to support local initiatives to improve access to long-term care services established by SB 374. Prioritize initiatives that utilize Internet technologies to provide information, referral and assessment for local services.*
11. *Expand statewide the Community Alzheimer's Resource and Education (CARE) program at DHS by adding four additional sites.*
12. *Recommend that the Legislature make a statutory change that would establish joint training for health and human services agency caseworkers to increase their awareness and knowledge of the services available to children within their agency and among other agencies.*
13. *Establish a temporary license for facility operators going through the change of ownership process.*
14. *Recommend that the Legislature require DHS to maintain a list of operators with excellent regulatory records to be made available in a change of ownership situation.*
15. *Allow DHS, at the request of a facility owner, to conduct architectural reviews prior to the construction or remodeling of nursing facilities.*
16. *Amend state law to provide a full range of administrative penalties for use by the state to sanction assisted living facilities that do not meet standards.*
17. *Establish an advisory committee to develop a plan for dealing with emergency financial crises at institutions, particularly those serving large numbers of children, and address the problem of facilities with recurring violations.*
18. *Revamp the criminal history background check process for long-term care employees by expanding the number of employees covered under such requirements and expediting access to background information.*
19. *Add direct care staff employed by home health agencies, MHMR, local community mental health and mental retardation centers and other providers, as appropriate, to the list of employees covered by the DHS Employee Misconduct Registry.*
20. *Establish, in statute, guidelines for updated definitions and policies relating to restraints, seclusions and emergency medications in residential facilities (e.g., nursing homes, psychiatric hospitals, ICF-MRs, assisted living centers and residential child care facilities).*
21. *Allow for-profit nursing facilities to purchase liability insurance from the Joint Underwriting Association (JUA).*

22. *Clarify the appropriate admissibility of DHS survey documents in civil lawsuits against nursing homes.*
23. *Provide tuition assistance for licensed vocational nursing students who agree to practice in long-term care settings.*
24. *Recommend that the Legislature increase funding for nursing home reimbursements.*
25. *Recommend that the Legislature increase funding for DHS audit staff to investigate the financial viability of nursing facilities.*
26. *Recommend that the Legislature direct DHS to evaluate the effectiveness of the new Medicaid nursing facility rate methodology to incentivize increased direct care staffing and consider the addition of incentives for increased dietary and other spending to improve quality of care and quality of life for residents.*
27. *Recommend that the Legislature direct DHS to conduct a new time study/recalculation of the TILE (or other) case-mix system to better account for varying resource needs of nursing home residents, especially those with dementia.*
28. *Recommend that the Legislature direct HHSC to consider a modeled rate for adult day care reimbursement with the possible inclusion of a case-mix reimbursement.*
29. *Enact state law to require TDI to produce and disseminate a consumer guide to long-term care insurance that includes information regarding the history of prices charged by insurance companies for long-term care insurance.*
30. *Provide a franchise tax credit for employers that contribute to long-term care insurance for their employees, employees' spouses or parents, equal to 20 percent of the costs incurred by the employer, with a maximum credit of \$5,000 or \$100 for each employee covered by the plan, whichever is lower.*

Charge 2 - Welfare Reform

31. *Recommend that the Legislature direct DHS, in conjunction with imposing any family-related sanction in the TANF program, to investigate why a family is being sanctioned, determine what resources could assist the family in meeting these requirements, make appropriate referrals and follow up with local support services. Recommend that the Legislature direct DHS to develop a service strategy, to be implemented at the local level, for addressing the needs of children in TANF families.*
32. *Recommend that the Legislature direct DHS to eliminate face-to-face interview requirements, allow mail-in eligibility or telephone re-certification and eliminate assets test for children's Medicaid eligibility.*

33. *Adopt 12-month continuous eligibility for children's Medicaid.*
34. *Recommend that the Legislature direct DHS to form an office standards workgroup (including legislative staff, advocates, service providers and stakeholders) to improve the TANF, Medicaid and Food Stamps eligibility, application and review processes at DHS by:*
- *reviewing client communication;*
 - *establishing uniform standards across DHS regions;*
 - *reviewing Food Stamp error rate reduction measures;*
 - *developing comprehensive performance measures;*
 - *exploring the use of extended hours based on regional needs; and*
 - *reviewing TANF policy for counting resources.*

Recommend that the Legislature direct DHS to implement recommendations of the workgroup, where appropriate, and report to the legislature on the findings of the workgroup.

35. *Recommend that the Legislature direct DHS to revise the TANF vehicle resource limit to exclude the value of one vehicle when determining a family's assets, define "TANF related" services or programs, such as resource and referral services and allow families with vehicles above the Food Stamp resource limit who qualify for these services to also qualify for Food Stamps as allowed under expanded federal "categorical eligibility" rules. If federal legislation is enacted that gives states the option to exclude the value of one vehicle for the purposes of the Food Stamp asset test for all Food Stamp recipients, Texas should exercise that option.*
36. *Recommend that the Legislature direct DHS to allow phone-in recertification for Food Stamp clients who are working or in job training, and to require only one face-to-face DHS office interview annually for those clients.*
37. *Recommend that the Legislature direct HHSC, DHS and TWC to define federal time-limit hardship exemptions that adequately address circumstances and barriers some clients may face exiting TANF.*
38. *Recommend that the Legislature direct DHS to implement a new screening/assessment process, based on a review of best practices, to help identify clients with highest level of need and barriers to work. The screening/assessment process is to be used to improve case management, referral to community-based services and to help local workforce contractors design appropriate employability plans and support services.*

39. *Recommend that the Legislature direct DHS and TWC to develop a cross-agency plan, especially at the local level, for identifying and addressing barriers to work among the hardest-to-serve clients.*
40. *Recommend that the Legislature require that local DHS, workforce board and TWC staff have a minimum of four hours training about domestic violence and its impact on the ability of TANF clients to meet requirements.*
41. *Recommend that the Legislature direct DHS and TWC to create incentives for local offices that design and implement effective case management tools for identifying hardest-to-serve clients and addressing their needs.*
42. *Recommend that the Legislature direct TWC to develop a Choices incentive program that encourages placement of TANF clients in higher wage jobs by local workforce board contractors. Recommend that the Legislature direct TWC to develop program guidelines for local workforce boards on post-employment services that recognize the difficulty many working clients will have in acquiring additional education and training once they are employed. Recommend that the Legislature direct TWC to encourage local workforce boards to provide post-employment case management for the hardest-to-serve clients.*
43. *Recommend that the Legislature direct DHS to develop a plan to roll-out the Employment Retention and Advancement (ERA) pilot project to all regions over a seven year period. The statewide rollout of this project should occur only if the data collected from the current sites indicates a positive effect on the employment outcomes of current and former TANF recipients served by this project.*
44. *Amend state law to include state recognition of nonresidential family violence centers and to authorize their funding with state appropriations to DHS for the Family Violence program.*

Charge 3 - Federal Developments

45. *Recommend that the Legislature endorse the process utilized by the “Promoting Independence” plan to direct HHSC and HHS agencies to ensure the appropriate care setting for persons with disabilities. Recommend that the Legislature direct agencies to ensure that such efforts provide for timely and appropriate transfer of consumers from institutional to community placements and prevent the unnecessary institutionalization of those in the community who are at imminent risk. Require HHSC to report on the status of implementation to the Legislature and make recommendations for needed statutory and appropriation action.*
46. *Recommend that the Legislature utilize TANF maintenance-of-effort (MOE) funds for assistance and services to two-parent families.*

47. *Amend state law to impose a greater penalty for non-compliance with the child support program for families of seven or more for single parent households and families of six or more for two parent households.*
48. *Amend state law to continue to assess a \$25 financial penalty for six months for a drug or alcohol-related misdemeanor conviction. Enact state law allowing TANF/Food Stamp clients with non-trafficking drug felonies who have completed any sentencing, are in compliance with parole/probation and are participating in or have completed a substance abuse treatment program to receive assistance. The law should include limits to how many times such clients may access benefits.*
49. *Enact state law to require all adults receiving cash assistance to participate in work activities within 24 months. For those clients with significant and continuing barriers to work, DHS and TWC should be directed to design activities to meet their needs and barriers. If barriers to work persist, assistance should be continued for those unable to work within the 24-month deadline.*
50. *Enact state law to define allowable work activities for TANF recipients.*
51. *Recommend that the Legislature should act to increase the supply and capacity of quality child care for current and former TANF clients, as related to infant care, weekends, shift hour and other services.*
52. *Recommend that the Legislature expand transitional supports for those leaving welfare to work to include: ongoing educational opportunities, job coaching, emergency assistance, transportation assistance, housing related supports, health care, better access to child care that meets work hours and other supports.*
53. *Recommend that the Legislature continue to provide an additional six months of transitional Medicaid benefits to exempt Choices volunteers.*

Charge 4 - Monitor the Implementation of Legislation, Funding and Child Abuse Prevention

54. *Recommend that the Legislature require HHSC to submit advance copies of official submissions to the federal government regarding waiver application submissions and state plan amendments to the Senate Human Services, Senate Health Services, House Human Services and House Public Health Committees.*
55. *Recommend that the Legislature support efforts to transition foster children from the foster care system by amending the state plan to allow health care funding options for foster children until age 21.*
56. *Recommend that the Legislature increase the subsidy given to families who adopt children with special needs to remove the disincentives to adopt these children.*

57. *Recommend that the Legislature direct PRS child care licensing staff to increase unannounced inspections of child care facilities designated as high risk.*
58. *Amend statute to include registered drop-in day care centers in the training requirements for child care providers.*
59. *Recommend that the Legislature direct PRS to amend agency rule to add child abuse prevention information to the posters displayed at business organizations providing child care.*
60. *Expand the authority for PRS to obtain criminal background information on certain applicants, employees, volunteers or persons living in an adoptive or foster home where a child in CPS conservatorship will reside.*
61. *Recommend that the Legislature require appropriate institutions of higher education and state agencies to report to the Legislature and HHSC on efforts to serve children age zero to three and recommendations to enhance coordination and collaboration.*
62. *Recommend that the Legislature direct PRS and Children's Trust Fund (CTF) to develop and implement an infant mortality prevention education program throughout the state using persons and organizations with specific experience, such as the Child Fatality Review Teams or the Sudden Infant Death Syndrome (SIDS) Alliance.*
63. *Recommend that the Legislature direct the Texas Education Agency (TEA) to amend current rules requiring teachers to report child abuse and neglect by adding a requirement to inform teachers about how to recognize child abuse or neglect.*
64. *Recommend that the Legislature direct the PRS prevention division and the State Board of Education to collaborate to include child abuse prevention and awareness information in the state's education curriculum for students.*
65. *Recommend that the Legislature establish a statewide PRS respite care program based on the respite care pilot.*
66. *Recommend that the Legislature increase funding to expand PRS home visiting services and offer a menu of programs based on identified community need and support.*
67. *Recommend that the Legislature increase funding to PRS for drug testing of certain clients.*

Appendix D

Draft Legislation Regarding Long-term Care

Recommendation 2

A BILL TO BE ENTITLED

AN ACT

relating to a requirement that health and human services agencies inform patients and clients of all care and support options and provide assistance in taking advantage of those options.

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

SECTION 1. Section 531.042, Government Code, is amended to read as follows:

Sec. 531.042. [~~COMMUNITY-BASED SERVICES~~] INFORMATION AND ASSISTANCE REGARDING CARE AND SUPPORT OPTIONS; REPORTS. (a) The commissioner by rule shall require each health and human services agency to provide to each patient or client of the agency information regarding all care and support options available to the patient or client, including community-based services appropriate to the needs of the patient or client, before the agency allows the patient or client to be placed in a care setting, including a nursing home or intermediate care facility for the mentally retarded, to receive care or services provided by the agency or by a person under an agreement with the agency.

(b) The rules must require each health and human services agency to provide information about all [~~community-based~~] long-term care options and long-term support options available to the patient or client, including community-based options and options available through another agency or a private provider. The information must be provided in a manner designed to maximize the patient's or client's understanding of all available options. If the patient or client has a guardian, the information must also be provided to the guardian. An agency may obtain the assistance of a private provider, including a community-based organization, in providing

patients, clients, or guardians with information as provided by commission rules.

(c) A health and human services agency that provides a patient, client, or guardian with information as provided by commission rules shall obtain a statement signed by the patient or client, and, if the patient or client has a guardian, by the patient's or client's guardian, that the patient or client has been informed about all care and support options available to the patient or client, including community-based care and support options, as required by commission rules.

The agency shall retain a copy of each signed statement in the patient's or client's case records.

(d) A health and human services agency that provides a patient, client, or guardian with information regarding care and support options available to the patient or client shall assist the patient, client, or guardian in taking advantage of an option selected by the patient, client, or guardian.

(e) Each health and human services agency annually and as provided by commission rule shall report to the legislature [~~commission~~] the number of community-based service placements and residential-care placements the agency makes.

SECTION 2. (a) This Act takes effect September 1, 2001.

(b) Not later than December 1, 2001, the commissioner of health and human services shall adopt rules under Section 531.042, Government Code, as amended by this Act.

(c) Notwithstanding Section 531.042(a), Government Code, as amended by this Act, not later than March 1, 2002, each health and human services agency shall provide to each patient or client of the agency who is in a care setting on the effective date of this Act and to the patient's or client's guardian, if any, the information required by Section 531.042, Government Code, as amended by this Act, and shall obtain the statement required by that section.

Recommendation 3

A BILL TO BE ENTITLED

AN ACT

relating to housing assistance and support services for persons with disabilities; providing a penalty.

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

SECTION 1. Chapter 531, Government Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. HOUSING ASSISTANCE FOR

PERSONS WITH DISABILITIES

Sec. 531.301. DEFINITIONS. In this subchapter:

(1) "Client" means a person with a disability who or a family that receives assistance under this subchapter.

(2) "Department" means the Texas Department of Housing and Community Affairs.

(3) "Family" means a group that consists of a person with a disability and that person's parent, sibling, spouse, child, or legal guardian. The group may include others.

(4) "Housing assistance" means assistance provided under Section 531.307(a)(1) to permit a person with a disability to live in an integrated housing setting.

(5) "Integrated housing setting" means a community-based housing setting in which a person with a disability resides or may reside.

(6) "Legal guardian" means a person appointed by a court to exercise powers over a person with a disability.

(7) "Parent" means a natural, foster, surrogate, or adoptive parent.

(8) "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:

(A) an orthopedic, visual, speech, or hearing impairment;

(B) Alzheimer's disease;

(C) pre-senile dementia;

(D) cerebral palsy;

(E) epilepsy;

(F) muscular dystrophy;

(G) multiple sclerosis;

(H) cancer;

(I) heart disease;

(J) diabetes;

(K) mental retardation, as defined by Section 591.003, Health and Safety

Code;

(L) autism; or

(M) mental illness, as defined by Section 571.003, Health and Safety

Code.

(9) "Supplemental assistance" means assistance provided under Section 531.307(a)(2).

Sec. 531.302. RULES; ADMINISTRATION OF HOUSING ASSISTANCE

PROGRAM. (a) The commission shall adopt rules, procedures, guidelines, and standards to administer this subchapter, including:

(1) procedures and guidelines for determining eligibility standards relating to financial qualifications and the need for housing assistance and supplemental assistance and for determining eligibility criteria for selecting clients;

(2) standards and procedures for approving housing assistance and supplemental assistance;

(3) procedures for conducting a periodic review of clients;

(4) procedures and guidelines for determining when housing assistance or supplemental assistance duplicates assistance provided by other government programs or results in excessive support to a client;

(5) rules establishing reasonable payment rates for housing assistance and supplemental assistance under this subchapter; and

(6) rules establishing a copayment system in accordance with Section 531.311.

(b) The department shall administer the housing assistance program.

Sec. 531.303. ELIGIBILITY. (a) A family, or a person with a disability who is 18 years of age or older and who lives or desires to live independently, may apply for housing assistance and supplemental assistance.

(b) The commission's rules must provide that a person with a disability or the person's family is eligible to receive housing assistance, or housing assistance and supplemental assistance, if:

(1) the person resides in this state;

(2) the person would, in the absence of the assistance, be required to reside in:

(A) an institution, as defined by Section 531.151;

(B) a community home subject to Chapter 123, Human Resources Code;

or

(C) a state hospital or state school maintained and managed by the Texas Department of Mental Health and Mental Retardation; and

(3) the person meets the income eligibility requirements established by the department.

Sec. 531.304. DETERMINATION OF ELIGIBILITY AND NEEDS. (a) The commission shall determine eligibility and the need for housing assistance or supplemental assistance from the results of current evaluations, program plans, and medical reports. Those documents shall be provided to the commission on request. The commission, if it considers necessary, may require and shall provide any additional evaluations.

(b) The commission shall determine the applicant's needs and the housing assistance or supplemental assistance for which the applicant is eligible after consulting with the applicant.

(c) In determining eligibility for housing assistance or supplemental assistance, the commission shall determine if the applicant is eligible for and likely to receive similar assistance under another government program and may deny the application if the commission determines that the applicant is eligible for and likely to receive assistance under another government program. If the commission denies the application because the applicant is eligible under another government program, the commission shall provide to the applicant information on and referral to that program.

Sec. 531.305. CONSIDERATION OF ASSISTANCE IN DETERMINING ELIGIBILITY FOR OTHER PROGRAM PROHIBITED. A local or state agency may not consider housing assistance or supplemental assistance in determining eligibility for another program unless that consideration is required by federal regulations.

Sec. 531.306. HEARING ON DENIAL OF APPLICATION. The commission shall provide an applicant an opportunity for a hearing to contest the denial of an application.

Sec. 531.307. PROVISION OF ASSISTANCE. (a) The department shall provide assistance to compensate a client for present and future expenses incurred to maintain in an integrated housing setting a family member with a disability or a person with a disability who lives independently, including:

(1) housing assistance to be used for:

(A) the rental or purchase of a home in which a person with a disability resides or will reside; and

(B) the purchase or lease of special equipment or architectural modifications to a home to improve or facilitate the care, treatment, therapy, general living conditions, or access of the person with a disability; and

(2) supplemental assistance for case management, including:

(A) counseling or training programs that assist a family in providing proper care for the family member with a disability or assist the person with a disability who lives independently, and that provide for the special needs of the family or person; and

(B) assistance in obtaining support services for which the person with a disability is eligible.

(b) Housing assistance may be used to make payments instead of rent to a family member of a person with a disability.

Sec. 531.308. LIMITATION OF DUTY. The department's duty to provide housing assistance or supplemental assistance is determined and limited by the funds specifically appropriated to administer this subchapter.

Sec. 531.309. AMOUNT AND PAYMENT OF ASSISTANCE. (a) The department shall determine the amount of housing assistance for which a client is eligible based on the prevailing rents for residential property in the locality in which the client resides.

(b) The department shall distribute housing assistance and supplemental assistance in accordance with program rules.

(c) The department shall consult with the client to determine the manner of distribution of the assistance. On agreement of the person with a disability or the head of the family, as appropriate, the department may distribute the assistance directly to the client or to a provider of housing or services to the client.

Sec. 531.310. SELECTION OF PROVIDERS. (a) Each client may select the client's provider of housing or services, except that the client may select only a provider that complies with the department's standards.

(b) The department shall require each provider to comply with the department's standards relating to the provision of housing or services and may disapprove payments to a provider that does not comply with the rules.

(c) The department shall assist each client in locating and selecting qualified providers of housing or services.

Sec. 531.311. COPAYMENT SYSTEM. The department shall establish with each client a copayment system that uses a sliding scale for payments determined according to:

(1) the client's need for assistance to acquire the necessary housing or services;

and

(2) the client's ability to pay for the housing or services.

