HUMAN RESOURCES CODE

TITLE 11. AGING, COMMUNITY-BASED, AND LONG-TERM CARE SERVICES

CHAPTER 161. DEPARTMENT OF AGING AND DISABILITY SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 161.001. DEFINITIONS. In this chapter:

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

(2) "Commissioner" means the commissioner of aging and disability services.

(3) "Council" means the Aging and Disability Services Council.

(4) "Department" means the Department of Aging and Disability Services.

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

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.13A.

Text of section effective until April 01, 2025

Sec. 161.003. SUNSET PROVISION. Unless the commission is continued in existence as provided by Chapter 325, Government Code, after the review required by Section 531.004, Government Code, this chapter expires on the date the commission is abolished under that section.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.13A.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 3.08, eff. June 15, 2007.

Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 2.15, eff. July 10, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 2.21, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.440, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 4.06, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.108, eff. April 1, 2025.

Text of section effective on April 01, 2025

Sec. 161.003. SUNSET PROVISION. Unless the commission is continued in existence as provided by Chapter 325, Government Code, after the review required by Section 523.0003, Government Code, this chapter expires on the date the commission is abolished under that section.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.13A.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 3.08, eff. June 15, 2007.

Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 2.15, eff. July 10, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 2.21, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.440, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 4.06, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.108, eff. April 1, 2025.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

SUBCHAPTER C. PERSONNEL

Sec. 161.0515. ASSISTANT COMMISSIONER FOR STATE SUPPORTED LIVING CENTERS. (a) The commissioner shall employ an assistant commissioner for state supported living centers. The assistant commissioner must be selected based on education, training, experience, and demonstrated ability.

(b) The assistant commissioner reports directly to the commissioner.

(c) The assistant commissioner shall supervise the operation of the state supported living centers. As part of that

duty, the assistant commissioner shall:

(1) verify that quality health and medical services are being provided in state supported living centers;

(2) verify and certify employee qualifications for employees of a state supported living center; and

(3) work with the commissioner to create administrative guidelines for proper implementation of federal and state statutory law and judicial decisions.

(d) The assistant commissioner shall coordinate with the appropriate staff of the Department of State Health Services to ensure that the ICF-IID component of the Rio Grande State Center implements and enforces state law and rules that apply to the operation of state supported living centers.

(e) The assistant commissioner shall consult with the appropriate staff at the Department of State Health Services to ensure that an individual with a dual diagnosis of mental illness and an intellectual disability who is a resident of a state supported living center or the ICF-IID component of the Rio Grande State Center is provided with appropriate care and treatment.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 36, eff. June 11, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.444, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.445, eff. April 2, 2015.

Sec. 161.0541. MAINTENANCE OF MERIT SYSTEM. The merit system established as provided by Section 161.054 may be maintained in conjunction with other state agencies that are required by federal law to operate under a merit system.

Acts 1979, 66th Leg., p. 2338, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Transferred, redesignated and amended from Human Resources Code, Section 21.007 by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.006, eff. April 2, 2015.

Sec. 161.057. CRIMINAL BACKGROUND CHECKS. (a) In this section, "eligible person" means a person whose criminal history record information the department is entitled to obtain from the Department of Public Safety under Section 411.13861, Government Code.

(b) The department may obtain criminal history record information regarding an eligible person as provided by Section 411.13861, Government Code. Criminal history record information obtained under Section 411.13861 is subject to the restrictions and requirements of that section.

Added by Acts 2015, 84th Leg., R.S., Ch. 1209 (S.B. 1540), Sec. 4, eff. June 19, 2015.

SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

Sec. 161.071. GENERAL POWERS AND DUTIES OF DEPARTMENT. The department is responsible for administering human services programs for the aging and persons with disabilities, including:

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

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

(3) providing and coordinating programs and services for persons with disabilities, including programs for the treatment, rehabilitation, or benefit of persons with developmental disabilities or an intellectual disability;

(4) operating state facilities for the housing, treatment, rehabilitation, or benefit of persons with disabilities, including state supported living centers for persons with an intellectual disability;

(5) serving as the state unit on aging required by the federal Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and its subsequent amendments, including performing the general functions under Section 101A.052 to ensure:

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

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

(C) fostering of the state and community infrastructure and capacity to serve older residents of this state; and

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

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

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

(8) performing all licensing and enforcement activities related to intermediate care facilities for persons with an intellectual disability under Chapter 252, Health and Safety Code;

(9) performing all licensing and enforcement activities and functions related to home and community support services agencies under Chapter 142, Health and Safety Code; and

(10) serving as guardian of the person or estate, or both, for an incapacitated individual as provided by Subchapter E of this chapter and Title 3, Estates Code.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.13A.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.03, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.447, eff. April 2, 2015.

Text of section effective until April 01, 2025

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

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.13A.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.109, eff. April 1, 2025.

Text of section effective on April 01, 2025

Sec. 161.073. RULES. The executive commissioner may adopt rules reasonably necessary for the department to administer this chapter, consistent with the memorandum of understanding under Section 524.0101(a), Government Code, between the commissioner and the executive commissioner, as adopted by rule.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.13A.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.109, eff. April 1, 2025.

Sec. 161.074. COMPETITIVE GRANT PROGRAM. (a) The department shall establish a competitive grant program that promotes innovation in the delivery of aging and disability services and improves the quality of life for individuals receiving those services.

(b) A grant awarded by the department under the program shall be used to:

(1) test innovative practices in the provision of aging and disability services; or

(2) disseminate information regarding innovative practices being used to provide aging and disability services.

(c) The department shall request proposals for the award of a grant under the program. The department shall evaluate the

proposals and award a grant based on a proposal's academic soundness, quantifiable effectiveness, and potentially positive impact on the delivery of aging and disability services.

(d) A grant awarded under Subsection (b)(1) must be made to an institution of higher education working in cooperation with a private entity that has committed resources to the project described in the proposal.

(e) A grant recipient may use grant money received under this section only to pay for activities directly related to the purpose of the grant program as described by Subsection (b) and may not use grant money for fees or advertising.

(f) The department shall establish procedures to administer the grant program, including a procedure for the submission of a proposal and a procedure to be used by the department to evaluate a proposal.

(g) The department shall enter into a contract that includes performance requirements with each grant recipient. The department shall monitor and enforce the terms of the contract. The contract must authorize the department to recoup grant money from a grant recipient for failure of the grant recipient to comply with the terms of the contract.

(h) The department shall post on its website a summary of each grant awarded under this section.

(i) The legislature may appropriate money described by Sections 142.0174, 242.0695, 247.0458, and 252.069, Health and Safety Code, including unexpended and unobligated amounts collected during a previous state fiscal biennium, to fund the grant program authorized by this section.

Added by Acts 2005, 79th Leg., Ch. 786 (S.B. 52), Sec. 5, eff. September 1, 2005.

Sec. 161.075. IMMUNITY FOR AREA AGENCIES ON AGING AND AGENCY EMPLOYEES AND VOLUNTEERS. (a) In this section:

(1) "Area agency on aging" means an agency described by 42 U.S.C. Section 3002(6) and through which the department ensures the implementation of services and volunteer opportunities for older persons in this state as provided by Section

161.071(5)(A).

(2) "Texas nonprofit organization" means a nonprofit corporation:

(A) that is organized under the Texas Nonprofit Corporation Law as described by Section 1.008(d), Business Organizations Code; and

(B) the funding of which is managed by an organization that is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) of that code.

(3) "Volunteer" means a person who:

(A) renders services for or on behalf of an area agency on aging under the supervision of an area agency on aging employee; and

(B) does not receive compensation that exceeds the authorized expenses the person incurs in performing those services.

(b) An area agency on aging that conducts an election on behalf of a Texas nonprofit organization is not civilly or criminally liable for any act or omission, including an act or omission relating to verifying the qualifications of candidates and determining and reporting election results, that relates to a duty or responsibility with respect to conducting the election if the agency acted in good faith and within the scope of the agency's authority.