Sec. 531.312. CLIENT RESPONSIBILITY FOR PAYMENT. Each client shall pay the client's required copayment.

Sec. 531.313. REVIEW OF CLIENT'S NEEDS. (a) The department shall regularly review each client's needs as established by the agency.

(b) The department shall review each client's needs when there is a change in the

circumstances that were considered in determining eligibility or the amount of the required copayment.

Sec. 531.314. NOTIFICATION OF CHANGE IN CIRCUMSTANCES. The department shall require each client to notify the agency of a change in circumstances that were considered in determining eligibility or the amount of the required copayment.

Sec. 531.315. CRIMINAL PENALTY. (a) A person commits an offense if the person, in obtaining or attempting to obtain assistance under this subchapter for the person or another person:

(1) makes or causes to be made a statement or representation the person knows to be false; or

(2) solicits or accepts any assistance for which the person knows the person, or the person for whom the solicitation is made, is not eligible.

(b) An offense under this section is a felony of the third degree.

SECTION 2. This Act takes effect September 1, 2001.

Recommendation 4

A BILL TO BE ENTITLED

AN ACT

relating to the provision of prescribed medications and community and personal care services under the medical assistance program.

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

SECTION 1. Section 32.024, Human Resources Code, is amended by adding Subsection (x) to read as follows:

(x) The department shall provide coverage for three prescribed medications each month for a recipient of services under the frail elderly program.

SECTION 2. Section 32.026, Human Resources Code, is amended by adding Subsection (d) to read as follows:

(d) The department by rule shall provide for the determination and certification of presumptive eligibility for a person who appears to meet the financial and other program eligibility criteria for the receipt of services under the primary home care program or community-based alternatives program.

SECTION 3. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.053 to read as follows:

Sec. 32.053. DELEGATION BY REGISTERED NURSE UNDER PRIMARY HOME CARE PROGRAM. The department, in its rules governing the primary home care program, shall permit a registered nurse to delegate to an unlicensed attendant the performance of appropriate nursing tasks under the nurse's supervision in accordance with rules adopted by the Board of Nurse Examiners.

SECTION 4. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 5. This Act takes effect September 1, 2001, and applies to a person receiving medical assistance on or after that date regardless of the date on which the person began receiving that medical assistance.

Recommendation 5

A BILL TO BE ENTITLED

AN ACT

relating to providing dental services to certain recipients of medical assistance.

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

SECTION 1. Section 32.024, Human Resources Code, is amended by adding Subsection (x) to read as follows:

(x) The department shall provide dental services annually to a resident of a nursing facility who is a recipient of medical assistance under this chapter. The dental services must include:

(1) a dental examination by a licensed dentist;

(2) a prophylaxis by a licensed dentist or licensed dental hygienist, if practical considering the health of the resident; and

(3) diagnostic dental x-rays, if possible.

SECTION 2. The Texas Department of Human Services, in cooperation with the Health and Human Services Commission, shall by rule develop a fee schedule for dental services provided under Section 32.024(x), Human Resources Code, as added by this Act.

SECTION 3. (a) The Health and Human Services Commission shall conduct a study regarding the need for and cost of expanding the dental services provided under Section 32.024(x), Human Resources Code, as added by this Act.

(b) Not later than December 1, 2002, the commissioner of health and human services shall report to the governor, the lieutenant governor, the speaker of the house of representatives,

and the presiding officers of the standing committees of the senate and of the house of representatives having primary jurisdiction over the commission the results of the study, including an analysis of the costs, benefits, and feasibility of expanding dental services provided under Section 32.024(x), Human Resources Code, as added by this Act.

SECTION 4. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 5. This Act takes effect September 1, 2001.

Recommendation 6

A BILL TO BE ENTITLED

AN ACT

relating to permanency planning procedures by state agencies for children in state institutions.

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

SECTION 1. Section 531.153, Government Code, is amended to read as follows:

Sec. 531.153. DEVELOPMENT OF PERMANENCY PLAN. (a) To further the policy stated in Section 531.152, the commission and each appropriate health and human services agency shall develop procedures to ensure that a permanency plan is developed for each child residing in an institution in this state on a temporary or long-term basis or for whom institutional care is sought.

(b) In developing procedures under Subsection (a), the commission and other appropriate health and human services agencies shall develop to the extent possible uniform procedures that promote efficiency for the agencies and stability for each child who is the subject of a permanency plan.

SECTION 2. This Act takes effect immediately.

Recommendation 7

A BILL TO BE ENTITLED

AN ACT

relating to the appointment of a guardian of the person for certain minors residing in long-term care facilities.

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

SECTION 1. Subchapter E, Chapter 48, Human Resources Code, is amended by adding Section 48.2091 to read as follows:

Sec. 48.2091. GUARDIANSHIPS FOR CERTAIN MINORS RESIDING IN LONG-TERM CARE FACILITIES. (a) In this section:

(1) "Long-term care facility" means a convalescent or nursing home or related institution licensed under Chapter 242, Health and Safety Code, or an ICF-MR facility.

(2) "Minor" has the meaning assigned by Section 601, Texas Probate Code.

(b) If the department finds that the parents or other guardian of the person of a minor who is a resident of a long-term care facility has abandoned the minor, the department may:

(1) file an application under Section 682 or 875, Texas Probate Code, for the appointment of a guardian of the person for the minor if the minor's parents are the minor's natural guardians; or

(2) file an application under Section 761, Texas Probate Code, for the removal of the guardian of the minor's person and the appointment of a successor guardian if a person other than a parent has been appointed to serve as guardian of the minor's person under Chapter XIII, Texas Probate Code.

(c) For purposes of this section, a minor is considered abandoned by the minor's parents or

other guardian only if:

(1) the minor has received no contact, either in person or by telephone or written correspondence, from either parent or the other guardian during the six-month period preceding the date of the filing of an application under Subsection (b); and

(2) reasonable attempts by the department or long-term care facility to contact the minor's parents or other guardian by telephone or certified mail within the time prescribed by Subdivision (1) have been unsuccessful.

SECTION 2. Section 676(a), Texas Probate Code, is amended to read as follows:

(a) Except as provided by Sections [~~Section~~] 680 and 676A of this code, the selection of a guardian for a minor is governed by this section.

SECTION 3. Subpart A, Part 3, Chapter XIII, Texas Probate Code, is amended by adding Section 676A to read as follows:

Sec. 676A. GUARDIANS OF CERTAIN MINORS RESIDING IN CERTAIN FACILITIES.

The court shall appoint a guardian of the person of a minor for whom an application for a guardian is authorized by Section 48.2091, Human Resources Code, according to the circumstances and considering the best interests of the ward.

SECTION 4. Section 676A, Texas Probate Code, as added by this Act, applies only to an application for the appointment of a guardian that is filed on or after the effective date of this Act. An application for the appointment of a guardian that is filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 5. This Act takes effect September 1, 2001.

Recommendation 8

A BILL TO BE ENTITLED

AN ACT

relating to the provision of Medicaid to certain children with disabilities.

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

SECTION 1. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0247 to read as follows:

Sec. 32.0247. MEDICAL ASSISTANCE FOR CERTAIN CHILDREN WITH DISABILITIES. (a) In this section, "medical institution" means a hospital, skilled nursing facility, or intermediate care facility.

(b) The department shall provide medical assistance, in accordance with department rules, to a person with a disability who is younger than 19 years of age if the department determines that:

(1) the person is receiving an appropriate level of care at home that would otherwise be provided in a medical institution;

(2) the person would be eligible to receive medical assistance if the person were residing in a medical institution; and

(3) the estimated cost of providing medical assistance for the person's care at home is not greater than the estimated cost of providing medical assistance for that same care at a medical institution.

(c) The department shall specify in the state Medicaid plan the method by which the department determines the cost-effectiveness of providing medical assistance to a person described by Subsection (b) for care at home.

(d) In adopting rules under this section, the department shall define a person with a disability

as a person who qualifies as a disabled individual under 42 U.S.C. Section 1382c(a).

SECTION 2. As soon as possible after the effective date of this Act, the Health and Human Services Commission shall submit an amendment to the state's Medicaid plan to include:

(1) the provision of medical assistance to eligible persons with disabilities receiving health care at home as required by Section 32.0247, Human Resources Code, as added by this Act; and

(2) the method by which each appropriate health and human services agency operating part of the medical assistance program determines the cost-effectiveness of providing medical assistance to persons described by Subdivision (1) of this section as required by Section 32.0247(c), Human Resources Code, as added by this Act.

SECTION 3. This Act takes effect September 1, 2001.

Recommendation 9

A BILL TO BE ENTITLED

AN ACT

relating to certain duties of the Health and Human Services Commission.

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

SECTION 1. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.055 to read as follows:

Sec. 531.055. ALTERNATIVE CARE PROGRAMS. The commission shall investigate alternative care programs used in other states to assist families with children with special health care needs, including shared parenting, extend-a-family, and friends of the family programs.

SECTION 2. This Act takes effect immediately.

Recommendation 10

A BILL TO BE ENTITLED

AN ACT

relating to authorizing the Health and Human Services Commission to make grants to community-based organizations to provide support for long-term care services.

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

SECTION 1. Section 531.02481, Government Code, is amended by amending Subsection (a) and adding Subsection (g) to read as follows:

(a) The commission, the Texas Department of Human Services, and the Texas Department on Aging 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.

(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.

SECTION 2. This Act takes effect September 1, 2001.

Recommendation 12

A BILL TO BE ENTITLED

AN ACT

relating to training for certain caseworkers employed by health and human services agencies.

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

SECTION 1. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0244 to read as follows:

Sec. 531.0244. JOINT TRAINING FOR CERTAIN CASEWORKERS. (a) The commissioner shall provide for joint training for health and human services agency caseworkers whose clients are children, including caseworkers employed by:

- (1) the Texas Department of Health;
- (2) the Texas Department of Human Services; and
- (3) the Texas Department of Mental Health and Mental Retardation.

(b) Training provided under this section must be designed to increase a caseworker's knowledge and awareness of the services available to children at each health and human services agency, including long-term care programs and services available under a Section 1915(c) waiver program.

SECTION 2. This Act takes effect September 1, 2001.

Recommendation 13

A BILL TO BE ENTITLED

AN ACT

relating to establishing a temporary nursing facility license.

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

SECTION 1. Subchapter B, Chapter 242, Health and Safety Code, is amended by adding Section 242.0335 to read as follows:

Sec. 242.0335. TEMPORARY CHANGE OF OWNERSHIP LICENSE. (a) For purposes of this section, a temporary change of ownership license is a temporary license issued to an applicant who proposes to become the new operator of an institution existing on the date the application is filed.

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

(1) the requirements established under Section 242.032(c); and

(2) the department's standards for background and qualifications under Sections 242.032(d) and (e).

(c) After the department issues a temporary change of ownership license to the applicant, the department shall conduct an inspection or survey of the nursing facility under Section 242.043 as soon as reasonably possible. During the period between the issuance of the temporary license and the inspection or survey of the nursing facility, the department may not place a hold on vendor payments to the temporary license holder.

(d) After conducting an inspection or survey under Subsection (c), the department shall issue

a license under Section 242.033 to the temporary license holder if the nursing facility passes the inspection or survey and meets the requirements of Section 242.033. If the nursing facility fails to pass the inspection or survey or meet the requirements of Section 242.033, the department may:

- (1) place a hold on vendor payments to the temporary license holder; and
- (2) take any other action authorized under this chapter.

(e) A temporary license issued under Subsection (b) expires on the 91st day after the date the license was issued.

SECTION 2. This Act takes effect September 1, 2001. The change in law made by this Act applies only in relation to an application for a change of ownership license submitted on or after January 1, 2002. An application for a change of ownership license submitted before January 1, 2002, is governed by the law in effect immediately before September 1, 2001, and that law is continued in effect for that purpose.

Recommendation 14

A BILL TO BE ENTITLED

AN ACT

relating to requiring the Texas Department of Human Services to establish criteria for designating nursing facility operators with excellent operating records as eligible to acquire a license to operate another existing nursing facility on an expedited basis.

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

SECTION 1. Subchapter B, Chapter 242, Health and Safety Code, is amended by adding Section 242.0335 to read as follows:

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

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

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

license holder at the time the application is made for the change of ownership license.

SECTION 2. (a) This Act takes effect September 1, 2001.

(b) The Texas Department of Human Services shall adopt rules under Section 242.0335, Health and Safety Code, as added by this Act, on or before March 1, 2002.

Recommendation 15

A BILL TO BE ENTITLED

AN ACT

relating to authorizing the conduct of architectural review before the construction or remodeling of certain long-term and other care facilities.

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

SECTION 1. Chapter 103, Human Resources Code, is amended by adding Section 103.0075 to read as follows:

Sec. 103.0075. EARLY COMPLIANCE REVIEW. (a) The department by rule shall adopt a procedure under which a person proposing to construct or modify an adult day-care facility may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the department shall set reasonable deadlines by which the department must complete review of submitted plans.

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

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

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

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

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

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

SECTION 2. Subchapter B, Chapter 242, Health and Safety Code, is amended by adding Section 242.0385 to read as follows:

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

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

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

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

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

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

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

SECTION 3. Subchapter B, Chapter 252, Health and Safety Code, is amended by adding Section 252.0375 to read as follows:

Sec. 252.0375. EARLY COMPLIANCE REVIEW. (a) The department by rule shall adopt a procedure under which a person proposing to construct or modify a facility may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the department shall set reasonable deadlines by which the department must complete review of submitted plans.

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

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

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

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

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

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

SECTION 4. This Act takes effect September 1, 2001.

Recommendation 16

A BILL TO BE ENTITLED

AN ACT

relating to imposition of administrative penalties against assisted living facilities.

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

SECTION 1. Section 247.002, Health and Safety Code, is amended by adding

Subdivision (7) to read as follows:

(7) "Commissioner" means the commissioner of human services.

SECTION 2. Section 247.0455, Health and Safety Code, is redesignated as Section 247.0459, Health and Safety Code, to read as follows:

Sec. 247.0459 [~~247.0455~~]. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. (a) The department shall assess an administrative penalty against a personal care facility that violates Section 166.004.

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

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

SECTION 3. Subchapter C, Chapter 247, Health and Safety Code, is amended by adding Sections 247.0451 through 247.0457 to read as follows:

Sec. 247.0451. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who:

(1) violates this chapter or a rule, standard, or order adopted or license issued under this chapter;

(2) makes a false statement, that the person knows or should know is false, of a

material fact:

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

(B) with respect to a matter under investigation by the department;

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

(A) a book, record, or file required to be maintained by an assisted living facility; or

(B) any portion of the premises of an assisted living facility;

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

(5) wilfully interferes with a representative of the department preserving evidence of a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter; or

(6) fails to pay a penalty assessed under this chapter not later than the 30th day after the date the assessment of the penalty becomes final.

(b) Except as provided by Subsection (d), the penalty may not exceed \$5,000 for each violation.

(c) Notice of any violation observed by a representative of the department during an inspection that results in a recommendation of an administrative penalty shall be provided in writing to the assisted living facility. The written notice must identify the specific law or regulation that has been violated and include the name of the department representative recommending the penalty.

(d) The penalty for a violation of a right of a resident under Section 247.064 may not exceed \$1,000 for each violation. This subsection does not apply to conduct that also violates

another provision of this chapter or a rule, standard, or order adopted or license issued under this chapter.

(e) The board shall establish gradations of penalties in accordance with the relative seriousness of the violation.

(f) In determining the amount of a penalty, the department shall consider any matter that justice may require, including:

(1) the size of the assisted living facility;

(2) the gradations of penalties established under Subsection (e);

(3) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created by the act to the health or safety of the public;

(4) the history of previous violations;

(5) deterrence of future violations; and

(6) efforts to correct the violation.

(g) A penalty assessed under Subsection (a)(6) is in addition to the penalty previously assessed and not timely paid.

Sec. 247.0452. RIGHT TO CORRECT. (a) The department may not collect an administrative penalty from an assisted living facility under Section 247.0451 if, not later than the 45th day after the date the facility receives notice under Section 247.0453(c), the facility corrects the violation.

(b) Subsection (a) does not apply:

(1) to a violation that the department determines:

(A) resulted in serious harm to or death of a resident;

(B) constitutes a serious threat to the health or safety of a resident; or

(C) substantially limits the assisted living facility's capacity to provide care;

(2) to a violation described by Sections 247.0451(a)(2)-(6); or

(3) to a violation of a right of a resident under Section 247.064.

Sec. 247.0453. REPORT RECOMMENDING ADMINISTRATIVE PENALTY. (a) The department may issue a preliminary report stating the facts on which the department concludes that a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter has occurred if the department has:

(1) examined the possible violation and facts surrounding the possible violation;

and

(2) concluded that a violation has occurred.

(b) The report may recommend a penalty under Section 247.0451 and the amount of the penalty.

(c) The department shall give written notice of the report to the person charged with the violation not later than the 10th day after the date the report is issued. The notice must include:

(1) a brief summary of the charges;

(2) a statement of the amount of penalty recommended;

(3) a statement of whether the violation is subject to correction under Section 247.0452 and, if the violation is subject to correction under that section, a statement of:

(A) the date on which the assisted living facility must file with the department a plan of correction to be approved by the department; and

(B) the date on which the plan of correction must be completed to avoid assessment of the penalty; and

(4) a statement that the person charged has a right to a hearing on the occurrence

of the violation, the amount of the penalty, or both.

(d) Not later than the 20th day after the date the notice under Subsection (c) is sent, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty;

(2) make a written request for a hearing; or

(3) if the violation is subject to correction under Section 247.0452, submit a plan of correction to the department for approval.

(e) If the violation is subject to correction under Section 247.0452 and the person reports to the department that the violation has been corrected, the department shall inspect the correction or take any other step necessary to confirm the correction and shall notify the person that:

(1) the correction is satisfactory and a penalty will not be assessed; or

(2) the correction is not satisfactory and a penalty is recommended.

(f) Not later than the 20th day after the date a notice under Subsection (e)(2) is sent, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; or

(2) make a written request for a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the department or does not timely respond to a notice sent under Subsection (c) or (e)(2), the commissioner or the commissioner's designee shall assess the penalty recommended by the department.

(h) If the commissioner or the commissioner's designee assesses the recommended

penalty, the department shall give written notice to the person charged of the decision and the person shall pay the penalty.

Sec. 247.0454. HEARING ON ADMINISTRATIVE PENALTY. (a) An administrative law judge shall order a hearing and give notice of the hearing if a person charged with a violation under Section 247.0451 timely requests a hearing.

(b) The hearing shall be held before an administrative law judge.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner a written decision regarding the occurrence of a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter and a recommendation regarding the amount of the proposed penalty if a penalty is warranted.

(d) Based on the findings of fact and conclusions of law and the recommendation of the administrative law judge, the commissioner by order may:

(1) find that a violation has occurred and assess an administrative penalty; or

(2) find that a violation has not occurred.

(e) Proceedings under this section are subject to Chapter 2001, Government Code.

Sec. 247.0455. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND. (a) The commissioner shall give notice of the findings made under Section 247.0454(d) to the person charged. If the commissioner finds that a violation has occurred, the commissioner shall give to the person charged written notice of:

(1) the findings;

(2) the amount of the administrative penalty;

(3) the rate of interest payable with respect to the penalty and the date on which interest begins to accrue;

(4) whether action under Section 247.0457 is required instead of payment of all

or part of the penalty; and

(5) the person's right to judicial review of the commissioner's order.