(c) An area agency on aging employee or volunteer who performs an act related to the conduct of an election described by Subsection (b) is not civilly or criminally liable for the act or any omission that relates to a duty or responsibility with respect to conducting the election if the person acted in good faith and within the scope of the person's authority.

Added by Acts 2007, 80th Leg., R.S., Ch. 594 (H.B. 41), Sec. 12, eff. September 1, 2007.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.449, eff. April 2, 2015.

Sec. 161.076. ON-SITE SURVEYS OF CERTAIN PROVIDERS. At least every 12 months, the department shall conduct an unannounced on-site survey in each group home, other than a foster home, at which a Home and Community-based Services (HCS) provider provides services.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 37, eff. June 11, 2009.

Sec. 161.077. INVESTIGATION DATABASE. (a) The department, in consultation with the Department of Family and Protective Services, shall develop and maintain an electronic database to collect and analyze information regarding the investigation and prevention of abuse, neglect, and exploitation of individuals with an intellectual disability who reside in a publicly or privately operated intermediate care facility for persons with an intellectual disability or in a group home, other than a foster home, at which a Home and Community-based Services (HCS) provider provides services and the results of regulatory investigations or surveys performed by the department regarding those facilities or providers.

(b) The information collected in the database regarding investigations must be detailed, be easily retrievable, and include information relating to abuse, neglect, and exploitation investigations performed by either department and regulatory investigations performed by the department that are capable of being sorted by home, provider, and facility.

(c) The database must facilitate the entry of required information and the sharing of information between the department and the Department of Family and Protective Services. At a minimum, the database must include the following information regarding investigations of abuse, neglect, or exploitation:

(1) the number of allegations of abuse, neglect, or exploitation received relating to a facility or group home, other than a foster home; and

(2) the number of allegations relating to a facility or group home, other than a foster home, substantiated through an investigation.

(d) Each allegation involving a unique individual in a facility or group home, other than a foster home, is considered a separate allegation for purposes of Subsection (c).

(e) The department shall ensure that information related to findings concerning failure to comply with regulatory standards directly related to the prevention of abuse, neglect, or exploitation in a facility or group home, other than a foster home, is collected and stored in the database and may be disaggregated by home, provider, and facility.

(f) The department and the Department of Family and Protective Services may not release or distribute information in the database in a form that contains personally identifiable information related to an individual in a facility or group home or to a victim of abuse, neglect, or exploitation.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 37, eff. June 11, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.450, eff. April 2, 2015.

Sec. 161.078. ELIGIBILITY FOR DEAF-BLIND WITH MULTIPLE DISABILITIES WAIVER PROGRAM. (a) Subject to the availability of funds appropriated for that purpose, the department shall provide home-based and community-based services under the deaf-blind with multiple disabilities waiver program without regard to a person's age if the person applies for and is otherwise eligible to receive services under the waiver program.

(b) Subsection (a) does not prevent the department from establishing an age requirement with respect to other programs or services offered to persons who are deaf-blind with multiple disabilities, including the summer outdoor training program for individuals who are deaf-blind with multiple disabilities established under Section 22.036(c).

Added by Acts 2009, 81st Leg., R.S., Ch. 269 (S.B. 37), Sec. 1, eff. May 30, 2009.

Redesignated from Human Resources Code, Section 161.076 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(35), eff.

September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.451, eff. April 2, 2015.

Sec. 161.079. INFORMAL CAREGIVER SERVICES. (a) In this section:

(1) "Area agency on aging" has the meaning assigned by Section 161.075.

(2) "Local entity" means an area agency on aging or other entity that provides services and support for older persons or persons with disabilities and their caregivers.

(b) The department shall coordinate with area agencies on aging and, to the extent considered feasible by the department, may coordinate with other local entities to coordinate public awareness outreach efforts regarding the role of informal caregivers in long-term care situations, including efforts to raise awareness of support services available in this state for informal caregivers.