(b) Not later than the 30th day after the date the commissioner's order is final, the person charged with the penalty shall:

(1) pay the full amount of the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, the failure to correct the violation to the department's satisfaction, or any combination of those issues.

(c) Notwithstanding Subsection (b), the department may permit the person to pay a penalty in installments or may require the person to use all or part of the amount of the penalty in accordance with Section 247.0457.

(d) If the person does not pay the penalty within the period provided by Subsection (b) or in accordance with Subsection (c), if applicable:

(1) the penalty is subject to interest; and

(2) the department may refer the matter to the attorney general for collection of the penalty and interest.

(e) Interest under Subsection (d)(1) accrues:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date after the date the penalty becomes due and ending on the date the penalty is paid.

(f) If a penalty is reduced or not assessed as a result of judicial review, the commissioner shall:

(1) remit to the person charged the appropriate amount of any penalty payment

plus accrued interest; or

(2) execute a release of the supersedeas bond if one has been posted.

(g) Accrued interest on amounts remitted by the commissioner under Subsection (f)(1)

shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted to the person charged.

Sec. 247.0456. APPLICATION OF OTHER LAW. Except as provided by Section 247.0451(a)(6), 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.

Sec. 247.0457. AMELIORATION OF VIOLATION. Instead of ordering payment of an administrative penalty authorized by this subchapter, the commissioner may require 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 assisted living facility affected by the violation.

SECTION 4. Section 247.049(b), Health and Safety Code, is amended to read as follows:

(b) Subsection (a) does not:

(1) bar the admission into evidence of department reports or other documents in an enforcement action in which the state or an agency or political subdivision of the state is a party, including:

(A) an action seeking injunctive relief under Section 247.044;

(B) an action seeking imposition of a civil penalty under Section 247.045;

(C) a contested case hearing on the imposition of an administrative

penalty under Section 247.0451; and

(D) [~~(C)~~] a contested case hearing involving denial, suspension, or revocation of a license issued under this chapter;

(2) bar the admission into evidence of department reports or other documents that are offered:

(A) to establish warning or notice to an assisted living facility of a relevant department determination; or

(B) under any rule or evidentiary predicate of the Texas Rules of Evidence;

(3) prohibit or limit the testimony of a department employee, in accordance with the Texas Rules of Evidence, as to observations, factual findings, conclusions, or determinations that an assisted living facility violated a standard prescribed under this chapter if the observations, factual findings, conclusions, or determinations were made in the discharge of the employee's official duties for the department; or

(4) prohibit or limit the use of department reports or other documents in depositions or other forms of discovery conducted in connection with a civil action if use of the reports or other documents appears reasonably calculated to lead to the discovery of admissible evidence.

SECTION 5. This Act takes effect September 1, 2001.

Recommendation 17

A BILL TO BE ENTITLED

AN ACT

relating to creating a work group to plan responses to financial crises at residential institutions regulated by the Texas Department of Human Services.

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

SECTION 1. Chapter 22, Human Resources Code, is amended by adding Section 22.0335 to read as follows:

Sec. 22.0335. WORK GROUP ON RESPONDING TO FINANCIAL CRISES AT RESIDENTIAL INSTITUTIONS. (a) The commissioner shall appoint a work group to develop a plan for improving the department's response to a financial crisis at a residential institution regulated by the department, with an emphasis on the department's response to:

(1) an emergency financial crisis; and

(2) a financial crisis at an institution that may serve a large number of children.

(b) The plan must specifically address, among other factors:

(1) the problem of institutions that show a pattern of recurring violations of law, including the department's rules; and

(2) the barriers to the department's ability to close an institution that is in financial crisis and that is not substantially complying with laws and rules designed to protect the health and safety of the institution's residents, and possible ways to overcome those barriers.

(c) The department shall:

(1) adopt rules to implement the provisions of the plan that the department considers meritorious and that it may adopt as a rule under existing law; and

(2) report to the presiding officers and the appropriate standing committees of each house of the legislature the provisions of the plan that the department considers meritorious that would require a change in statute.

(d) The work group is an advisory committee subject to Chapter 2110, Government Code. In appointing representatives of consumers to the work group under Section 2110.002(a)(2), Government Code, the commissioner shall:

(1) appoint at least one representative from the office of the attorney general; and

(2) appoint several persons who have experience as advocates for residents of institutions regulated by the department.

(e) This section expires June 1, 2005.

SECTION 2. This Act takes effect September 1, 2001.

Recommendation 18

A BILL TO BE ENTITLED

AN ACT

relating to criminal history checks of employees and applicants for employment in certain long-term care facilities.

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

SECTION 1. Section 250.002, Health and Safety Code, is amended to read as follows:

Sec. 250.002. ~~INFORMATION OBTAINED BY REGULATORY AGENCY, FACILITY,~~
~~OR PRIVATE AGENCY.~~ (a) A regulatory agency, a facility, or a private agency on behalf of a facility is entitled to obtain from the Department of Public Safety of the State of Texas criminal history record information maintained by the Department of Public Safety that relates to a person who is an applicant for employment at a facility licensed, certified, or under contract with the agency, as specified by Section 250.001(3), or who is an employee of that facility~~[- and whose employment duties would or do involve direct contact with a consumer in a facility].~~

(b) A facility may pay a private agency to obtain criminal history record information for an applicant or employee described by Subsection (a) directly from the Department of Public Safety of the State of Texas or may obtain the information directly from the Department of Public Safety ~~[from the regulatory agency that obtains the information from the Department of Public Safety of the State of Texas regarding that facility].~~

(c) The ~~[regulatory agency or]~~ private agency~~[- as appropriate,]~~ shall forward criminal history record information received under this section to the facility requesting the information.

(d) A regulatory agency may adopt rules relating to the processing of information requested or obtained under this chapter, the release or disclosure of the information, and the retention or

destruction of the information by the agency, a facility regulated by the agency, or a private agency obtaining the information for a regulated facility.

SECTION 2. Section 250.003, Health and Safety Code, is amended to read as follows:

Sec. 250.003. VERIFICATION OF EMPLOYABILITY; DISCHARGE. (a) A facility may not employ a person [~~in a position the duties of which involve direct contact with a consumer in the facility~~] if the facility determines, as a result of a criminal history check, that a person has been convicted of an offense listed in this chapter that bars employment or that a conviction is a contraindication to employment with the consumers the facility serves, and if the applicant is a nurse aide, until the facility further verifies that the applicant is listed in the nurse aide registry and verifies that the applicant is not designated in the registry as having a finding entered into the registry concerning abuse, neglect, or mistreatment of a consumer of a facility, or misappropriation of a consumer's property. A person licensed under another law of this state is exempt from the requirements of this chapter.

(b) The facility may not employ an applicant covered by Subsection (a), except that in an emergency requiring immediate employment, a facility may hire on a temporary or interim basis a person not listed in the registry pending the results of a criminal conviction check, which must be requested within 72 hours of employment. The request shall be mailed, sent by telephonic facsimile machine, sent by electronic means, or otherwise forwarded [~~to the facility's regulatory agency~~] by the facility or a private agency working with the facility[~~, or~~] to the Department of Public Safety of the State of Texas [~~by a private agency working with the facility~~].

(c) A facility shall immediately discharge any employee [~~in a position the duties of which involve direct contact with a consumer in the facility~~] who is designated in the nurse aide registry as having committed an act of abuse, neglect, or mistreatment of a consumer of a facility, or misappropriation of a consumer's property, or whose criminal history check reveals conviction of

a crime that bars employment or that the facility determines is a contraindication to employment as provided by this chapter.

SECTION 3. Section 250.004(a), Health and Safety Code, is amended to read as follows:

(a) Identifying information of an employee [~~in direct contact with a consumer~~] in a covered facility shall be submitted on a typewritten form to the Department of Public Safety to obtain the person's criminal conviction record when the person applies for employment and at other times as the facility may determine appropriate. In this subsection, "identifying information" includes:

- (1) the complete name, race, and sex of the employee;
- (2) any known identifying number of the employee, including social security number, driver's license number, or state identification number; and
- (3) the employee's date of birth.

SECTION 4. Section 250.006, Health and Safety Code, is amended to read as follows:

Sec. 250.006. CONVICTIONS BARRING EMPLOYMENT. A person convicted of an offense listed in this section may not be employed in a position [~~the duties of which involve direct contact with a consumer~~] in a facility:

- (1) an offense under Chapter 19, Penal Code (criminal homicide);
- (2) an offense under Chapter 20, Penal Code (kidnapping and false imprisonment);
- (3) an offense under Section 21.11, Penal Code (indecent with a child);
- (4) an offense under Section 22.011, Penal Code (sexual assault);
- (5) an offense under Section 22.02, Penal Code (aggravated assault);
- (6) an offense under Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual);
- (7) an offense under Section 22.041, Penal Code (abandoning or endangering child);
- (8) an offense under Section 22.08, Penal Code (aiding suicide);

- (9) an offense under Section 25.031, Penal Code (agreement to abduct from custody);
- (10) an offense under Section 25.08, Penal Code (sale or purchase of a child);
- (11) an offense under Section 28.02, Penal Code (arson);
- (12) an offense under Section 29.02, Penal Code (robbery); ~~[or]~~
- (13) an offense under Section 29.03, Penal Code (aggravated robbery); or
- (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 Subdivisions (1)-(13).

Recommendation 19

A BILL TO BE ENTITLED

AN ACT

relating to providing for the registry of acts of misconduct by certain employees of certain health care facilities.

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

SECTION 1. Chapter 40, Human Resources Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. EMPLOYEE MISCONDUCT REGISTRY

Sec. 40.101. DEFINITIONS. In this subchapter:

- (1) "Commissioner" means the commissioner of human services.
- (2) "Department" means the Department of Protective and Regulatory Services.
- (3) "Employee" means a person who:
 - (A) works at a facility; and
 - (B) is not licensed by an agency of the state to perform the services the person performs at the facility.
- (4) "Employee misconduct registry" means the employee misconduct registry established under Chapter 253, Health and Safety Code.
- (5) "Facility" means:
 - (A) a residential facility for the elderly regulated under Chapter 105;
 - (B) a state hospital;
 - (C) a state school;
 - (D) a community center, local mental health authority, or local mental

retardation authority;

(E) a designated provider of community-based mental health or mental retardation services; or

(F) a person who contracts with the state or with a designated provider to provide community-based mental health or mental retardation services.

Sec. 40.102. INVESTIGATION BY DEPARTMENT. If the department receives a report that an employee of a facility has abused, neglected, or exploited a resident or consumer of a facility or misappropriated a resident's or consumer's property, the department shall investigate the report to determine whether the employee has committed the act of abuse, neglect, exploitation, or misappropriation.

Sec. 40.103. DETERMINATION; NOTICE. (a) If, after an investigation, the department determines that the employee abused, neglected, or exploited a resident or consumer of the facility or misappropriated a resident's or consumer's property, the department shall give written notice of the department's findings. The notice must include:

(1) a brief summary of the department's findings; and

(2) a statement of the employee's right to a hearing on the occurrence of the misconduct.

(b) Not later than the 30th day after the date the notice is received, the employee notified may accept the determination of the department made under this section or may make a written request for a hearing on that determination.

(c) If the employee notified of the violation accepts the determination of the department or fails to timely respond to the notice, the commissioner or the commissioner's designee shall issue an order approving the determination and ordering that the incident of misconduct be recorded in the registry under Section 253.007, Health and Safety Code.

Sec. 40.104. HEARING; ORDER. (a) If the employee requests a hearing, the department shall:

- (1) set a hearing;
- (2) give written notice of the hearing to the employee; and
- (3) designate a hearings examiner to conduct the hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commissioner or the commissioner's designee a proposal for decision as to the occurrence of the violation.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commissioner or the commissioner's designee by order may find that an act of misconduct has occurred. If the commissioner or the commissioner's designee finds that an act of misconduct has occurred, the commissioner or the commissioner's designee shall issue an order approving the determination.

Sec. 40.105. NOTICE; JUDICIAL REVIEW. (a) The department shall give notice of the order under Section 40.104 to the employee alleged to have committed the act of misconduct.

The notice must include:

- (1) separate statements of the findings of fact and conclusions of law;
- (2) a statement of the right of the employee to judicial review of the order; and
- (3) a statement that the incident of misconduct will be recorded in the registry

under Section 253.007, Health and Safety Code, if:

- (A) the employee does not request judicial review of the determination; or
- (B) the determination is sustained by the court.

(b) Not later than the 30th day after the date the decision becomes final as provided by Chapter 2001, Government Code, the employee may file a petition for judicial review contesting

the finding of an act of misconduct. If the employee does not request judicial review of the determination, the department shall record the incident of misconduct in the registry under Section 253.007, Health and Safety Code.

(c) Judicial review of the order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(d) If the court sustains the finding of the occurrence of an act of misconduct, the department shall record the incident of misconduct in the registry under Section 253.007, Health and Safety Code.

Sec. 40.106. INFORMAL PROCEEDINGS. The department by rule shall adopt procedures governing informal proceedings held in compliance with Section 2001.056, Government Code.

Sec. 40.107. EMPLOYEE MISCONDUCT REGISTRY. (a) If an employee abuses, neglects, or exploits a resident or consumer of a facility or misappropriates a resident's or consumer's property, the department shall send to the Texas Department of Human Services, for recording in the employee misconduct registry, the employee's name, the employee's address, the employee's social security number, the name of the facility, the address of the facility, the date of the act of misconduct, and a description of the act of misconduct.

(b) If an agency of another state or the federal government finds that an employee has abused, neglected, or exploited a resident or consumer of a facility or misappropriated a resident's or consumer's property, the department may send to the Texas Department of Human Services, for recording in the employee misconduct registry, the employee's name, the employee's address, the employee's social security number, the name of the facility, the address of the facility, the

date of the act of misconduct, and a description of the act of misconduct.

SECTION 2. Sections 253.001(3) and (4), Health and Safety Code, are amended to read as follows:

(3) "Employee" means a person who:

(A) works at a facility;

(B) ~~[is an individual who provides personal care services, active treatment, or any other personal services to a resident or consumer of the facility;~~

~~[(C)]~~ is not licensed by an agency of the state to perform the services the employee performs at the facility; and

~~(C)~~ ~~[(D)]~~ is not a nurse aide employed by a nursing facility.

(4) "Facility" means:

(A) a facility licensed by the department;

~~(B) a home and community support services agency regulated under Chapter 142;~~ or

~~(C)~~ ~~[(B)]~~ an adult foster care provider that contracts with the department.

SECTION 3. Subchapter A, Chapter 534, Health and Safety Code, is amended by adding Section 534.0111 to read as follows:

Sec. 534.0111. VERIFICATION OF EMPLOYABILITY; NOTIFICATION TO EMPLOYEES REGARDING MISCONDUCT REGISTRY. (a) In this section:

(1) "Employee" means a person who:

(A) works at a community center; and

(B) is not licensed by an agency of the state to perform the services the person performs at the community center.

(2) "Employee misconduct registry" means the employee misconduct registry

established under Chapter 253.

(3) "Facility" means a facility listed in Section 253.001 or in Section 40.101, Human Resources Code.

(b) Before a community center may hire an employee, the community center shall search the employee misconduct registry and the nurse aide registry maintained under the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203) to determine whether the person is designated in either registry as having abused, neglected, or exploited a resident or consumer of a facility.

(c) A community center may not employ a person who is listed in either registry as having abused, neglected, or exploited a resident or consumer of a facility.

(d) Each community center shall notify its employees in a manner prescribed by the department:

(1) about the employee misconduct registry; and

(2) that an employee may not be employed if the employee is listed in the registry.

(e) The department shall adopt rules to implement this section.

SECTION 4. Subchapter B, Chapter 534, Health and Safety Code, is amended by adding Section 534.0581 to read as follows:

Sec. 534.0581. VERIFICATION OF EMPLOYABILITY; NOTIFICATION TO EMPLOYEES REGARDING MISCONDUCT REGISTRY. (a) In this section:

(1) "Employee" means a person who:

(A) works for:

(i) a local mental health authority or local mental retardation authority;

(ii) a designated provider of community-based mental health or mental retardation services; or

(iii) a person who contracts with the state or with a designated provider to provide community-based mental health or mental retardation services; and

(B) is not licensed by an agency of the state to perform the services the person performs at the entity listed under Paragraph (A) that employs the person.

(2) "Employee misconduct registry" means the employee misconduct registry established under Chapter 253.

(3) "Facility" means a facility listed in Section 253.001 or in Section 40.101, Human Resources Code.

(b) Before a local mental health authority, a local mental retardation authority, a designated provider of community-based mental health or mental retardation services, or a person who contracts with the state or with a designated provider to provide community-based mental health or mental retardation services may hire an employee, the entity or individual shall search the employee misconduct registry and the nurse aide registry maintained under the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203) to determine whether the person is designated in either registry as having abused, neglected, or exploited a resident or consumer of a facility.

(c) An entity or individual required by Subsection (b) to search the registries identified by that subsection may not employ a person who is listed in either registry as having abused, neglected, or exploited a resident or consumer of a facility.

(d) Each entity or individual required by Subsection (b) to search the registries identified by that subsection shall notify the entity's or individual's employees in a manner prescribed by the department:

(1) about the employee misconduct registry; and

(2) that an employee may not be employed if the employee is listed in the registry.

(e) The department shall adopt rules to implement this section.

SECTION 5. Subchapter A, Chapter 551, Health and Safety Code, is amended by adding Section 551.009 to read as follows:

Sec. 551.009. VERIFICATION OF EMPLOYABILITY; NOTIFICATION TO EMPLOYEES REGARDING MISCONDUCT REGISTRY. (a) In this section:

(1) "Employee" means a person who:

(A) works at a state hospital or state school; and

(B) is not licensed by an agency of the state to perform the services the person performs at the state hospital or state school.

(2) "Employee misconduct registry" means the employee misconduct registry established under Chapter 253.

(3) "Facility" means a facility listed in Section 253.001 or in Section 40.101, Human Resources Code.

(b) Before a state hospital or state school may hire an employee, the hospital or school shall search the employee misconduct registry and the nurse aide registry maintained under the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203) to determine whether the person is designated in either registry as having abused, neglected, or exploited a resident or consumer of a facility.

(c) A state hospital or state school may not employ a person who is listed in either registry as having abused, neglected, or exploited a resident or consumer of a facility.

(d) Each state hospital or state school shall notify its employees in a manner prescribed

by the department:

(1) about the employee misconduct registry; and

(2) that an employee may not be employed if the employee is listed in the

registry.

(e) The department shall adopt rules to implement this section.

SECTION 6. This Act takes effect September 1, 2001, and applies only to an act of misconduct that occurs on or after that date.

Recommendation 20

A BILL TO BE ENTITLED

AN ACT

relating to the use of restraint, seclusion, and emergency psychoactive medication in certain health care facilities.

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

SECTION 1. Subtitle G, Title 4, Health and Safety Code, is amended by adding Chapter 322 to read as follows:

CHAPTER 322. USE OF RESTRAINT, SECLUSION, AND EMERGENCY
PSYCHOACTIVE MEDICATION IN CERTAIN HEALTH CARE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 322.001. DEFINITIONS. In this chapter:

(1) "Emergency" means a situation in which it is immediately necessary to restrain or seclude a person to prevent:

(A) imminent probable death or substantial bodily harm to the person because the person overtly or continually is threatening to or attempting to commit suicide or serious bodily harm; or

(B) imminent physical harm to another because:

(i) the person overtly or continually makes or commits threats, attempts, or other acts; and

(ii) attempted preventive de-escalatory or redirection techniques have not effectively reduced the potential for injury.

(2) "Emergency psychoactive medication" means psychoactive medication, as

defined by Section 574.101, that:

(A) is ordered and administered in an emergency to a person without the person's consent; and

(B) is not administered to a person as a standard treatment or in a standard dosage for the psychiatric condition of the person.

(3) "Facility" means:

(A) a child-care institution, as defined by Section 42.002, Human Resources Code;

(B) an intermediate care facility licensed by the Texas Department of Human Services under Chapter 252;

(C) a mental hospital, as defined by Section 571.003;

(D) a nursing facility, as defined by Section 242.301; or

(E) an assisted living facility, as defined by Section 247.002.

(4) "Health and human services agency" means an agency listed in Section 531.001, Government Code.

(5) "Mechanical restraint" means a device used to restrict the free movement of all or a portion of a person's body to control the person's physical activity.

(6) "Personal restraint" means the application of physical force to restrict the free movement of all or a portion of a person's body.

(7) "Protective device" means a device used to prevent involuntary self-injury or to permit wounds to heal.

(8) "Resident" means a person who receives care or treatment in a facility.

(9) "Seclusion" means the placement of a person alone in an area from which the person is prevented from leaving for any period.

(10) "Supportive device" means a device used to provide postural support for a person or to assist a person in obtaining and maintaining normal bodily functioning.

Sec. 322.002. APPLICABILITY. This chapter applies to a health and human services agency that regulates the care or treatment of a resident.

Sec. 322.003. ADOPTION OF PROCEDURES. (a) A health and human services agency by rule shall adopt procedures for the use on a resident of:

- (1) mechanical restraint;
- (2) personal restraint;
- (3) seclusion;
- (4) emergency psychoactive medication; and
- (5) supportive and protective devices.

(b) The procedures must be consistent with this chapter and with the right of a resident to be free from:

- (1) physical or mental abuse;
- (2) corporal punishment; and
- (3) the use of restraints or seclusion:
 - (A) as punishment;
 - (B) as a substitute for treatment or habilitation;
 - (C) for the convenience of facility staff; or
 - (D) to compensate for a lack of facility staff.

Sec. 322.004. USE OF RESTRAINT, SECLUSION, OR EMERGENCY PSYCHOACTIVE MEDICATION. (a) Except as provided by Section 322.005, a mechanical restraint, seclusion, or emergency psychoactive medication may be used on a resident only in an emergency. This subsection does not apply to an intermediate care facility.

(b) The use of a mechanical restraint, seclusion, or emergency psychoactive medication may be initiated by a member of a facility's staff who has clinical privileges as defined by agency rule. Use of the restraint, seclusion, or medication may proceed only under a physician's order. A physician must issue the order not more than one hour after the use of the restraint, seclusion, or medication is initiated.

(c) In determining whether to use a mechanical restraint, seclusion, or emergency psychoactive medication, a physician shall consider medical and psychiatric contraindications, including a resident's history regarding physical or sexual abuse or substance abuse.

(d) A facility that uses a mechanical restraint, seclusion, or emergency psychoactive medication shall document:

(1) the specific behavior that constitutes the emergency;

(2) the de-escalation techniques used to manage the resident's behavior before the use of the restraint, seclusion, or medication; and

(3) the response of the resident to those alternatives.

(e) The member of the staff who initiates the use of a mechanical restraint, seclusion, or emergency psychoactive medication must sign the document described by Subsection (d).

(f) If a mechanical restraint, seclusion, or emergency psychoactive medication is used on a resident three or more times in a 30-day period, staff members who are treating the resident shall consult with a clinician who is not treating the resident to explore alternative treatment strategies.

(g) If a mechanical restraint or emergency psychoactive medication is used on a resident in an intermediate care facility three or more times in a 30-day period, staff members, including a physician and a behavior specialist, shall meet to explore alternative or additional treatment strategies.

Sec. 322.005. NONEMERGENCY USE OF MECHANICAL RESTRAINT OR SECLUSION. A mechanical restraint may be used on a resident during medical or dental care or rehabilitation, and seclusion may be used during medical care, if its use is necessary and is a regular and customary part of the care or rehabilitation.

Sec. 322.006. STAFF TRAINING. A facility shall provide to its staff, annually or more frequently if necessary, training on:

- (1) procedures for managing a resident's behavior in an emergency; and
- (2) the prevention and de-escalation of a resident's aggressive behavior.

Sec. 322.007. REPORT OF DEATH OR INJURY DURING OR AFTER RESTRAINT, SECLUSION, OR EMERGENCY PSYCHOACTIVE MEDICATION. A facility shall report to the appropriate law enforcement and regulatory agencies for investigation a death of or injury to a resident if the death or injury occurs during the use, or less than 48 hours after the use, on the resident of mechanical or personal restraint, seclusion, or emergency psychoactive medication. A report under this section regarding an injury to a resident is required only if an examining physician determines the injury is serious.

Sec. 322.008. REPORTS. (a) Each quarter, a health and human services agency that regulates a facility shall collect information related to the facility's use of mechanical restraints, seclusion, and emergency psychoactive medication.

(b) The information must include:

(1) the age, race, sex, and number of residents on whom a mechanical restraint, seclusion, or emergency psychoactive medication is used, and the means by which those residents pay for treatment at the facility;

(2) documentation regarding each death of or serious physical injury to a resident described by Section 322.007; and

(3) if practicable, autopsy findings for each death of a resident that occurs before the 15th day after the date of the use of a mechanical restraint, personal restraint, seclusion, or emergency psychoactive medication on the resident.

(c) The agency annually shall submit an analysis of the information collected under this section to the governor and the presiding officer of each house of the legislature.

[Sections 322.009-322.020 reserved for expansion]

SUBCHAPTER B. PROVISIONS SPECIFIC TO MEDICATION OR TYPE OF
RESTRAINT OR SECLUSION

Sec. 322.021. USE OF MECHANICAL RESTRAINT. (a) A mechanical restraint may not be used on a resident receiving care or treatment in:

(1) an assisted living facility; or

(2) a child-care institution that:

(A) does not serve persons with mental retardation exclusively; or

(B) is not a residential treatment facility licensed by the Department of

Protective and Regulatory Services.

(b) A physician may not authorize the use of a mechanical restraint by a pro re nata (PRN) order.

(c) A mechanical restraint may be used only under a physician's order. The order must specify:

(1) the maximum duration of the use of the restraint; and

(2) the date and time of its use.

(d) The use of a mechanical restraint on a resident must end at the earliest possible time.

Except as provided by Subsection (e), a mechanical restraint may not be used on a resident for longer than:

(1) one hour for a resident younger than nine years of age;

(2) two hours for a resident at least nine years of age but younger than 18 years of age; or

(3) four hours for a resident 18 years of age or older.

(e) A mechanical restraint may be used on a resident for a period longer than the period described by Subsection (d) only if the restraint's use is authorized by a physician or registered nurse and is based on an in-person evaluation by the physician or nurse. A mechanical restraint may not be used continuously under the original order and one or more continuations of the order for longer than 12 hours.

(f) While a mechanical restraint is used on a resident, facility staff shall:

(1) provide the resident with the opportunity to drink water and use a toilet every two hours or more frequently if needed;

(2) take the resident's vital signs at 15-minute intervals;

(3) continuously observe the resident; and

(4) monitor the resident's breathing.

Sec. 322.022. USE OF EMERGENCY PSYCHOACTIVE MEDICATION. (a)

Emergency psychoactive medication may not be used on a resident in an assisted living facility.

(b) Emergency psychoactive medication may be used only under a physician's order. A physician may not authorize the use of emergency psychoactive medication by a pro re nata (PRN) order.

(c) Emergency psychoactive medication may be used on a resident at the time a mechanical restraint or seclusion is used on the resident only if clinically justified. When emergency psychoactive medication is used on a resident while mechanical restraint or seclusion is used on the resident, facility staff shall:

(1) continuously observe the resident; and

(2) document the use of the medication and the resident's response to the medication.

Sec. 322.023. USE OF PERSONAL RESTRAINT. (a) The use of personal restraint on a resident must end at the earliest possible time.

(b) Facility staff shall continuously observe a resident under personal restraint and monitor the resident's breathing.

Sec. 322.024. SECLUSION. (a) Seclusion may not be used for a resident receiving care or treatment in:

(1) an assisted living facility; or

(2) a child-care institution that is not a residential treatment facility or emergency shelter licensed by the Department of Protective and Regulatory Services.

(b) Seclusion may be used on a resident only under a physician's order. A physician may not authorize the use of seclusion by a pro re nata (PRN) order.

(c) An area used for seclusion must:

(1) be free of hazards that may cause physical injury to a resident; and

(2) permit the direct observation of a resident in the area.

(d) Facility staff shall provide a resident under seclusion with the opportunity to drink water and use a toilet every two hours or more frequently if needed. The seclusion must end at the earliest possible time.

Sec. 322.025. EXCLUSIONARY TIME-OUT. (a) In this section, "exclusionary time-out" means the placement, in accordance with an approved individualized behavior intervention program, of a resident who exhibits maladaptive behavior in an enclosed area from which the resident is prevented from leaving until the resident exhibits appropriate behavior.

(b) An exclusionary time-out may be used only in an intermediate care facility in accordance with applicable federal law and for a period not to exceed one hour.

Sec. 322.026. USE OF SUPPORTIVE OR PROTECTIVE DEVICE. (a) A supportive or protective device may not be used as a substitute for habilitative or rehabilitative care.

(b) A protective device may be used on a resident to prevent self-injury.

(c) A supportive device may be used to provide postural support for a resident to assist the resident in obtaining or maintaining a normal bodily function.

(d) Facility staff shall periodically review the use of a supportive or protective device on a resident and, where practicable, develop a plan to overcome the need for the device.

SECTION 2. A health and human services agency described by Section 322.002, Health and Safety Code, as added by this Act, shall adopt rules as necessary to implement Chapter 322, Health and Safety Code, as added by this Act, not later than January 1, 2002.

SECTION 3. This Act takes effect immediately, except that Section 1 takes effect January 1, 2002.

Recommendation 21

A BILL TO BE ENTITLED

AN ACT

relating to the participation of certain nursing homes in the Texas Medical Liability Insurance Underwriting Association.

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

SECTION 1. Section 2(6), Article 21.49-3, Insurance Code, is amended to read as follows:

(6) "Health care provider" means:

(A) any person, partnership, professional association, corporation, facility, or institution duly licensed or chartered by the State of Texas to provide health care as defined in Section 1.03(a)(2) [~~1.03(2)~~], Medical Liability Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), as:

(i) a registered nurse, hospital, dentist, podiatrist, pharmacist, chiropractor, or optometrist; [~~or~~]

(ii) a for-profit or not-for-profit nursing home; [~~or~~]

(iii) a radiation therapy center that is independent of any other medical treatment facility and which is licensed by the Texas Department of Health in that agency's capacity as the Texas [~~State~~] Radiation Control Agency pursuant to the provisions of Chapter 401, Health and Safety Code, and which is in compliance with the regulations promulgated under that chapter; [~~by the Texas State Radiation Control Agency~~];

(iv) a blood bank that is a nonprofit corporation chartered to operate a blood bank and which is accredited by the American Association of Blood Banks; [~~]~~

(v) a nonprofit corporation which is organized for the delivery of health care to the public and which is certified under Chapter 162, Occupations Code; [~~Article 4509a, Revised Civil Statutes of Texas, 1925,~~] or

(vi) a [~~migrant~~] health center as defined by 42 U.S.C. Section 254b [P.L. 94-63], as amended; [~~(42 U.S.C. Section 254b), or a community health center as defined by P.L. 94-63, as amended (42 U.S.C. Section 254c), that is receiving federal funds under an application approved under either Title IV, P.L. 94-63, as amended (42 U.S.C. Section 254b), or Title V, P.L. 94-63, as amended (42 U.S.C. Section 254c),~~] or

(B) an officer, employee, or agent of an entity listed in Paragraph (A) [~~any of them~~] acting in the course and scope of that person's [~~his~~] employment.

SECTION 2. This Act takes effect immediately.

Recommendation 22

A BILL TO BE ENTITLED

AN ACT

relating to the admissibility of certain reports of the Texas Department of Human Services in civil actions.

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

SECTION 1. Subchapter L, Chapter 242, Health and Safety Code, is amended by adding Section 242.505 to read as follows:

Sec. 242.505. USE OF REGULATORY REPORTS IN CIVIL ACTIONS. (a) In this section:

(1) "Civil action" includes a cause of action that:

(A) is asserted by or on behalf of a resident; or

(B) derives from an injury to a resident.

(2) "Department report" includes a written finding, survey report, complaint investigation, incident investigation, inspection report, memorandum record, or data compilation that is prepared by the department and that relates to regulation or Medicaid certification of an institution.

(3) "Determination" includes a finding, observation, opinion or conclusion relating to, or statement of a deficiency in or violation of, the requirements for licensure or for certification and participation in the Medicaid program.

(b) Except as provided by Subsection (c), a department report is not admissible as evidence in a civil action to prove that the institution violated a standard prescribed under this chapter or under Section 222.0255.

(c) A department report is admissible in a civil action if the report:

(1) is offered for a purpose other than to prove the truth of the matters and determinations asserted in the report and:

(A) the report is properly authenticated and relevant under the Texas Rules of Evidence;

(B) any determination or matter asserted in the report that is not relevant is redacted; and

(C) on request by the party against whom the report is offered, an appropriate limiting instruction is given by the court;

(2) except as provided by Subsection (d), is offered under Rule 803(6) or 803(8), Texas Rules of Evidence, to prove the truth of the matters and determinations asserted in the report; or

(3) is otherwise offered in accordance with the Texas Rules of Evidence, and:

(A) the report is properly authenticated and relevant under the Texas Rules of Evidence; and

(B) any determination or matter asserted in the report that is not relevant is redacted.

(d) Subject to Subsection (e), a department report is not admissible under Subsection (c)(2) if the court finds that the determinations or matters asserted in the report:

(1) are based on untrustworthy information; or

(2) were created under untrustworthy circumstances.

(e) In accordance with the Texas Rules of Evidence, the burden of showing untrustworthiness with respect to a department report offered in accordance with Subsection (c)(2) is on the party opposing admission of the report. If the court finds the report or any

determination or matter contained in the report is untrustworthy, the court may:

(1) exclude the entire report if the court finds that the entire report is untrustworthy; or

(2) exclude by redaction the specific determination or matter the court finds to be untrustworthy.

(f) A department report that is considered open to the public, that is treated as public information by the department, or that is subject to any means of legal compulsion, including a report that is a survey or resurvey report, inspection of care report, licensing inspection, complaint investigation, incident investigation, monitoring visit, or follow-up investigation or survey, is not privileged as a medical committee record, peer review record, quality assurance review record, or department quality improvement compilation, report, or analysis.

(g) This section does not prohibit, limit, or restrict the testimony of a department surveyor or investigator in a civil action under Sections 32.021(j) and (k), Human Resources Code. This section does not affect the use of a department report as provided by Section 32.021(j), Human Resources Code.

SECTION 2. This Act applies only to a civil action that is commenced on or after the effective date of this Act. A civil action that is commenced before the effective date of this Act is governed by the law applicable to the civil action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect immediately.

Recommendation 23

A BILL TO BE ENTITLED

AN ACT

relating to tuition assistance for licensed vocational nursing students who agree to practice in long-term care facilities.

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

SECTION 1. Subchapter L, Chapter 61, Education Code, is amended by adding Section 61.659 to read as follows:

Sec. 61.659. TUITION ASSISTANCE FOR VOCATIONAL NURSING STUDENTS AGREEING TO PRACTICE IN LONG-TERM CARE FACILITIES. (a) In this section,

"long-term care facility" means:

(1) an ICF-MR, as defined by Section 531.002, Health and Safety Code;

(2) a nursing facility;

(3) a residential facility licensed by the Department of Protective and Regulatory

Services; or

(4) another residential arrangement that provides care to four or more children or adults who are unrelated to each other.

(b) In addition to any other financial aid program established under this subchapter, the board shall establish and administer a tuition assistance program for vocational nursing students attending any school or program in this state who agree, following licensure as a licensed vocational nurse, to practice in a long-term care facility in this state.

(c) The board shall establish and administer the tuition assistance program in a manner that the board determines best promotes the needs of clients of long-term care facilities in this

state. The board shall determine the amount of tuition assistance that a student may receive as the board considers appropriate in order to maximize the effectiveness of the program, considering the amount of money available for the program.

(d) The board shall adopt rules necessary for the administration of this section, including rules providing eligibility requirements, the maximum amount of any tuition assistance available, and the amount of time a student agrees to practice in a long-term care facility.

(e) The student must begin fulfilling the long-term care facility work obligation not later than the 18th month after the person completes any course required for licensure, unless the board grants the student additional time to begin fulfilling the work obligation. The student must complete the long-term care facility work obligation within a period determined by board rule, unless the board grants the person, on a showing of good cause, additional time to complete the work obligation.

(f) The board shall cancel a person's long-term care facility work obligation if the board determines that the person:

(1) has become permanently disabled so that the person is not able to work as a licensed vocational nurse; or

(2) has died.

(g) The board shall require a person who receives tuition assistance under this section to sign a promissory note acknowledging the conditional nature of the tuition assistance and promising to repay the amount of the tuition assistance plus applicable interest and reasonable collection costs if the person does not satisfy the applicable long-term care facility work obligation within the required time or other conditions of the assistance. The board shall determine the terms of the promissory note.

(h) The amount required to be repaid by a person who fails to complete the long-term

care facility work obligation of the person's tuition assistance shall be determined in proportion to the portion of the work obligation that the person has not satisfied.

(i) A person receiving tuition assistance under this section is considered to have failed to satisfy the conditions of the assistance, and the tuition assistance automatically becomes a loan, if the person fails to remain enrolled in or to make steady progress in the school or program that is preparing the person for licensure as a licensed vocational nurse without good cause as determined by the board or if the person fails to become licensed as a licensed vocational nurse not later than the 18th month after the date the person completes the school or program.

(j) The board shall consult with the advisory committee appointed under Section 61.657(b) concerning assistance provided under this section to vocational nursing students. Section 61.657(c) also applies to this section.

(k) The legislature may appropriate money for the purposes of this section. The board may accept gifts, grants, and donations from any public or private source for the purposes of this section.

SECTION 2. (a) This Act takes effect immediately.

(b) The Texas Higher Education Coordinating Board shall establish the tuition assistance program under Section 61.659, Education Code, as added by this Act, as soon as the board determines practicable.

Recommendation 29

A BILL TO BE ENTITLED

AN ACT

relating to a consumers' guide regarding long-term care insurance.

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

SECTION 1. Subchapter G, Chapter 3, Insurance Code, is amended by adding Article 3.70-12A to read as follows:

Art. 3.70-12A. CONSUMERS' GUIDE TO LONG-TERM CARE INSURANCE

RATES. (a) The department, in consultation with the office of public insurance counsel, shall annually prepare a consumers' guide to long-term care insurance.

(b) The guide must include:

(1) an explanation of:

(A) long-term care services, including public and private home-based and community-based long-term care services;

(B) long-term care providers;

(C) alternative living arrangements;

(D) public programs to pay for long-term care; and

(E) insurance designed to pay for long-term care expenses;

(2) a comparison of long-term care insurance policies available in this state, including the benefits provided by those policies, and sample premiums for those policies; and

(3) a premium history, covering the 10-year period preceding publication of the guide, for each insurer that markets a long-term care insurance policy or certificate in this state.

(c) The consumers' guide must be available not later than December 1 of each year on the

department's website and on request from the department or the office of public insurance counsel.