(c) The department shall perform the following duties to assist a local entity with outreach efforts under this section:

(1) expand an existing department website to provide a link through which a local entity may post and access best practices information regarding informal caregiver support; and

(2) create a document template that a local entity may adapt as necessary to reflect resources available to informal caregivers in the area supported by the entity.

(d) The department shall create or modify a form to be included in the functional eligibility determination process for long-term care benefits for older persons under the Medicaid program and, to the extent considered feasible by the department, may include a form in systems for other long-term care support services. The department shall use the form to identify informal caregivers for the purpose of enabling the department to refer the caregivers to available support services. The form may be based on an existing form, may include optional questions for an informal caregiver, or may include questions from similar forms used in other states.

(e) The department shall coordinate with area agencies on aging and, to the extent considered feasible by the department, may coordinate with other local entities to develop and implement a protocol to evaluate the needs of certain informal caregivers. The protocol must:

(1) provide guidance on the type of caregivers who should receive an assessment; and

(2) include the use of a standardized assessment tool that may be based on similar tools used in other states, including the Tailored Caregiver Assessment and Referral process.

(f) The department shall require area agencies on aging and, to the extent considered feasible by the department, other local entities to use the protocol and assessment tool under Subsection (e) and report the data gathered from the assessment tool to the department.

(g) The department shall analyze the data reported under Subsection (f) and collected from the form under Subsection (d).

(h) The department shall use the data analyzed under Subsection (g) to:

(1) evaluate the needs of assessed informal caregivers;

(2) measure the effectiveness of certain informal caregiver support interventions;

(3) improve existing programs;

(4) develop new services as necessary to sustain informal caregivers; and

(5) determine the effect of informal caregiving on employment and employers.

Added by Acts 2009, 81st Leg., R.S., Ch. 726 (S.B. 271), Sec. 1, eff. June 19, 2009.

Redesignated from Human Resources Code, Section 161.076 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(36), eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.452, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 20, eff.

September 1, 2021.

Sec. 161.080. CONTRACTS FOR SERVICES FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES. (a) A person that provides services to individuals with developmental disabilities may contract with a state supported living center for the center to provide services and resources to support those individuals.

(b) Notwithstanding any other law, a state supported living center may provide nonresidential services to support an individual if the provision of services to the individual does not interfere with the provision of services to a resident of the state supported living center.

(c) The executive commissioner by rule shall establish:

(1) a list of services a state supported living center may provide under a contract described by Subsection (a); and

(2) procedures for the commission to create, maintain, and amend as needed a schedule of fees that a state supported living center may charge for a service included in the list described by Subdivision (1).

(d) In creating a schedule of fees, the commission shall:

(1) use the reimbursement rate for the applicable service under the Medicaid program; or

(2) modify that rate with a written justification for the modification and after holding a public hearing on the issue of the modification.

Text of subsection effective on April 01, 2025

(e) Notwithstanding Subsection (c), a state supported living center, based on negotiations between the center and a managed care organization, as defined by Section 540.0001, Government Code, may charge a fee for a service other than the fee provided by the schedule of fees created by the commission under this section.

Text of subsection effective until April 01, 2025

(e) Notwithstanding Subsection (c), a state supported living center, based on negotiations between the center and a managed care organization, as defined by Section 533.001,

Government Code, may charge a fee for a service other than the fee provided by the schedule of fees created by the commission under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 904 (H.B. 748), Sec. 1, eff. June 19, 2009.

Redesignated from Human Resources Code, Section 161.077 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(37), eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 320 (H.B. 1760), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.453, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 300 (S.B. 547), Sec. 1, eff. May 29, 2017.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.110, eff. April 1, 2025.

Sec. 161.081. LONG-TERM CARE MEDICAID WAIVER PROGRAMS: STREAMLINING AND UNIFORMITY.