(d) The department must:

(1) notify the office of public insurance counsel of any rate increase for long-term care insurance that occurs during the year after a guide is published; and

(2) make information relating to an increase described by Subdivision (1) available as an insert to the current guide and on the department's website not later than the 30th day after the effective date of the rate increase.

(e) An insurer that markets a long-term care insurance policy or certificate in this state shall include on or with the application for the policy or certificate a statement in 14-point or larger type that reads as follows: "A rate guide is available that compares the policies sold by different insurers, the benefits provided in those policies, sample premiums, and the history of premium increases, if any, for those policies. You can obtain a copy of this guide by calling the Texas Department of Insurance toll-free at [insert the department's toll-free phone number], by calling the office of public insurance counsel at [insert the office of public insurance counsel's toll-free phone number], or by accessing the Texas Department of Insurance's website [insert the URL for the department's website]."

(f) An insurer that markets a long-term care insurance policy or certificate in this state shall annually provide to the department:

(1) information regarding each form of long-term care insurance policy or certificate issued in any state, whether originally issued by the insurer or acquired from another insurer, including:

(A) the name of the insurer that originally issued the policy or certificate and the name of the current insurer;

(B) a description of the type of benefits provided under the policy or certificate;

(C) the policy form identification number; and

(D) dates during which the policy or certificate was sold;

(2) each premium increase requested or filed for a policy form sold by the insurer in this and any other state;

(3) the amount and the effective date of each premium increase imposed for the policy form in this state or any other state and the percentage by which the premium increased;

(4) a list of sample premiums for at least four different age groups for each policy form that the insurer is currently marketing in this state; and

(5) any other information requested by the department.

(g) An insurer must provide the information required under Subsection (f) not later than July 31 of each year.

(h) Information provided to the department by an insurer under Subsection (f) is public information available to the public under Chapter 552, Government Code, unless the information is excepted from required disclosure under Subchapter C, Chapter 552, Government Code.

SECTION 2. (a) This Act takes effect September 1, 2001.

(b) The Texas Department of Insurance shall prepare the initial consumers' guide required under Article 3.70-12A, Insurance Code, as added by this Act, not later than December 1, 2002.

Recommendation 30

A BILL TO BE ENTITLED

AN ACT

relating to a franchise tax credit for expenditures made toward the cost of long-term care insurance policies for certain employees.

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

SECTION 1. Chapter 171, Tax Code, is amended by adding Subchapter S to read as follows:

SUBCHAPTER S. TAX CREDIT FOR EXPENDITURES FOR LONG-TERM CARE
INSURANCE POLICY

Sec. 171.851. DEFINITION. In this subchapter, "long-term care insurance policy" has the meaning assigned by Section 2, Article 3.70-12, Insurance Code.

Sec. 171.852. ELIGIBILITY. A corporation is eligible for a credit against the tax imposed under this chapter in the amount and under the conditions and limitations provided by this subchapter.

Sec. 171.853. CREDIT FOR PURCHASE OF LONG-TERM CARE INSURANCE POLICY. A corporation may claim a credit under this subchapter only for an expenditure made toward the cost of a long-term care insurance policy for an employee or the employee's spouse or parent.

Sec. 171.854. AMOUNTS; LIMITATIONS. (a) The amount of the credit in relation to an employee and the employee's spouse or parent is equal to the lesser of:

- (1) 20 percent of the cost incurred by the employer; or
- (2) \$100.

(b) The total credit under this subchapter for a report may not exceed \$5,000.

(c) The total credit claimed under this subchapter for a period may not exceed the amount of franchise tax due for the report after any other applicable tax credits.

(d) A corporation may claim a credit under this subchapter for an expenditure made during an accounting period only against the tax owed for the corresponding reporting period.

Sec. 171.855. APPLICATION FOR CREDIT. (a) A corporation must apply for a credit under this subchapter on or with the tax report for the period for which the credit is claimed.

(b) The comptroller shall adopt a form for the application for the credit. A corporation must use this form in applying for the credit.

Sec. 171.856. ASSIGNMENT PROHIBITED. A corporation may not convey, assign, or transfer the credit allowed under this subchapter to another entity unless all of the assets of the corporation are conveyed, assigned, or transferred in the same transaction.

SECTION 2. (a) This Act takes effect January 1, 2002, and applies only to a report due on or after that date.

(b) A corporation may claim a credit under Subchapter S, Chapter 171, Tax Code, as added by this Act, only for an expenditure made on or after January 1, 2002.

Appendix E

Draft Legislation Regarding Welfare Reform

Recommendation 31

A BILL TO BE ENTITLED

AN ACT

relating to identifying and addressing the needs of certain recipients of financial assistance and dependent children of recipients of financial assistance.

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

SECTION 1. Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.00331 to read as follows:

Sec. 31.00331. CASE REVIEW FOLLOWING NONCOMPLIANCE WITH CERTAIN REQUIREMENTS. (a) The department shall, on application of a sanction or penalty to a person for noncompliance with a requirement of the responsibility agreement under Section 31.0031(d)(2), (6), (7), or (8), conduct a case review to determine:

(1) the reasons for the noncompliance; and

(2) whether the provision of local support services will enable the person to comply with that requirement or prevent future noncompliance.

(b) If the department determines that local support services are necessary, the department shall promptly refer the person to appropriate support services.

SECTION 2. Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.011 to read as follows:

Sec. 31.011. NEEDS ASSESSMENT AND SUPPORT SERVICES FOR DEPENDENT CHILDREN. (a) The department shall develop and implement a needs assessment program to identify the needs of dependent children of recipients of financial assistance that, if addressed, would

promote the welfare of the children.

(b) After identifying the needs of a dependent child under this section, the department shall refer the child to appropriate local support services as determined by the department.

(c) The department by rule shall adopt criteria for determining when a needs assessment should be conducted under this section.

SECTION 3. Not later than January 1, 2002, the Texas Department of Human Services shall develop and implement the assessment program required by Section 31.011, Human Resources Code, as added by this Act.

SECTION 4. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 5. This Act takes effect September 1, 2001.

Recommendation 32

A BILL TO BE ENTITLED

AN ACT

relating to application and eligibility for Medicaid.

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

SECTION 1. Section 32.025, Human Resources Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) To the extent allowed by federal law and except as otherwise provided by this section, the department shall adopt application forms and procedures for a request for medical assistance provided to a person younger than 19 years of age that are similar to the application forms and procedures adopted under Section 62.103, Health and Safety Code.

(e) The department shall permit an application requesting medical assistance for a person younger than 19 years of age to be made by mail instead of through a personal appearance at a department office.

SECTION 2. Section 32.026, Human Resources Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) In adopting rules under this section, the department shall ensure, to the extent allowed by federal law, that documentation and verification procedures used in determining and certifying the eligibility and need for medical assistance of a person younger than 19 years of age are similar to the documentation and verification procedures used to determine a child's eligibility for coverage under Chapter 62, Health and Safety Code.

(e) The department shall permit a recertification review of the eligibility and need for medical assistance of a person younger than 19 years of age to be conducted by telephone or mail

instead of through a personal appearance at a department office.

SECTION 3. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.02415 to read as follows:

Sec. 32.02415. EXCLUSION OF ASSETS AND RESOURCES. To the extent allowed by federal law, the department may not consider the assets and resources of a person younger than 19 years of age or the assets and resources of the person's parents or other caretaker for purposes of determining the person's eligibility for medical assistance.

SECTION 4. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation, the state agency shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 5. This Act takes effect September 1, 2001.

Recommendation 33

A BILL TO BE ENTITLED

AN ACT

relating to continuous eligibility of children for medical assistance.

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

SECTION 1. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0261 to read as follows:

Sec. 32.0261. CONTINUOUS ELIGIBILITY. The department shall adopt rules in accordance with 42 U.S.C. Section 1396a(e)(12), as amended, to provide for a period of continuous eligibility for a child under 19 years of age who is determined to be eligible for medical assistance under this chapter. The rules shall provide that the child remains eligible for medical assistance, without additional review by the department and regardless of changes in the child's resources or income, until the earlier of:

(1) the first anniversary of the date on which the child's eligibility was determined;

or

(2) the child's 19th birthday.

SECTION 2. If, before implementing any provision of this Act, the Health and Human Services Commission or another appropriate state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the commission or agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 3. (a) This Act takes effect September 1, 2001.

(b) The Health and Human Services Commission or the appropriate state agency operating

part of the medical assistance program under Chapter 32, Human Resources Code, shall adopt rules required by Section 32.0261, Human Resources Code, as added by this Act, not later than October 1, 2001. The rules must provide for a period of continuous eligibility in accordance with that section for a child whose initial or continued eligibility is determined on or after the effective date of the rules.

Recommendation 34

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a work group on office standards to assist the Texas Department of Human Services in improving the delivery of certain services.

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

SECTION 1. Chapter 22, Human Resources Code, is amended by adding Section 22.037 to read as follows:

Sec. 22.037. WORK GROUP ON OFFICE STANDARDS. (a) A work group on office standards is created to assist the department in improving the eligibility, application, and review processes relating to the financial assistance, medical assistance, and food stamp programs.

(b) The commissioner shall appoint the members of the work group, which must include balanced representation from:

(1) the house and senate committees having oversight of the financial assistance, medical assistance, and food stamp programs;

(2) advocates for consumers of financial assistance, medical assistance, or food stamps;

(3) providers of financial assistance, medical assistance, or food stamp services;

and

(4) consumers of financial assistance, medical assistance, or food stamps.

(c) The department shall provide administrative support, including staff, to the work group.

(d) A member of the work group serves at the will of the commissioner.

(e) The commissioner shall appoint a member of the work group to serve as the presiding officer.

(f) The work group shall meet at the call of the presiding officer.

(g) The work group shall study and make recommendations on ways to improve the eligibility, application, and review processes of the financial assistance, medical assistance, and food stamp programs. As part of the study and recommendations required by this subsection, the work group shall conduct activities that include:

(1) reviewing client communication;

(2) developing uniform standards for department service regions;

(3) reviewing food stamp error rate reduction measures;

(4) developing comprehensive performance measures;

(5) exploring ways to make services and facilities more accessible to working families, including the feasibility of alternative or extended office hours, or both, based on regional needs; and

(6) reviewing financial assistance policy relating to counting resources.

(h) The work group shall annually report its findings and recommendations to the board.

(i) After evaluating and considering recommendations of the work group reported under Subsection (h), the board shall adopt rules to improve the eligibility, application, and review processes of the financial assistance, medical assistance, and food stamp programs.

(j) The department shall file annually with the governor and legislature a report that details the recommendations of the work group and the actions taken by the department relating to those recommendations. The department may include the report with the report required by Section 21.011(a).

(k) The work group is not subject to Chapter 2110, Government Code, except that

Section 2110.008, Government Code, does apply to the work group.

SECTION 2. This Act takes effect September 1, 2001.

Recommendation 35

A BILL TO BE ENTITLED

AN ACT

relating to services and programs provided under and eligibility for temporary assistance for needy families and for food stamps.

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

SECTION 1. Section 11.001(5), Human Resources Code, is amended to read as follows:

(5) "Financial assistance" means money payments or related services or programs for needy persons authorized by Chapter 31.

SECTION 2. Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.0061 to read as follows:

Sec. 31.0061. SERVICES AND PROGRAMS RELATED TO FINANCIAL ASSISTANCE PROGRAM. (a) The department shall develop and implement services or programs that:

(1) are related to the financial assistance program; and

(2) will be provided to eligible recipients under the financial assistance program.

(b) The department by rule shall:

(1) prescribe eligibility criteria for the related services or programs; and

(2) define the related services or programs to be provided.

SECTION 3. Sections 31.032(d) and (e), Human Resources Code, are amended to read as follows:

(d) In determining whether an applicant is eligible for assistance, the department shall exclude from the applicant's available resources:

(1) \$2,000 for the applicant's household or \$3,000 if there is a person with a disability or a person who is at least 60 years of age in the applicant's household; ~~[and]~~

(2) the entire fair market value of the applicant's ownership interest in one [a] motor vehicle; and

(3) the fair market value of the applicant's ownership in another motor vehicle, but not more than ~~[the amount determined according to the following schedule:~~

~~[(A) \$4,550 on or after September 1, 1995, but before October 1, 1995;~~

~~[(B) \$4,600 on or after October 1, 1995, but before October 1, 1996;~~

~~[(C) \$5,000 on or after October 1, 1996, but before October 1, 1997; and~~

~~[(D)] \$5,000 plus or minus an amount to be determined annually~~

~~[beginning on October 1, 1997,]~~ to reflect changes in the new car component of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.

(e) If federal regulations governing the maximum allowable resources under the food stamp program, 7 CFR Part 273, are revised, the department shall adjust the standards that determine available resources under Subsection (d)(1) ~~[(d)]~~ to reflect those revisions.

SECTION 4. Chapter 33, Human Resources Code, is amended by adding Section 33.014 to read as follows:

Sec. 33.014. EXCLUSION OF VALUE OF MOTOR VEHICLE. If federal regulations governing the maximum allowable resources under the food stamp program are revised to allow for the exclusion of the entire fair market value of one motor vehicle, the department shall adjust its eligibility standards under this chapter to provide for that exclusion.

SECTION 5. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may

delay implementing that provision until the waiver or authorization is granted.

SECTION 6. This Act takes effect September 1, 2001.

Recommendation 36

A BILL TO BE ENTITLED

AN ACT

relating to eligibility recertification requirements for certain recipients of food stamps.

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

SECTION 1. Chapter 33, Human Resources Code, is amended by adding Section 33.015 to read as follows:

Sec. 33.015. RECERTIFICATION OF ELIGIBILITY FOR CERTAIN RECIPIENTS. (a)

Except as provided by Subsection (b), the department may allow a recipient of food stamps who is employed or participating in employment training activities to comply with periodic eligibility recertification requirements by telephone instead of through a personal appearance at department offices.

(b) In accordance with federal law, the department shall require a recipient of food stamps described by Subsection (a) to personally appear at department offices once each year to comply with periodic eligibility recertification requirements.

SECTION 2. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 3. This Act takes effect September 1, 2001, and applies to a person receiving food stamps on or after that date, regardless of the date on which eligibility for food stamps was determined.

Recommendation 37

A BILL TO BE ENTITLED

AN ACT

relating to the specification of the types of hardships that warrant excepting a recipient of temporary assistance for needy families from the imposition of time limits on the receipt of those benefits.

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

SECTION 1. Section 31.0065, Human Resources Code, is amended by amending Subsections (a), (e), and (f) and adding Subsection (g) to read as follows:

(a) The department may provide financial assistance under this chapter only in accordance with the time limits specified by this section. In accordance with federal law, the ~~[The]~~ department by rule may provide for exceptions to these time limits for reasons of ~~[if severe personal]~~ hardship ~~[or community economic factors prevent the recipient from obtaining employment or if the state is unable to provide support services].~~

(e) In implementing the time-limited benefits program, the department~~[-~~
[~~(1)~~] shall provide that a participant in the program may reapply with the department for financial assistance on or after the fifth anniversary of the date on which the participant is totally disqualified from receiving assistance because of the application of Subsection (b)~~[-~~ and

~~[(2) shall establish the criteria for determining what constitutes severe personal hardship under Subsection (a)].~~

(f) If the department is imposing time-limited benefits on an individual, the department shall consider~~[-~~

~~[(1)]~~ the assessment of the individual's need that was conducted by the department, provided that if the needs assessment indicates discrepancies between a client's self-reported educational level and the client's functional abilities, the time limits shall be based upon the functional educational level~~;~~ and

~~[(2) the prevailing economic and employment conditions in the area of the state where the individual resides].~~

(g) The department, the Health and Human Services Commission, and the Texas Workforce Commission shall jointly adopt rules prescribing what constitutes a hardship under Subsection (a) that would warrant an exception to the imposition of time-limited benefits.

SECTION 2. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 3. This Act takes effect September 1, 2001, and applies to a person receiving financial assistance on or after that date regardless of the date on which the person began receiving that financial assistance.

Recommendation 38

A BILL TO BE ENTITLED

AN ACT

relating to identifying and assessing personal needs of certain recipients of financial assistance.

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

SECTION 1. The section heading to Section 31.0095, Human Resources Code, is amended to read as follows:

Sec. 31.0095. EMPLOYABILITY NEEDS ASSESSMENT.

SECTION 2. The section heading to Section 31.010, Human Resources Code, is amended to read as follows:

Sec. 31.010. SUPPORT SERVICES RELATED TO EMPLOYABILITY OF A RECIPIENT.

SECTION 3. Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.011 to read as follows:

Sec. 31.011. PERSONAL NEEDS ASSESSMENT. (a) The department, with the participation of the Health and Human Services Commission, shall develop and implement a personal needs assessment program to:

(1) identify recipients of financial assistance who have:

(A) high levels of barriers to employment; and

(B) needs, other than employability needs assessed under Section 31.0095,

that, if addressed, would help the recipient achieve independence from public assistance granted to the recipient and the recipient's family; and

(2) improve case management for a recipient identified by the program.

(b) The department and the Health and Human Services Commission shall develop the

assessment program based on research into the best practices and methods of needs assessment.

(c) The department shall consider the barriers to employment and needs of a recipient identified by the assessment program in:

(1) referring the recipient to appropriate community-based support services; and

(2) developing the employability plan under Section 31.0095 and determining necessary support services under Section 31.010 for the recipient.

SECTION 4. Not later than January 1, 2002, the Texas Department of Human Services and the Health and Human Services Commission shall develop and implement the assessment program required by Section 31.011, Human Resources Code, as added by this Act.

SECTION 5. This Act takes effect September 1, 2001.

Recommendation 39

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of an interagency plan for coordinating case management services for certain recipients of financial assistance.

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

SECTION 1. Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.0128 to read as follows:

Sec. 31.0128. COORDINATED INTERAGENCY PLAN. (a) The department and the Texas Workforce Commission shall jointly develop and adopt a memorandum of understanding, subject to the approval of the Health and Human Services Commission. The memorandum of understanding must establish a coordinated interagency case management plan to:

(1) identify each recipient of financial assistance who has, in comparison to other recipients, higher levels of barriers to employment; and

(2) provide coordinated services that address those barriers to assist the recipient in finding and retaining employment.

(b) Each agency by rule shall adopt the memorandum of understanding and all revisions to the memorandum.

(c) The department and the Texas Workforce Commission shall implement the plan under this section through local department and commission offices and local workforce development boards, as appropriate.

SECTION 2. Not later than January 1, 2002, the Texas Department of Human Services and the Texas Workforce Commission shall adopt the memorandum of understanding and implement

the interagency case management plan required by Section 31.0128, Human Resources Code, as added by this Act.

SECTION 3. This Act takes effect September 1, 2001.

Recommendation 40

A BILL TO BE ENTITLED

AN ACT

relating to minimum training regarding family violence for certain state employees and other persons administering the financial assistance program and to identification of and services for certain victims of family violence.

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

SECTION 1. Section 31.0322, Human Resources Code, is amended by amending Subsection (e) and adding Subsections (f), (g), and (h) to read as follows:

(e) The department, the Texas Workforce Commission, the Title IV-D agency, and each local workforce development board shall provide not less than four hours of training regarding family violence to each employee or other person who on behalf of the department, commission, agency, or board:

(1) provides information relating to requirements described by Subsection (a) and the availability of waivers or modifications of those requirements to an individual seeking or receiving financial assistance;

(2) recommends or grants waivers or modifications authorized by this section of requirements described by Subsection (a);

(3) recommends or imposes sanctions for noncooperation or noncompliance with requirements described by Subsection (a); or

(4) assesses employment readiness or provides employment planning or employment retention services to an individual receiving financial assistance.