Text of subsection effective until April 01, 2025

(a) In this section, "Section 1915(c) waiver program" has the meaning assigned by Section 531.001, Government Code.

Text of subsection effective on April 01, 2025

(a) In this section, "Section 1915(c) waiver program" has the meaning assigned by Section 521.0001, Government Code.

(b) The department, in consultation with the commission, shall streamline the administration of and delivery of services through Section 1915(c) waiver programs. In implementing this subsection, the department, subject to Subsection (c), may consider implementing the following streamlining initiatives:

(1) reducing the number of forms used in administering the programs;

(2) revising program provider manuals and training curricula;

(3) consolidating service authorization systems;

(4) eliminating any physician signature requirements the department considers unnecessary;

(5) standardizing individual service plan processes across the programs;

(6) if feasible:

(A) concurrently conducting program certification and billing audit and review processes and other related audit and review processes;

(B) streamlining other billing and auditing requirements;

(C) eliminating duplicative responsibilities with respect to the coordination and oversight of individual care plans for persons receiving waiver services; and

(D) streamlining cost reports and other cost reporting processes; and

(7) any other initiatives that will increase efficiencies in the programs.

Text of subsection effective until April 01, 2025

(c) The department shall ensure that actions taken under Subsection (b) do not conflict with any requirements of the commission under Section 531.0218, Government Code.

Text of subsection effective on April 01, 2025

(c) The department shall ensure that actions taken under Subsection (b) do not conflict with any requirements of the commission under Sections 546.0402(a), (b), and (c), Government Code.

Text of subsection effective until April 01, 2025

(d) The department and the commission shall jointly explore the development of uniform licensing and contracting standards that would:

(1) apply to all contracts for the delivery of Section 1915(c) waiver program services;

(2) promote competition among providers of those program services; and

(3) integrate with other department and commission efforts to streamline and unify the administration and delivery of

the program services, including those required by this section or Section 531.0218, Government Code.

Text of subsection effective on April 01, 2025

(d) The department and the commission shall jointly explore the development of uniform licensing and contracting standards that would:

(1) apply to all contracts for the delivery of Section 1915(c) waiver program services;

(2) promote competition among providers of those program services; and

(3) integrate with other department and commission efforts to streamline and unify the administration and delivery of the program services, including those required by this section or Sections 546.0402(a), (b), and (c), Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 759 (S.B. 705), Sec. 1, eff. June 19, 2009.

Redesignated from Human Resources Code, Section 161.077 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(38), eff. September 1, 2011.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.06(a), eff. September 28, 2011.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.111, eff. April 1, 2025.

Sec. 161.082. LONG-TERM CARE MEDICAID WAIVER PROGRAMS: UTILIZATION REVIEW.

Text of subsection effective until April 01, 2025

(a) In this section, "Section 1915(c) waiver program" has the meaning assigned by Section 531.001, Government Code.

Text of subsection effective on April 01, 2025

(a) In this section, "Section 1915(c) waiver program" has the meaning assigned by Section 521.0001, Government Code.

(b) The department shall perform a utilization review of services in all Section 1915(c) waiver programs. The utilization review must include, at a minimum, reviewing program recipients'

levels of care and any plans of care for those recipients that exceed service level thresholds established in the applicable waiver program guidelines.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.06(b), eff. September 28, 2011.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.112, eff. April 1, 2025.

Sec. 161.083. CORRECTIONS MEDICATION AIDES. (a) The executive commissioner shall establish:

(1) minimum standards and procedures for the approval of corrections medication aide training programs, including curricula, developed under Section 501.1485, Government Code;

(2) minimum requirements for the issuance, denial, renewal, suspension, and revocation of a permit to a corrections medication aide, including the payment of an application or renewal fee in an amount necessary to cover the costs incurred by the department in administering this section; and

(3) the acts and practices that are within and outside the scope of a permit issued under this section.