(f) The training required by Subsection (e) must include information relating to:

(1) the potential impact of family violence on:

(A) the safety of an individual seeking or receiving financial assistance;

and

(B) the ability of that individual to make a successful transition into the workforce;

(2) state laws and agency rules regarding options available to an individual receiving financial assistance for whom family violence poses a danger or impediment to attaining financial independence; and

(3) statewide and local resources available from state and local governmental agencies and other entities that could assist a victim of family violence in safely and successfully entering the workforce.

(g) Before the application of a sanction or penalty based on an individual's failure to cooperate with the department or Title IV-D agency, as required by Section 31.0031(d)(1), or failure to comply with the work or participation requirements imposed by Section 31.012, a person who has received the training required by Subsection (e) must interview the individual to:

(1) determine whether family violence contributed to the failure; and

(2) if family violence contributed to the failure, identify the types of services necessary to assist the individual in safely and successfully entering the workforce.

(h) In this section:

(1) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(2) "Title IV-D agency" has the meaning assigned by Section 101.033, Family Code.

SECTION 2. This Act takes effect September 1, 2001.

Recommendation 41

A BILL TO BE ENTITLED

AN ACT

relating to a requirement that the Texas Department of Human Services and the Texas Workforce Commission develop and implement a performance-based bonus program to reward local offices that design and implement case management tools for identifying and meeting the needs of certain clients.

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

SECTION 1. Subchapter B, Chapter 31, Human Resources Code, is amended by adding Section 31.046 to read as follows:

Sec. 31.046. PERFORMANCE-BASED BONUS PROGRAM FOR LOCAL ADMINISTRATIVE UNITS THAT DESIGN AND IMPLEMENT CASE MANAGEMENT TOOLS. (a) The department shall develop and implement a performance-based bonus program to reward local administrative units of the department that design and implement effective case management tools for identifying and addressing the needs of the recipients of financial assistance who are likely to have the most difficulty becoming self-sufficient.

(b) The department by rule shall specify the criteria to be considered by local administrative units of the department in determining which recipients of financial assistance are likely to have the most difficulty becoming self-sufficient. The criteria may include any factor the department determines relevant, including whether the recipient:

- (1) has a learning disability;
- (2) has a physical or mental disability;
- (3) has a chronic health problem;

(4) has a substance abuse problem;

(5) is a victim of domestic violence;

(6) has an incapacitated family member;

(7) has a child with a behavioral problem;

(8) has a criminal history;

(9) has a history of housing instability;

(10) lacks health insurance; and

(11) lacks education, training, or job experience.

(c) The department by rule shall specify the criteria for determining whether to award a performance-based bonus to a local administrative unit of the department. The criteria may include consideration of any factor the department determines relevant, including whether the unit:

(1) collaborates with state and local organizations to implement substantive programs that address the needs of the recipients of financial assistance who are likely to have the most difficulty becoming self-sufficient;

(2) ensures that the programs described by Subdivision (1) are accessible and responsive to the needs of the recipients of financial assistance who are likely to have the most difficulty becoming self-sufficient;

(3) collaborates with state and local organizations to provide training to caseworkers and to persons who provide education, job training, job placement, or other services under contracts with the unit;

(4) collaborates with state and local organizations to screen applicants for financial assistance;

(5) protects the confidentiality of information disclosed by applicants for or

recipients of financial assistance;

(6) devotes a staff member to addressing the needs of the recipients of financial assistance who are likely to have the most difficulty becoming self-sufficient; and

(7) informs applicants for or recipients of financial assistance of the services that are available to them.

(d) The department may not deny a person access to education, job training, job placement, or other services because the person is likely to have difficulty becoming self-sufficient.

(e) The department shall coordinate with other state agencies and private organizations in developing and implementing the performance-based bonus program.

(f) A local administrative unit of the department shall use money provided under this section for expenses relating to addressing the needs of the recipients of financial assistance who are likely to have the most difficulty becoming self-sufficient.

SECTION 2. Subchapter C, Chapter 302, Labor Code, is amended by adding Section 302.044 to read as follows:

Sec. 302.044. PERFORMANCE-BASED BONUS PROGRAM FOR CAREER DEVELOPMENT CENTERS THAT DESIGN AND IMPLEMENT CASE MANAGEMENT TOOLS. (a) The commission shall develop and implement a performance-based bonus program to reward career development centers that design and implement effective case management tools for identifying and addressing the needs of clients who are recipients of financial assistance under Chapter 31, Human Resources Code, and are likely to have the most difficulty becoming self-sufficient.

(b) The commission by rule shall specify the criteria to be considered by career development centers in determining which clients who are recipients of financial assistance

under Chapter 31, Human Resources Code, are likely to have the most difficulty becoming self-sufficient. The criteria may include any factor the commission determines relevant, including whether the client:

- (1) has a learning disability;
- (2) has a physical or mental disability;
- (3) has a chronic health problem;
- (4) has a substance abuse problem;
- (5) is a victim of domestic violence;
- (6) has an incapacitated family member;
- (7) has a child with a behavioral problem;
- (8) has a criminal history;
- (9) has a history of housing instability;
- (10) lacks health insurance; and
- (11) lacks education, training, or job experience.

(c) The commission by rule shall specify the criteria for determining whether to award a performance-based bonus to a career development center. The criteria may include consideration of any factor the commission determines relevant, including whether the center:

- (1) collaborates with state and local organizations to implement substantive programs that address the needs of clients who are recipients of financial assistance under Chapter 31, Human Resources Code, and are likely to have the most difficulty becoming self-sufficient;
- (2) ensures that the programs described by Subdivision (1) are accessible and responsive to the needs of clients who are recipients of financial assistance under Chapter 31, Human Resources Code, and are likely to have the most difficulty becoming self-sufficient;

(3) collaborates with state and local organizations to provide training to caseworkers and to persons who provide education, job training, job placement, or other services under contracts with the center;

(4) collaborates with state and local organizations to screen clients;

(5) protects the confidentiality of information disclosed by applicants for or recipients of workforce training or services;

(6) devotes a staff member to addressing the needs of clients who are recipients of financial assistance under Chapter 31, Human Resources Code, and are likely to have the most difficulty becoming self-sufficient; and

(7) informs applicants for or recipients of workforce training or services of the services that are available to them.

(d) The commission may not deny a person access to education, job training, job placement, or other services because the person is likely to have difficulty becoming self-sufficient.

(e) The commission shall coordinate with other state agencies and private organizations in developing and implementing the performance-based bonus program.

(f) A career development center shall use money provided under this section for expenses relating to addressing the needs of clients who are recipients of financial assistance under Chapter 31, Human Resources Code, and are likely to have the most difficulty becoming self-sufficient.

SECTION 3. This Act takes effect September 1, 2001.

Recommendation 42

A BILL TO BE ENTITLED

AN ACT

relating to incentive programs and employment services to benefit certain recipients of financial assistance.

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

SECTION 1. Subchapter A, Chapter 302, Labor Code, is amended by adding Sections 302.009, 302.010, and 302.011 to read as follows:

Sec. 302.009. JOB PLACEMENT INCENTIVE PROGRAM. (a) The commission by rule shall develop a job placement incentive program under which persons with whom local workforce development boards contract for employment services under Chapter 2308, Government Code, are provided incentives for placing recipients of financial assistance participating in employment programs under Chapter 31, Human Resources Code, in higher-wage jobs, as determined by the commission.

(b) In developing guidelines for the job placement incentive program, the commission shall:

(1) define measures for higher-wage jobs based on locally appropriate indicators of the wages necessary to lift recipients of employment services out of poverty and into self-sufficiency; and

(2) involve representatives of local workforce development boards in developing guidelines for the program and the measures for higher-wage jobs.

(c) The commission shall administer the job placement incentive program through the local workforce development boards.

Sec. 302.010. POSTEMPLOYMENT SERVICES GUIDELINES. (a) The commission by rule shall develop guidelines under which local workforce development boards provide postemployment services to a recipient of financial assistance participating in an employment program under Chapter 31, Human Resources Code.

(b) In developing the guidelines, the commission must consider the difficulties the recipient is likely to encounter in acquiring additional education and training after becoming employed.

(c) The commission shall assist local workforce development boards in meeting the guidelines by providing information about model programs and best practices, including employer involvement in past employment services.

(d) The commission shall involve representatives of local workforce development boards and other appropriate organizations in developing the guidelines and identifying model programs and best practices.

Sec. 302.011. POSTEMPLOYMENT CASE MANAGEMENT. The commission shall encourage local workforce development boards to provide postemployment case management services for recipients of financial assistance who participate in employment programs under Chapter 31, Human Resources Code, and have, in comparison to other recipients, higher levels of barriers to employment.

SECTION 2. Not later than January 1, 2002, the Texas Workforce Commission shall develop the job placement incentive program required by Section 302.009, Labor Code, as added by this Act, and the postemployment services guidelines required by Section 302.010, Labor Code, as added by this Act.

SECTION 3. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that

provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 4. This Act takes effect September 1, 2001.

Recommendation 43

A BILL TO BE ENTITLED

AN ACT

relating to expansion of the employment retention and advancement pilot project.

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

SECTION 1. Subchapter B, Chapter 31, Human Resources Code, is amended by adding Section 31.046 to read as follows:

Sec. 31.046. EMPLOYMENT RETENTION AND ADVANCEMENT PILOT

PROJECT. (a) The department by rule shall develop and implement a plan for statewide expansion of the employment retention and advancement pilot project in which a comprehensive array of eligibility support services, workforce support services, and other support services are coordinated at the local level and provided to recipients of financial assistance and persons who are eligible for and in the process of being certified by the department to receive financial assistance to:

(1) promote long-term employment stability and increased wages; and

(2) enable project participants and their families to achieve permanent

independence from public assistance.

(b) In adopting rules under this section, the department shall ensure that:

(1) the project continues to serve former recipients of financial assistance when the former recipients have made the transition from the receipt of financial assistance to employment;

(2) the project continues to develop strategies to increase the employment skills and educational level of a participant in an effort to accomplish the purposes of the project

described by Subsection (a):

(3) services continue to be provided to a participant on an individualized basis by a team of caseworkers, professionals, or other persons that may include:

(A) a caseworker employed by the department;

(B) a local case manager who contracts with the department or a local workforce development board to provide those services; and

(C) a counselor, mentor, family member, community leader, or any other person from the participant's local community;

(4) a participant who is making a transition from the receipt of financial assistance to employment and complies with a postemployment plan and other work requirements may receive under the project a monthly stipend to assist with child care, transportation, and other expenses associated with the participant's employment activities; and

(5) a system is developed to monitor and evaluate the effectiveness of the project, including follow-up on employment and income outcomes of each person who participates in the project.

(c) The department shall work in conjunction with the Texas Workforce Commission and local workforce development boards to implement the plan.

(d) If the data collected from the project sites indicates that the project has been successful in increasing the retention of employment by and the compensation paid to former participants in the project, the department shall expand the project annually to sites in one or two regions in this state until the project is implemented statewide.

(e) The Texas Workforce Commission and a local workforce development board assisting the department with the implementation of the plan or project shall provide to the department information necessary to complete the report required by Subsection (f).

(f) Before each regular session of the legislature, the department shall submit to the governor, lieutenant governor, and speaker of the house of representatives a report that evaluates the effectiveness of the plan and project. The report must include recommendations for changes in the plan or project or expansion of the project.

(g) This section expires September 1, 2008.

SECTION 2. This Act takes effect September 1, 2001.

Recommendation 44

A BILL TO BE ENTITLED

AN ACT

relating to residential and nonresidential services for victims of family violence.

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

SECTION 1. The chapter heading to Chapter 51, Human Resources Code, is amended to read as follows:

CHAPTER 51. FAMILY VIOLENCE CENTERS [~~SHELTERS~~]

SECTION 2. Section 51.001, Human Resources Code, is amended to read as follows:

Sec. 51.001. PURPOSE. The purpose of this chapter is to promote development of and access to locally based and supported nonprofit [~~shelters and~~] services for victims of family violence throughout the state.

SECTION 3. Section 51.002, Human Resources Code, is amended to read as follows:

Sec. 51.002. DEFINITIONS. In this chapter:

(1) "Family" has the meaning assigned by Section 71.003, Family Code.

(2) "Family violence" means an act by a member of a family or household against another member of the family or household that:

(A) is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault but does not include defensive measures to protect oneself; or

(B) is intended to inflict emotional harm.

(3) "Family violence center" includes a family violence shelter center and a

family violence nonresidential center.

(4) "Family violence nonresidential center" means a program that:

(A) is operated by a public or private nonprofit organization; and

(B) provides comprehensive nonresidential services to victims of family violence.

(5) "Family violence shelter center" means a program that:

(A) is operated by a public or private nonprofit organization; and

(B) [that] provides comprehensive residential and nonresidential [shelter and] services to victims of family violence.

(6) "Household" has the meaning assigned by Section 71.005, Family Code.

(7) "Member of a household" has the meaning assigned by Section 71.006, Family Code.

(8) ~~(2)~~ "Victim of family violence" means:

(A) an adult who is subjected to an act of family violence [~~physical force or the threat of physical force by another who is related by affinity or consanguinity, as determined under Chapter 573, Government Code, to that adult, who is a former spouse of that adult, or who resides in the same household with that adult];~~ or

(B) a member of a family or household residing with the adult described by Subdivision (A) [~~an individual~~], other than the member of the family or household who commits the act of family violence [~~an individual using physical force or the threat of physical force, who resides in the same household with a victim of family violence as defined in Paragraph (A) of this subdivision~~].

SECTION 4. Chapter 51, Human Resources Code, is amended by adding Section 51.0021 to read as follows:

Sec. 51.0021. FAMILY VIOLENCE SERVICES PLAN. (a) The department shall develop and maintain a plan for delivering family violence services in this state.

(b) In developing the plan under this section, the department shall consider the geographic distribution of services and the need for services, including the need for increasing services for underserved populations.

SECTION 5. Section 51.003, Human Resources Code, is amended to read as follows:

Sec. 51.003. CONTRACTS. (a) The department [~~Texas Department of Human Services~~] shall contract for services with family violence [~~shelter~~] centers with consideration given to the plan for family violence services under Section 51.0021 [~~geographic distribution and need~~]. These contracts are to expand existing family violence [~~shelter~~] center services and may not result in reducing financial support a family violence [~~shelter~~] center receives from another source. The contracts shall not provide for more than 75 percent of the cost of the family violence [~~shelter~~] center program. The department shall develop a declining scale of state financial support for family violence [~~shelter~~] centers, declining over a six-year period from the initiation of each individual contract, with no more than 50 percent of a family violence [~~shelter~~] center program's funding to be provided by the state after the sixth year. The balance each year shall be provided from other sources. The department may adopt rules which will allow exceptions to the above scale in individual instances when a family violence [~~shelter~~] center shall demonstrate that exigent circumstances require such a waiver.

(b) The department shall contract statewide for activities that support and advance the work of family violence [~~shelter~~] centers. Activities contracted for under this subsection [~~A contract~~] must include [~~require~~] the provision of technical assistance and training for family violence [~~shelter~~] centers. The department may contract for [~~may require~~] the provision of public education, consultation to the department, research, evaluation, and liaison and training for other

professionals who work with victims of family violence, including professionals in the criminal justice, medical, and social services fields, and for community or civic groups.

(c) The department shall award all contracts made under Subsection (b) through a competitive bidding process unless that process would not be cost-effective.

SECTION 6. Section 51.004, Human Resources Code, is amended to read as follows:

Sec. 51.004. CONTRACT BIDS. (a) To be eligible for a contract under Section 51.003(a) ~~[of this code]~~, a family violence shelter center ~~[public or private nonprofit organization]~~ must:

(1) provide ~~[operate a family violence shelter center that provides]~~ temporary lodging and direct delivery of ~~[social]~~ services for adults and their dependents;

(2) [children who have left or have been removed from the family home because of family violence. The family violence shelter center must] have been in actual operation offering shelter services 24 hours a day with a capacity for not less than five persons for at least one year ~~[nine months]~~ before the date on which ~~[that]~~ the contract is awarded;

(3) demonstrate that the center, through the services it provides, is addressing a need in the community consistent with the plan for family violence services under Section 51.0021; and

(4) submit a ~~[- The]~~ contract application ~~[must be submitted]~~ on forms prescribed by the department.

(b) To be eligible for a contract under Section 51.003(a), a family violence nonresidential center must:

(1) provide, as its primary purpose, direct delivery of services to adult victims of family violence;

(2) demonstrate a system of referring victims of family violence to at least one

family violence shelter center or other safe temporary lodging;

(3) have been operating and providing comprehensive services, including the services described by Section 51.005(b)(3), to victims of family violence for at least one year before the date on which the contract is awarded;

(4) demonstrate that the center, through the services it provides, is addressing a need in the community consistent with the plan for family violence services under Section 51.0021; and

(5) submit a contract application on forms prescribed by the department.

(c) The department shall consider the following factors in awarding [the] contracts under Section 51.003(a):

(1) the family violence [shelter] center's eligibility for and use of funds from the federal government, philanthropic organizations, and voluntary sources;

(2) community support for the family violence [shelter] center, as evidenced by financial contributions from civic organizations, local governments, and individuals;

(3) evidence that the family violence [shelter] center provides services that encourage self-sufficiency [rehabilitation] and effectively uses [utilizes] community resources;

(4) evidence of [the endorsement and] involvement with [of] local law enforcement officials; and

(5) support for the family violence [shelter] center through volunteer work, especially volunteer effort by persons who have been victims of family violence.

(d) [(c)] The department shall use a noncompetitive procurement procedure if the department determines that there is no competition between eligible family violence [shelter] centers for a service area. If the department determines that there is competition between eligible family violence [shelter] centers for a service area, the department shall award a contract through

a competitive procurement procedure ~~[based on the factors in Subsection (b) of this section]~~.

SECTION 7. Section 51.005, Human Resources Code, is amended to read as follows:

Sec. 51.005. CONTRACT SPECIFICATIONS. (a) The department shall contract only with family violence ~~[shelter]~~ centers that fulfill the requirements of this chapter.

(b) The contracts shall require the persons operating a family violence ~~[shelter]~~ center to:

(1) make a quarterly and an annual financial report on a form prescribed by the department;

(2) cooperate with inspections the department makes to ensure services standards and fiscal responsibility; and

(3) provide, as its primary purpose, services to victims of family violence that include ~~[as a minimum access to the following]~~:

(A) 24-hour-a-day shelter, except that a family violence nonresidential center may provide access to a 24-hour-a-day shelter;

(B) a 24-hour-a-day crisis [call] hotline, except that a family violence nonresidential center may provide access to a 24-hour-a-day crisis hotline operated by another organization located in the nonresidential center's service area ~~[available 24 hours a day]~~;

(C) access to emergency medical care;

(D) intervention [counseling] services, including safety planning, understanding and support, information, education, referrals, and other resource assistance;

(E) access to emergency transportation;

(F) legal assistance in the civil and criminal justice systems, including:

(i) identifying individual needs, legal rights, and options; and

(ii) providing support and accompaniment in pursuing those

options;

- (G) information about educational arrangements for children;
- (H) information about training for and seeking employment;
- (I) cooperation with criminal justice officials;
- (J) community education;
- (K) a referral system to existing community services; and
- (L) a volunteer recruitment and training program.

(c) The contracts may require the persons operating a family violence [~~shelter~~] center to use intake and case study forms. Forms required shall be developed by the department with consultation as outlined in Section 51.008 [~~of this subtitle~~].

SECTION 8. Section 51.006, Human Resources Code, is amended to read as follows:

Sec. 51.006. REPORT. Not later than November 1 of each even-numbered year, the department shall publish a report that summarizes reports from family violence [~~shelter~~] centers under contract with the department and that analyzes the effectiveness of the contracts authorized by this chapter. The reports must include information on the expenditure of funds authorized under this chapter, the services provided, the number of persons for whom a service was provided, and any other information relating to the provision of family violence services. The report may be combined with the report required by Section 21.011. Copies of the report shall be submitted to the governor, the lieutenant governor, the speaker of the house of representatives, the Legislative Budget Board, and the standing committees of the senate and house of representatives having primary jurisdiction over the department.

SECTION 9. Section 51.007, Human Resources Code, is amended to read as follows:

Sec. 51.007. CONFIDENTIALITY. The department may not disclose any information gained through reports, collected case data, or inspections that would identify a particular center or a person working at or receiving services at a family violence [~~shelter~~] center.

SECTION 10. Chapter 51, Human Resources Code, is amended by adding Section 51.012 to read as follows:

Sec. 51.012. COORDINATION OF SERVICES. The department and the Department of Protective and Regulatory Services shall coordinate the provision of violence prevention services for children.

SECTION 11. The Texas Department of Human Services shall develop the plan for delivering family violence services required by Section 51.0021, Human Resources Code, as added by this Act, not later than January 1, 2002.

SECTION 12. Sections 51.003, 51.004, and 51.005, Human Resources Code, as amended by this Act, apply only to a contract entered into on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by the law in effect on the date the contract was entered into, and the former law is continued in effect for that purpose.

SECTION 13. This Act takes effect September 1, 2000.

Appendix F

_____ Draft Legislation Regarding Federal Developments _____

Recommendation 45

A BILL TO BE ENTITLED

AN ACT

relating to ensuring an appropriate care setting for a person with a disability.

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

SECTION 1. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0244 to read as follows:

Sec. 531.0244. ENSURING APPROPRIATE CARE SETTING FOR PERSON WITH DISABILITY. (a) The commission and appropriate health and human services agencies shall implement a 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 person's home community.

(b) The plan required by Subsection (a) must require appropriate health and human services agencies to:

(1) timely and appropriately transfer a person with a disability from an institution to an appropriate setting in the person's home community; and

(2) prevent the unnecessary placement in an institution of a person with a disability who is living in the person's home community but is in imminent risk of requiring placement in an institution because of a lack of community services.

(c) Not later than December 1 of each even-numbered year, the 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.

SECTION 2. This Act takes effect immediately.

Recommendation 47

A BILL TO BE ENTITLED

AN ACT

relating to sanctions imposed on recipients of temporary assistance for needy families for failure to provide certain information.

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

SECTION 1. Section 31.0032, Human Resources Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except as provided by Section 231.115, Family Code, [~~as added by Chapter 911, Acts of the 75th Legislature, Regular Session, 1997,~~] if after an investigation the department or the Title IV-D agency determines that a person is not complying with a requirement of the responsibility agreement required under Section 31.0031, the department immediately shall apply appropriate sanctions or penalties regarding the assistance provided to or for that person under this chapter.

(d) The department's rules for the imposition of sanctions or penalties on a person for whom the Title IV-D agency has made a noncompliance determination under Section 231.115, Family Code, must provide for the deduction of not less than 25 percent of the amount of assistance that would otherwise be provided to the person's family if the family consists of:

(1) at least six persons if the family is a two-parent family; or

(2) at least seven persons if the family is a single-parent family.

SECTION 2. This Act takes effect September 1, 2001, and applies only to a sanction or penalty imposed for a noncompliance determination received by the Texas Department of Human

Services on or after that date. A noncompliance determination received by the department before the effective date of this Act is governed by the law in effect on the date the determination was received, and the former law is continued in effect for that purpose.

Recommendation 48

A BILL TO BE ENTITLED

AN ACT

relating to applying penalties to recipients of financial and nutritional assistance for certain drug- and alcohol-related convictions.

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

SECTION 1. Subchapter A, Chapter 31, Human Resources Code, is amended by adding Sections 31.00321 and 31.00322 to read as follows:

Sec. 31.00321. PENALTIES RESULTING FROM CERTAIN DRUG- AND ALCOHOL-RELATED MISDEMEANOR CONVICTIONS. The department shall reduce the amount of financial assistance provided to a person by \$25 each month for a period of six months if the person is convicted of or receives deferred adjudication for an offense under federal law or the law of this state or any other state that at the time of the conviction:

(1) is classified as a misdemeanor by the jurisdiction involved; and

(2) has as an element:

(A) the possession, use, or distribution of a controlled substance, as defined in 21 U.S.C. Section 802; or

(B) the possession, use, or distribution of alcohol.

Sec. 31.00322. REINSTATEMENT OF FINANCIAL AND NUTRITIONAL ASSISTANCE FOLLOWING CERTAIN DRUG-RELATED FELONY CONVICTIONS. (a) Notwithstanding 21 U.S.C. Section 862a(a) and except as provided by Subsection (b), a person who is convicted of an offense under federal law or the law of this state or any other state that, at the time of the conviction, is classified as a felony by the jurisdiction involved and has as an

element the possession or use of a controlled substance, as defined in 21 U.S.C. Section 802, but does not have as an element the distribution of a controlled substance, is eligible for financial assistance under this chapter and nutritional assistance under Chapter 33, Human Resources Code, if the person:

(1) has completed any sentence of confinement or imprisonment imposed by a court in connection with the conviction;

(2) is in compliance with the conditions of any parole or community supervision;
and

(3) has completed or is participating in a substance abuse rehabilitation, counseling, or support program.

(b) The department by rule may limit the number of times a person's eligibility for financial assistance and nutritional assistance may be reinstated under this section following a conviction for an offense described by Subsection (a).

SECTION 2. (a) Sections 31.00321 and 31.00322, Human Resources Code, as added by this Act, apply only to an offense committed on or after the effective date of this Act by a person who receives financial assistance under Chapter 31, Human Resources Code, or nutritional assistance under Chapter 33, Human Resources Code, on or after the effective date of this Act, regardless of the date on which eligibility for the financial assistance or nutritional assistance was determined.

(b) An offense committed before the effective date of this Act is governed by the law, including any applicable rules, in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 3. If before implementing any provision of this Act a state agency determines

that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 4. This Act takes effect April 1, 2002.

Recommendation 49

A BILL TO BE ENTITLED

AN ACT

relating to employment and work activity requirements for certain recipients of TANF benefits.

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

SECTION 1. Section 31.0032(a), Human Resources Code, is amended to read as follows:

(a) Except as provided by Section 231.115, Family Code, [~~as added by Chapter 911, Acts of the 75th Legislature, Regular Session, 1997,~~] if after an investigation the department or the Title IV-D agency determines that a person is not complying with a requirement of the responsibility agreement required under Section 31.0031 or is not complying with Section 31.012(b), the department immediately shall apply appropriate sanctions or penalties regarding the assistance provided to or for that person under this chapter.

SECTION 2. Section 31.0034, Human Resources Code, is amended to read as follows:

Sec. 31.0034. ANNUAL REPORT. The department shall prepare and submit an annual report to the legislature that contains statistical information regarding persons who are applying for or receiving financial assistance or services under this chapter, including the number of persons receiving assistance, the type of assistance those persons are receiving, and the length of time those persons have been receiving the assistance. The report also must contain information on:

- (1) the number of persons to whom sanctions and time limits apply;
- (2) the number of persons under each time limit category;
- (3) the number of persons who are exempt from participation under Section 31.012(d) [~~31.012(e)~~];
- (4) the number of persons who were receiving financial assistance under this chapter

but are no longer eligible to receive that assistance because they failed to comply with the requirements prescribed by Section 31.0031;

(5) the number of persons who are no longer eligible to receive financial assistance or transitional benefits under this chapter because:

(A) the person's household income has increased due to employment; or

(B) the person has exhausted the person's benefits under this chapter; and

(6) the number of persons receiving child care, job training, or other support services designed to assist the transition to self-sufficiency.

SECTION 3. Section 31.0035(b), Human Resources Code, is amended to read as follows:

(b) Except as provided by Section 31.012(d) [~~31.012(e)~~], the department may provide the child-care services only until the earlier of:

(1) the end of the applicable period prescribed by Section 31.0065 for the provision of transitional benefits; or

(2) the first anniversary of the date on which the person becomes ineligible for financial assistance because of increased household income.

SECTION 4. Section 31.0065(d), Human Resources Code, is amended to read as follows:

(d) The computation of time limits under Subsection (b) begins when the adult or teen parent recipient receives notification under Section 31.012(c)(2) [~~31.012(b)~~] of the availability of an opening in and eligibility for the job opportunity and basic skills (JOBS) program Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682), or a successor program.

SECTION 5. Section 31.012, Human Resources Code, is amended to read as follows:

Sec. 31.012. MANDATORY WORK OR PARTICIPATION IN EMPLOYMENT ACTIVITIES [~~Through the Job Opportunities and Basic Skills Program~~]. (a) The department shall require that, during any one-month period in which a parent or other caretaker of a dependent child

~~[an adult]~~ is receiving financial assistance under this chapter, the parent or caretaker ~~[adult]~~ shall during that period:

(1) work not less than 30 hours a week; or

(2) participate, in accordance with department rules, ~~[for not less than 20 hours a week]~~ in an employment activity established in accordance with federal law under the job opportunities and basic skills (JOBS) training program under Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682), or a successor program.

(b) The department shall require a parent or the caretaker of a dependent child to participate in work or an employment activity not later than the earlier of the date on which the department determines the person is ready to participate or the date on which the person has received financial assistance for a cumulative total of 24 months. If the department determines, independently or after a hearing under Section 31.0033, that the person's failure or refusal to participate in work or an employment activity results from a significant or continuing barrier to employment that the person has been unable to overcome, the department may not apply a penalty or sanction under Section 31.0032 before the 180th day after the deadline prescribed for participation by this subsection.

(c) The department by rule shall:

(1) define what constitutes a significant and continuing barrier to a person's employment for purposes of this section; and

(2) establish criteria for good cause noncompliance and for notification procedures regarding participation in work or employment activities under this section.

(d) ~~[e)]~~ A person who is the caretaker of a physically or mentally disabled child who requires the caretaker's presence is not required to participate in a program under this section. Effective January 1, 2000, a single person who is the caretaker of a child is not required to participate in a program under this section until the caretaker's youngest child at the time the caretaker first

became eligible for assistance reaches the age of three. Effective September 1, 2000, a single person who is the caretaker of a child is exempt until the caretaker's youngest child at the time the caretaker first became eligible for assistance reaches the age of two. Effective September 1, 2001, a single person who is the caretaker of a child is exempt until the caretaker's youngest child at the time the caretaker first became eligible for assistance reaches the age of one. Notwithstanding Sections 31.0035(b) and 32.0255(b), the department shall provide to a person who is exempt under this subsection and who voluntarily participates in a program under Subsection (a)(2) six months of transitional benefits in addition to the applicable limit prescribed by Section 31.0065.

(e) [(d)] A state program operated under this section shall be administered by the division of workforce development of the Texas Workforce Commission when the program is transferred to that commission. The division of workforce development shall design employment activities established under Subsection (a)(2) in a manner in which a person receiving financial assistance who has a significant and continuing barrier to employment is provided services and assistance to enable the person to overcome that barrier.

(f) [(e)] The department shall allow a person who is participating in work or employment activities under this section to complete those activities if the person becomes ineligible to receive financial assistance under this chapter because the person receives child support in an amount that makes the person ineligible for that assistance. The department shall provide to the person necessary child care services until the date on which the person completes work or employment activities under this section.

(g) [(f)] In this section, "caretaker of a child" means the parent or relative of a dependent child with whom the child primarily resides, including a parent or relative who has been appointed under a court order as sole managing conservator or joint managing conservator of the child.

SECTION 6. Sections 31.0125(a) and (b), Human Resources Code, are amended to read as

follows:

(a) Subject to the availability of appropriations for client support services, the department by rule shall develop and implement a volunteer work experience program in accordance with federal law as a part of the job opportunities and basic skills (JOBS) training program under Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682), or a successor program.

(b) In adopting rules under this section, the department shall:

(1) establish the criteria for determining which recipients of financial assistance under this chapter who are eligible to participate in the JOBS training program or a successor program will be required to participate in the volunteer work experience program;

(2) ensure that participation in the volunteer work experience program will not result in the displacement of an employee from an existing position or the elimination of a vacant position;

(3) ensure that the volunteer work experience program will not impair an existing service contract or collective bargaining agreement;

(4) ensure that an entity or agency that enters into an agreement with the department under this section provides to a participant, without paying the participant a salary, job training and work experience in certain areas within the entity or agency;

(5) require that each entity or agency that enters into a cooperative agreement with the department under this section identify positions within the entity or agency that will enable a participant to gain the skills and experience necessary to be able to compete in the labor market for comparable positions; [~~and~~]

(6) amend the service delivery system of the JOBS training program or a successor program to require a participant in the JOBS training program or a successor program who is unemployed after completing the [JOBS] readiness activities outlined in the participant's employability plan, including job search, to participate in the volunteer work experience program;

and

(7) ensure that the volunteer work experience program is implemented in a manner in which a participant who has a significant and continuing barrier to employment is provided services and assistance to enable the participant to overcome that barrier.

SECTION 7. Sections 31.0126(b) and (c), Human Resources Code, are amended to read as follows:

(b) The department shall develop the programs prescribed by this section in accordance with federal law as a part of the job opportunities and basic skills (JOBS) training program under Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682), or a successor program.

(c) In adopting rules governing a program prescribed by this section, the department shall:

(1) establish the criteria for determining which recipients who are eligible to participate in the JOBS training program or a successor program may be required to participate in a particular program;

(2) ensure that a recipient who is incapable of participating in a particular program is not required to participate in that program; ~~and~~

(3) provide technical assistance to local workforce development boards; and

(4) ensure that a particular program is implemented in a manner in which a participant who has a significant and continuing barrier to employment is provided services and assistance to enable the participant to overcome that barrier.

SECTION 8. Section 32.0255(b), Human Resources Code, is amended to read as follows:

(b) Except as provided by Section 31.012(d) [~~31.012(e)~~], the state may provide the medical assistance only until the earlier of:

(1) the end of the applicable period prescribed by Section 31.0065 for the provision of transitional benefits; or

(2) the first anniversary of the date on which the person becomes ineligible for financial assistance because of increased household income.

SECTION 9. If before implementing any provision of this Act, a state agency determines that a waiver or authorization from a federal agency is necessary for implementation, the agency shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 10. This Act takes effect April 1, 2002, and applies only to a person who receives financial assistance under Chapter 31, Human Resources Code, on or after that date, regardless of the date on which eligibility for that assistance was determined.

Recommendation 50

A BILL TO BE ENTITLED

AN ACT

relating to the work or employment activities required under the temporary assistance for needy families program.

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

SECTION 1. Subchapter D, Chapter 301, Labor Code, is amended by adding Section 301.0675 to read as follows:

Sec. 301.0675. WORK OR EMPLOYMENT ACTIVITIES FOR RECIPIENTS OF TEMPORARY ASSISTANCE FOR NEEDY FAMILIES. The work or employment activities in which a person must participate to comply with Section 31.012, Human Resources Code, include:

- (1) unsubsidized employment;
- (2) subsidized private or public sector employment;
- (3) work experience, including work associated with the refurbishing of publicly assisted housing;
- (4) on-the-job training;
- (5) job search and job readiness assistance;
- (6) participation in a community service program;
- (7) vocational education training;
- (8) secondary and postsecondary education;
- (9) training in job skills that are directly related to employment;
- (10) education leading to a high school equivalency certificate or directly related to employment if the person does not have a high school diploma or high school equivalency

certificate:

(11) the provision of child-care services to a person participating in a community service program; and

(12) another activity described by Section 31.0125, 31.0126, or 31.0135, Human Resources Code.

SECTION 2. This Act takes effect immediately.

Recommendation 52

A BILL TO BE ENTITLED

AN ACT

relating to authorizing transitional support services to former recipients of TANF benefits.

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

SECTION 1. Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.00351 to read as follows:

Sec. 31.00351. TRANSITIONAL SUPPORT SERVICES. (a) In this section, "support services" includes:

(1) transportation assistance;

(2) emergency assistance;

(3) job coaches;

(4) education;

(5) housing-related assistance;

(6) assistance in accessing child-care services; and

(7) other appropriate services designed to support a successful transition from public assistance to self-support.

(b) The department and Texas Workforce Commission shall provide transitional support services to a person who was receiving financial assistance but is no longer eligible to receive the assistance because:

(1) the person's household income has increased; or

(2) the person has exhausted the person's benefits under Section 31.0065.

(c) Each agency shall provide the support services that the agency determines are necessary

and that are appropriate for the agency to provide. Each agency shall provide the support services in accordance with agency rules and federal law.

(d) The agencies may provide the support services only until the earlier of:

(1) the end of the applicable period prescribed by Section 31.0065 for the provision of transitional benefits; or

(2) the first anniversary of the date on which the person becomes ineligible for financial assistance because of increased household income.

SECTION 2. Section 31.012(c), Human Resources Code, is amended to read as follows:

(c) A person who is the caretaker of a physically or mentally disabled child who requires the caretaker's presence is not required to participate in a program under this section. Effective January 1, 2000, a single person who is the caretaker of a child is not required to participate in a program under this section until the caretaker's youngest child at the time the caretaker first became eligible for assistance reaches the age of three. Effective September 1, 2000, a single person who is the caretaker of a child is exempt until the caretaker's youngest child at the time the caretaker first became eligible for assistance reaches the age of two. Effective September 1, 2001, a single person who is the caretaker of a child is exempt until the caretaker's youngest child at the time the caretaker first became eligible for assistance reaches the age of one. Notwithstanding Sections 31.0035(b) and 32.0255(b), the department shall provide to a person who is exempt under this subsection and who voluntarily participates in a program under Subsection (a)(2) six months of transitional benefits other than transitional support services in addition to the applicable limit prescribed by Section 31.0065.

SECTION 3. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation, the agency shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 4. This Act takes effect September 1, 2001, and applies only to a person who receives financial assistance under Chapter 31, Human Resources Code, on or after that date, regardless of the date on which eligibility for that assistance was determined.

Appendix G

Draft Legislation Regarding Monitoring the Implementation of Legislation,

Funding and Child Abuse Prevention

Recommendation 54

A BILL TO BE ENTITLED

AN ACT

relating to certain information submitted by the Health and Human Services Commission to the legislative committees that have jurisdiction over health and human services issues.

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

SECTION 1. Section 531.171(b), Government Code, is amended to read as follows:

(b) The commission shall provide copies of all required reports to the committees and shall provide the committees with copies of proposed rules before the rules are published in the Texas Register and advance copies of waiver application submissions and amendments or changes to the state plan. At the request of a committee or the commissioner, a health and human services agency shall provide other information to the committee, including information relating to the health and human services system, and shall report on agency progress in implementing statutory directives identified by the committee and the directives of the commission.

SECTION 2. This Act takes effect immediately.

Recommendation 55

A BILL TO BE ENTITLED

AN ACT

relating to the provision of Medicaid to certain persons making the transition from foster care to independent living.

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

SECTION 1. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0247 to read as follows:

Sec. 32.0247. MEDICAL ASSISTANCE FOR CERTAIN PERSONS MAKING TRANSITION FROM FOSTER CARE TO INDEPENDENT LIVING. (a) In this section, "independent foster care adolescent" has the meaning assigned by 42 U.S.C. Section 1396d(v)(1).