(b) Not later than the 90th day after receipt of an application for approval of a corrections medication aide training program developed under Section 501.1485, Government Code, the department shall:

(1) approve the program, if the program meets the minimum standards and procedures established under Subsection (a)(1); or

(2) provide notice to the Texas Department of Criminal Justice that the program is not approved and include in the notice a description of the actions that are required for the program to be approved.

(c) The department shall issue a permit to or renew the permit of an applicant who meets the minimum requirements established under Subsection (a)(2). The department shall coordinate with the Texas Department of Criminal Justice in the performance of the department's duties and functions under this

subsection.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 65.06, eff. September 28, 2011.

Sec. 161.084. MEDICAID SERVICE OPTIONS PUBLIC EDUCATION INITIATIVE.

Text of subsection effective until April 01, 2025

(a) In this section, "Section 1915(c) waiver program" has the meaning assigned by Section 531.001, Government Code.

Text of subsection effective on April 01, 2025

(a) In this section, "Section 1915(c) waiver program" has the meaning assigned by Section 521.0001, Government Code.

Text of subsection effective until April 01, 2025

(b) The department, in cooperation with the commission, shall educate the public on:

(1) the availability of home and community-based services under a Medicaid state plan program, including the primary home care and community attendant services programs, and under a Section 1915(c) waiver program; and

(2) the various service delivery options available under the Medicaid program, including the consumer direction models available to recipients under Section 531.051, Government Code.

Text of subsection effective on April 01, 2025

(b) The department, in cooperation with the commission, shall educate the public on:

(1) the availability of home and community-based services under a Medicaid state plan program, including the primary home care and community attendant services programs, and under a Section 1915(c) waiver program; and

(2) the various service delivery options available under the Medicaid program, including the consumer direction models available to recipients under Subchapter C, Chapter 546, Government Code.

(c) The department may coordinate the activities under this section with any other related activity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1057 (S.B. 222), Sec. 3, eff. September 1, 2011.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.113, eff. April 1, 2025.

Sec. 161.085. INTEREST LIST REPORTING. The department shall post on the department's Internet website historical data, categorized by state fiscal year, on the percentages of individuals who elect to receive services under a program for which the department maintains an interest list once their names reach the top of the list.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1057 (S.B. 222), Sec. 3, eff. September 1, 2011.

Sec. 161.086. ELECTRONIC VISIT VERIFICATION SYSTEM. If it is cost-effective, the department shall implement an electronic visit verification system under appropriate programs administered by the department under the Medicaid program that allows providers to electronically verify and document basic information relating to the delivery of services, including:

(1) the provider's name;

(2) the recipient's name;

(3) the date and time the provider begins and ends the delivery of services; and

(4) the location of service delivery.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.07, eff. September 28, 2011.

Sec. 161.087. GIFTS AND GRANTS. (a) The department may accept gifts and grants of money, personal property, and real property from public or private sources to expand and improve the human services programs for the aging and persons with disabilities available in this state.

(b) The department shall use a gift or grant of money, personal property, or real property made for a specific purpose in accordance with the purpose expressly prescribed by the donor. The

department may decline the gift or grant if the department determines that it cannot be economically used for that purpose.

(c) The department shall keep a record of each gift or grant in the department's central office in the city of Austin.

Added by Acts 2013, 83rd Leg., R.S., Ch. 320 (H.B. 1760), Sec. 2, eff. June 14, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.454, eff. April 2, 2015.

Sec. 161.088. TRAUMA-INFORMED CARE TRAINING. (a) The department shall develop or adopt trauma-informed care training for employees who work directly with individuals with intellectual and developmental disabilities in state supported living centers and intermediate care facilities. The executive commissioner by rule shall require new employees to complete the training before working with individuals with intellectual and developmental disabilities.

(b) The training required under this section may be provided through an Internet website.

Added by Acts 2015, 84th Leg., R.S., Ch. 796 (H.B. 2789), Sec. 1, eff. September 1, 2015.