(b) The department shall provide medical assistance, in accordance with department rules, to an independent foster care adolescent who:

(1) is not otherwise eligible for medical assistance; and

(2) is not covered by a health benefits plan offering adequate benefits, as determined by the Health and Human Services Commission.

(c) The department may not consider a person's income, assets, or resources in determining whether the person is eligible for medical assistance under this section.

SECTION 2. As soon as possible after the effective date of this Act, the Health and Human Services Commission shall submit an amendment to the state's Medicaid plan to include the provision of medical assistance to independent foster care adolescents as required by Section 32.0247, Human Resources Code, as added by this Act.

SECTION 3. This Act takes effect September 1, 2001.

Recommendation 56

A BILL TO BE ENTITLED

AN ACT

relating to the amount of the adoption subsidy for certain children.

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

SECTION 1. Section 162.304(b), Family Code, is amended to read as follows:

(b) The adoption of a child may be subsidized by the department. The need for [~~and amount of~~] the subsidy shall be determined by the department under its rules. If the department determines that there is a need for a subsidy, the amount of the subsidy shall be:

(1) equal to the foster care reimbursement rate for a child who, according to department rules, is described as:

(A) being adequate in all developmental and social areas; or

(B) having only occasional problems functioning in one or more areas; and

(2) 80 percent of the foster care reimbursement rate for a child who, according to department rules, is described as having:

(A) frequent or repetitive minor problems in one or more areas of functioning;

or

(B) substantial problems.

SECTION 2. This Act takes effect September 1, 2001.

Recommendation 57

A BILL TO BE ENTITLED

AN ACT

relating to unannounced inspections of licensed child care facilities or registered family homes designated as high risk by the Department of Protective and Regulatory Services.

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

SECTION 1. Section 42.044(b), Human Resources Code, is amended to read as follows:

(b) The department shall inspect all licensed or certified facilities at least once a year and may inspect other facilities or registered family homes as necessary. The department shall investigate a listed family home when the department receives a complaint of abuse or neglect of a child, as defined by Section 261.001, Family Code. At least one of the annual visits must be unannounced and all may be unannounced. If the department determines that a licensed facility or registered family home presents a high risk to children because of noncompliance with department standards, the department shall conduct an unannounced inspection of:

(1) the licensed facility at least every five months until the facility is no longer designated by the department as a high-risk facility; and

(2) the registered family home at least every 12 months until the home is no longer designated by the department as a high-risk home.

SECTION 2. This Act takes effect September 1, 2001.

Recommendation 58

A BILL TO BE ENTITLED

AN ACT

relating to requiring employees of drop-in child-care facilities to comply with statutory minimum training standards.

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

SECTION 1. Section 42.002, Human Resources Code, is amended by adding Subdivision (18) to read as follows:

(18) "Drop-in care center" means a child-care facility that provides drop-in care for children under 14 years of age for less than 24 hours a day. The term does not include a child-care facility that provides regular or extended care for a child.

SECTION 2. Sections 42.0421(a) and (b), Human Resources Code, are amended to read as follows:

(a) The minimum training standards prescribed by the department under Section 42.042(p) for an employee of a day-care center, drop-in care center, or group day-care home must include:

(1) eight hours of initial training for an employee of a day-care center who has no previous training or employment experience in a regulated child-care facility, to be completed before the employee is given responsibility for a group of children;

(2) 15 hours of annual training for each employee of a day-care center, drop-in care center, or group day-care home, excluding the director; and

(3) 20 hours of annual training for each director of a day-care center, drop-in care center, or group day-care home.

(b) The minimum training standards prescribed by the department under Section 42.042(p) must require an employee of a licensed day-care center, drop-in care center, or group day-care home who provides care for children younger than 24 months of age to receive special training regarding the care of those children. The special training must be included as a component of the initial training required by Subsection (a)(1) and as a one-hour component of the annual training required by Subsections (a)(2) and (a)(3). The special training must include information on:

- (1) recognizing and preventing shaken baby syndrome;
- (2) preventing sudden infant death syndrome; and
- (3) understanding early childhood brain development.

SECTION 3. This Act takes effect January 1, 2002.

Recommendation 59

A BILL TO BE ENTITLED

AN ACT

relating to a requirement that child-care facilities post certain signs.

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

SECTION 1. Section 42.055(a), Human Resources Code, is amended to read as follows:

(a) Each child-care facility shall post in a location that is conspicuous to all employees and customers a sign that includes:

(1) a description of the provisions of the Family Code relating to the duty to report child abuse or neglect; ~~and~~

(2) a description of the penalties for violating the reporting provisions of the Family Code; and

(3) a brief description of at least two phenomena that adversely affect children's well-being, such as sudden infant death syndrome or shaken-baby syndrome, and methods for preventing those phenomena.

SECTION 2. This Act takes effect September 1, 2001.

Recommendation 60

A BILL TO BE ENTITLED

AN ACT

relating to access to criminal history record information by the Department of Protective and Regulatory Services.

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

SECTION 1. Sections 411.114(a)(1)-(4) and (7), Government Code, are amended to read as follows:

(a)(1) In this subsection:

(A) "Child," [the terms "child,"] "child-care facility," and "family home" have the meanings assigned by Section 42.002, Human Resources Code.

(B) "Elderly person" has the meaning assigned by Section 48.002, Human Resources Code.

(C) "Person with a disability" means a disabled person as defined by Section 48.002, Human Resources Code.

(D) "Ward" has the meaning assigned by Section 601, Texas Probate Code.

(2) The Department of Protective and Regulatory Services shall obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A) an applicant for a license, registration, [or] certification, or listing under Chapter 42, Human Resources Code, or a person who registers with or has been issued a certificate to operate under accreditation by the Department of Protective and Regulatory Services under Subchapter E, Chapter 42, Human Resources Code;

(B) an owner or employee of or an applicant for employment by a child-care facility or family home licensed, registered, or certified under Chapter 42, Human Resources Code, or by a child-care facility or child-placing agency that is seeking to register with or has been issued a certificate to operate under accreditation by the Department of Protective and Regulatory Services under Subchapter E, Chapter 42, Human Resources Code;

(C) each person 14 years of age or older who will be regularly working or staying in a facility or family home while children are being provided care, other than ~~[a resident of a registered family home, but not]~~ a child in the home's care or a parent of the child;

(D) an applicant for a position with the Department of Protective and Regulatory Services, the duties of which include ~~[direct]~~ delivery of protective services to children, elderly persons, or persons with a disability;

(E) an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with a business entity or person that contracts with the Department of Protective and Regulatory Services to provide direct delivery of protective services to children, elderly persons, or persons with a disability, if the person's duties or responsibilities include direct contact with children, elderly persons, or persons with a disability;

(F) a registered volunteer ~~[or applicant volunteer]~~ with the Department of Protective and Regulatory Services;

(G) a person providing or applying to provide in-home, adoptive, or foster care for children in the care of the Department of Protective and Regulatory Services and other persons ~~[adults]~~ living ~~[with that person]~~ in the residence in which the child will reside;

(H) a Department of Protective and Regulatory Services employee who is engaged in the direct delivery of protective services to children, elderly persons, or persons with a disability;

(I) a person who is the subject of a report the Department of Protective and Regulatory Services [~~department~~] receives alleging that the person has abused or neglected a child or abused, neglected, or exploited[;] an elderly person[;] or a person with a disability, provided that report has proven to have merit, and other persons living with that person in the residence in which the alleged victim resides;

(J) [~~a relative providing or applying to provide in-home care for a child in the care of the Department of Protective and Regulatory Services and other adults living with that relative in the residence in which the child will reside~~;

[~~(K)~~] a person providing child care for a child who is in the care of the Department of Protective and Regulatory Services and who is or will be receiving adoptive, foster, or in-home care;

(K) [~~(L)~~] through a contract with a nonprofit management center, an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with a nonprofit, tax-exempt organization that provides any service that involves the care of or access to children, elderly persons, or persons with a disability;

(L) [~~(M)~~] an operator of a child-care facility or child-placing agency that is seeking to register with or has been issued a certificate to operate under accreditation by the Department of Protective and Regulatory Services under Subchapter E, Chapter 42, Human Resources Code, subject to Section 42.105, Human Resources Code; or

(M) [~~(N)~~] a child-care administrator seeking accreditation as provided by Section 43.003, Human Resources Code.

(3) The Department of Protective and Regulatory Services is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A) a volunteer or applicant volunteer with a local affiliate in this state of Big Brothers/Big Sisters of America;

(B) a volunteer or applicant volunteer with the "I Have a Dream/Houston" program;

(C) a volunteer or applicant volunteer with an organization that provides court-appointed special advocates for abused or neglected children;

(D) a person providing, at the request of the child's parent, in-home care for a child who is the subject of a report alleging the child has been abused or neglected;

(E) a volunteer or applicant volunteer with a Texas chapter of the Make-a-Wish Foundation of America; ~~or~~

(F) a person providing, at the request of the child's parent, in-home care for a child only if the person gives written consent to the release and disclosure of the information;

(G) a child who is related to the caretaker, as determined under Section 42.002, Human Resources Code, and who resides in or is present in a child-care facility, other than a child described by Subdivision (2)(C);

(H) an applicant for a position with the Department of Protective and Regulatory Services, other than a position described by Subdivision (2)(D), regardless of the duties of the position;

(I) a volunteer or applicant volunteer with the Department of Protective and Regulatory Services, other than a registered volunteer, regardless of the duties to be performed;

(J) a person providing or applying to provide in-home, adoptive, or foster care for children to the extent necessary to comply with Subchapter B, Chapter 162, Family Code;

(K) a Department of Protective and Regulatory Services employee, other than an employee described by Subdivision (2)(H), regardless of the duties of the employee's position;

(L) a relative of a child in the care of the Department of Protective and Regulatory Services, to the extent necessary to comply with Section 162.007, Family Code;

(M) an employee under, or an applicant for employment under, a contract with the estate of a ward of the Department of Protective and Regulatory Services, if the duties of the position include delivery of services to the ward; or

(N) a friend or relative of a ward of the Department of Protective and Regulatory Services who seeks unsupervised visits with the ward away from the ward's placement.

(4) Subject to Section 411.087, the Department of Protective and Regulatory Services [department] shall:

(A) obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to a person described by Subdivision (2); and [or]

(B) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to a person described by Subdivision (2).

(7) The Department of Protective and Regulatory Services is not prohibited from releasing criminal history record information obtained under this subsection to:

(A) the person who is the subject of the criminal history record information;

(B) a child-care facility or family home listed in Subdivision (2) that employs or is considering employing the person who is the subject of the criminal history record information;

(C) a person or business entity described by Subdivision (2)(E) or (3) [~~Subsection (a)(2)(E)~~] who uses or intends to use the services of the volunteer or employs or is considering employing the person who is the subject of the criminal history record information; or

(D) an adult residing with a child, elderly person, or person with a disability

and the person who is the subject of the criminal history record information, if the Department of Protective and Regulatory Services determines that the release of information to the adult is necessary to ensure the safety or welfare of the child, elderly person, or person with a disability or the adult.

SECTION 2. Section 411.114(b), Government Code, is amended to read as follows:

(b) The failure or refusal to provide a complete set of fingerprints or a complete name on request constitutes good cause for dismissal or refusal to hire, as applicable, with regard to a volunteer of or an employee or applicant for permanent or temporary employment with the Department of Protective and Regulatory Services [~~department~~], or a facility, home, business, or other entity, if the volunteer position, employment, or potential employment involves direct interaction with or the opportunity to interact and associate with children.

SECTION 3. This Act takes effect September 1, 2001.

Recommendation 61

A BILL TO BE ENTITLED

AN ACT

relating to reports by health and human services agencies and institutions of higher education on the efforts to deliver health and human services to young Texans.

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

SECTION 1. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0244 to read as follows:

Sec. 531.0244. DELIVERY OF HEALTH AND HUMAN SERVICES TO YOUNG TEXANS. (a) In this section, "governing board" and "institution of higher education" have the meanings assigned by Section 61.003, Education Code.

(b) The executive head of each health and human services agency and the president or chief administrative officer of each institution of higher education shall report annually to the governing body of that agency or the governing board of that institution on that agency's or institution's efforts to provide health and human services to children younger than four years of age, including the development of any new programs or the enhancement of existing programs. The agency or institution shall submit a copy of the report to the commission.

(c) The commission shall prepare and deliver a semiannual report to the governor, the lieutenant governor, the speaker of the house of representatives, the comptroller, the Legislative Budget Board, and appropriate legislative committees on the efforts of the health and human services agencies and institutions of higher education to provide health and human services to children younger than four years of age. The report may contain recommendations by the commission to better coordinate state agency and institution of higher education programs

relating to the delivery of health and human services to children younger than four years of age and may propose joint agency or institution collaborative programs.

(d) The commissioner shall adopt rules relating to the reports required by Subsection (b), including rules specifying when and in what manner a health and human services agency or institution of higher education must report and the information to be included in the report. Each agency or institution shall follow the rules adopted by the commissioner under this section. The commissioner may request the assistance of the Texas Higher Education Coordinating Board in developing rules relating to reports required of an institution of higher education.

SECTION 2. Not later than December 1, 2002, the Health and Human Services Commission shall prepare and deliver the first semiannual report to the governor, the lieutenant governor, the speaker of the house of representatives, the comptroller, the Legislative Budget Board, and appropriate legislative committees on the efforts of the health and human services agencies and institutions of higher education to provide health and human services to children younger than four years of age, as required by Section 531.0244(c), Government Code, as added by this Act.

Recommendation 62

A BILL TO BE ENTITLED

AN ACT

relating to a statewide education program to prevent infant mortality.

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

SECTION 1. Subchapter C, Chapter 40, Human Resources Code, is amended by renumbering Section 40.0523 as Section 40.0524 and adding a new Section 40.0523 to read as follows:

Sec. 40.0523. INFANT MORTALITY PREVENTION EDUCATION PROGRAM. (a) The department and the Children's Trust Fund of Texas Council jointly shall develop and implement a statewide education program designed to prevent infant mortality. The department and the council shall develop and mutually agree to a memorandum of understanding to clearly define the responsibilities of the department and the council under this section.

(b) In developing and implementing the program, the department and the council shall request the assistance of individuals, governmental entities, private organizations, and other entities with specific knowledge of infant mortality prevention.

(c) The board and the council shall adopt rules to implement this section.

Sec. 40.0524 [~~40.0523~~]. MULTIDISCIPLINARY TEAMS. (a) To the extent possible, the department shall establish multidisciplinary teams to provide services relating to a report of child abuse or neglect. A multidisciplinary team shall include professionals in parent education and in each professional discipline necessary to provide comprehensive medical and psychological services to a child who is the subject of a report and to members of the child's household.

(b) Members of a multidisciplinary team may exchange information relating to a report of child abuse or neglect as necessary to facilitate a thorough investigation of the report. The

department may adopt rules governing the exchange of information between team members.

(c) A multidisciplinary team established under this section shall coordinate services provided by the department to a child and to members of the child's household with services available from other sources, including public and private agencies in the community. The goal of the multidisciplinary team is to provide the greatest range of services possible without duplication of effort.

(d) The department shall establish a process by which members of a multidisciplinary team are involved in the department's development and implementation of procedures relating to coordination of the department's child abuse or neglect services with services provided by other public and private agencies.

SECTION 2. Section 40.061(a), Human Resources Code, is amended to read as follows:

(a) A department employee, a member of a multidisciplinary team established under Section 40.0524 [~~40.0523~~], or an authorized department volunteer who performs a departmental duty or responsibility 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.

SECTION 3. Section 74.006(c), Human Resources Code, is amended to read as follows:

(c) The council may transfer money contained in the trust fund to the operating fund at any time. However, during a fiscal year the council may not transfer more than the amount deposited to the credit of the fund from any source, including interest and the amount credited under Section 118.022, Local Government Code, during the preceding fiscal year. Money transferred to the operating fund that was originally deposited to the credit of the trust fund under Section 118.022, Local Government Code, may be used only for an infant mortality prevention education program developed and implemented under Section 40.0523 and child abuse and neglect prevention programs. The council may also transfer funds contained in the operating fund to the trust fund at

any time.

SECTION 4. (a) This Act takes effect September 1, 2001.

(b) The Texas Department of Protective and Regulatory Services and the Children's Trust Fund of Texas Council shall implement the statewide education program to prevent infant mortality on or before June 1, 2002.

Recommendation 63

A BILL TO BE ENTITLED

AN ACT

relating to a requirement that school district employees be provided information regarding recognition of child abuse and neglect.

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

SECTION 1. Section 38.004(a), Education Code, is amended to read as follows:

(a) The agency shall develop a policy governing the child abuse reports required by Chapter 261, Family Code, of school districts and their employees. The policy must provide for cooperation with law enforcement child abuse investigations without the consent of the child's parents if necessary, including investigations by the Department of Protective and Regulatory Services. The policy must also require that information regarding recognition of child abuse and neglect be provided to school district employees. Each school district shall adopt the policy.

SECTION 2. This Act takes effect immediately and applies beginning with the 2001-2002 school year.

Recommendation 64

A BILL TO BE ENTITLED

AN ACT

relating to development of a child abuse awareness and prevention program that may be included in public school health courses.

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

SECTION 1. Section 28.002, Education Code, is amended by adding Subsection (l) to read as follows:

(l) The State Board of Education, in consultation with the Department of Protective and Regulatory Services, shall develop a child abuse awareness and prevention program that a school district may use in the health curriculum under Subsection (a)(2)(B). The program must include the provision of information relating to the prevention of at-risk behaviors by students or other persons that could lead to the commission of child abuse by the students or other persons.

SECTION 2. This Act takes effect immediately and applies beginning with the 2001-2002 school year.



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June 23, 2000

The Honorable Judith Zaffirini, Chair
Senate Committee on Human Services
Room 420 Sam Houston Building
Austin, Texas 78701

Dear Chairman Zaffirini,

I applaud your staff and you for the excellent work and leadership you provided in handling the interim charges designated to us by Lieutenant Governor Perry. It is obvious that everyone on your staff put in a lot of work formulating the recommendations for each of these charges.

We have worked together for a long time, and I have never been shy about discussing my concerns with you. While I agree with many of the recommendations approved by the Senate Human Services Committee on June 14, 2000, I also have some concerns.

- ▶ **Funding for the recommendations:** Some of the recommendations I reviewed would seem to have fiscal notes, some rather sizable. I think we need to consider what the state will be able to afford next session, and prioritize accordingly.
- ▶ **Changes in welfare-to-work programs:** While I think the state could do a better job in providing more up-front assistance, I also think that in doing so, we need to develop a higher level of expectation for the individuals to whom we provide assistance. This includes holding them accountable if they choose not to participate.
- ▶ **Admissibility of DHS survey documents in civil litigation:** The wording in the proposal is broad, but I think that unless the Legislature takes an active role in limiting the admissibility of these documents, damage awards and liability insurance will continue to spiral out of control. I believe this will jeopardize the entire nursing home industry in the state.
- ▶ **Advance notification by the Health and Human Services Commissioner regarding waiver application submissions and state plan amendments:** While I believe that the Commissioner needs to work closely with these committees, I also feel that it is still part of the Executive Branch. As such, I think the current notification requirements are adequate. If the Commissioner is not doing what the Legislature expects, we both know the best way to address this type of behavior.

With these caveats, I support the report. If we need to discuss any of these issues further, please do not hesitate to call me.

Sincerely,

Chris Harris

cc: Lieutenant Governor Rick Perry
Members, Senate Human Services Committee