Sec. 161.089. ADMINISTRATIVE PENALTIES. (a) This section applies to the following waiver programs established under Section 1915(c), Social Security Act (42 U.S.C. Section 1396n(c)), and administered by the commission to serve persons with an intellectual or developmental disability:

(1) the home and community-based services (HCS) waiver program; and

(2) the Texas home living (TxHmL) waiver program.

(b) The commission may assess and collect an administrative penalty against a provider who participates in a program to which this section applies for a violation of a law or rule relating to the program. If the commission assesses an administrative penalty against a provider for a violation of a law or rule, the commission may not impose a payment hold against or otherwise withhold contract payments from the provider for the same violation of a law

or rule.

(c) After consulting with appropriate stakeholders, the executive commissioner shall develop and adopt rules regarding the imposition of administrative penalties under this section. The rules must:

(1) specify the types of violations that warrant imposition of an administrative penalty;

(2) establish a schedule of progressive administrative penalties in accordance with the relative type, frequency, and seriousness of a violation;

(3) prescribe reasonable amounts to be imposed for each violation giving rise to an administrative penalty, subject to Subdivision (4);

(4) authorize the imposition of an administrative penalty in an amount not to exceed $5,000 for each violation;

(5) provide that a provider commits a separate violation each day the provider continues to violate the law or rule;

(6) ensure standard and consistent application of administrative penalties throughout the state;

(7) provide for an administrative appeals process to adjudicate claims and appeals relating to the imposition of an administrative penalty under this section that is in accordance with Chapter 2001, Government Code; and

(8) ensure standard and consistent interpretation of service delivery rules and consistent application of administrative penalties throughout this state.

(c-1) On adoption of the rules under Subsection (c), the executive commissioner shall develop interpretative guidelines for regulatory staff and providers regarding the imposition of administrative penalties under this section.

(d) In determining the types of violations that warrant imposition of an administrative penalty and in establishing the schedule of progressive administrative penalties and penalty amounts under Subsection (c), the executive commissioner must consider:

(1) the seriousness of a violation, including:

(A) the nature, circumstances, extent, and gravity of the violation; and

(B) the hazard to the health or safety of recipients resulting from the violation;

(2) the provider's history of previous violations;

(3) whether the provider:

(A) had prior knowledge of the violation, including whether the provider identified the violation through the provider's internal quality assurance process; and

(B) made any efforts to mitigate or correct the identified violation;

(4) the penalty amount necessary to deter future violations; and

(5) any other matter justice may require.

(e) Except as provided by Subsection (f), the executive commissioner by rule shall provide to a provider who has implemented a plan of correction a reasonable period of time following the date the commission sends notice to the provider of the violation to correct the violation before the commission may assess an administrative penalty. The period may not be less than 45 days.

(f) The commission may assess an administrative penalty without providing a reasonable period of time to a provider to correct the violation if the violation:

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

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

(3) is widespread in scope and constitutes a potential for actual harm;

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

(5) substantially limits the provider's ability to provide care; or

(6) is a violation in which a provider:

(A) wilfully interferes with the work of a representative of the commission or the enforcement of a law relating to a program to which this section applies;

(B) fails to pay a penalty assessed by the commission under this section not later than the 10th day after the date the assessment of the penalty becomes final, subject to Section 161.0891; or

(C) fails to submit a plan of correction not later than the 10th day after the date the provider receives a statement of the violation.

(g) Notwithstanding any other provision of this section, an administrative penalty ceases to be incurred on the date a violation is corrected.

(h) In this section:

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

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

(3) "Pattern of violation" means repeated, but not pervasive, failures of a provider to comply with a law relating to a program to which this section applies that:

(A) result in a violation; and

(B) are found throughout the services provided by the provider or that affect or involve the same recipients or provider employees or volunteers.

(4) "Recipient" means a person served by a program to which this section applies.

(5) "Widespread in scope" means a violation of a law relating to a program to which this section applies that:

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

(B) represents a systemic failure by the provider that affects or has the potential to affect a large portion of or all of the recipients.

Added by Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 15, eff. September 1, 2015.

Added by Acts 2015, 84th Leg., R.S., Ch. 1200 (S.B. 1385), Sec. 1, eff. September 1, 2015.

Redesignated from Human Resources Code, Section 161.088 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(29), eff. September 1, 2017.

Redesignated and amended from Human Resources Code, Section 161.088 by Acts 2017, 85th Leg., R.S., Ch. 487 (H.B. 2590), Sec. 1, eff. September 1, 2017.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 906 (H.B. 3720), Sec. 4, eff. September 1, 2021.

Sec. 161.0892. INFORMAL DISPUTE RESOLUTION. (a) The executive commissioner by rule shall establish an informal dispute resolution process in accordance with this section. The process must provide for adjudication by an appropriate disinterested person of disputes relating to a proposed enforcement action or related proceeding of the commission against a provider participating in a waiver program described by Section 161.089. The informal dispute resolution process must require:

(1) a provider participating in a waiver program described by Section 161.089 to request informal dispute resolution not later than the 10th calendar day after the date of notification by the commission of the violation of a law or rule relating to the program; and

(2) the commission to complete the process not later than the 30th calendar day after the date of receipt of a request from a provider for informal dispute resolution.

(b) As part of the informal dispute resolution process established under this section, the commission shall contract with an appropriate disinterested person to adjudicate disputes between a provider participating in a waiver program described by Section 161.089 and the commission concerning a statement of violations prepared by the commission. Section 2009.053, Government Code, does not apply to the selection of an appropriate disinterested person under this subsection. The person with whom the commission contracts shall adjudicate all disputes described by this subsection.

(c) The executive commissioner shall adopt rules to

adjudicate claims in contested cases.

(d) The commission may not delegate its responsibility to administer the informal dispute resolution process established by this section to another state agency.

Added by Acts 2017, 85th Leg., R.S., Ch. 487 (H.B. 2590), Sec. 2, eff. September 1, 2017.

SUBCHAPTER D-1. ADMINISTRATION OF MEDICATION FOR CLIENTS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

Sec. 161.091. DEFINITIONS. In this subchapter:

(1) "Administration of medication" means:

(A) removing a unit or dose of medication from a previously dispensed, properly labeled container;

(B) verifying the medication with the medication order;

(C) giving the proper medication in the proper dosage to the proper client at the proper time by the proper administration route; and

(D) recording the time of administration and dosage administered.

(2) "Client" means a person with an intellectual and developmental disability who is receiving services from a facility or program listed in Section 161.092.

(3) "Unlicensed person" means an individual not licensed as a health care provider who provides services at or for a facility or program listed in Section 161.092, including:

(A) a nurse aide, orderly, assistant, attendant, technician, home health aide, medication aide with a permit issued by a state agency, or other individual who provides personal health care-related services;

(B) a person who is monetarily compensated to perform certain health-related tasks and functions in a complementary or assistive role to a licensed nurse who provides direct client care or performs common nursing functions;

(C) a person who performs those tasks and functions as a volunteer but does not qualify as a friend providing

gratuitous nursing care of the sick under Section 301.004, Occupations Code; or

(D) a person who is a professional nursing student who provides care for monetary compensation and not as part of a formal educational program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 677 (S.B. 1857), Sec. 1, eff. June 17, 2011.

Sec. 161.092. APPLICABILITY. This subchapter applies only to administration of medication provided to certain persons with intellectual and developmental disabilities who are served:

(1) in a small facility with not less than one and not more than eight beds that is licensed or certified under Chapter 252, Health and Safety Code;

(2) in a medium facility with not less than 9 and not more than 13 beds that is licensed or certified under Chapter 252, Health and Safety Code; or

(3) by one of the following Section 1915(c) waiver programs administered by the department to serve persons with intellectual and developmental disabilities:

(A) the Home and Community-Based Services waiver program; or

(B) the Texas Home Living waiver program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 677 (S.B. 1857), Sec. 1, eff. June 17, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.455, eff. April 2, 2015.

Sec. 161.093. ADMINISTRATION OF MEDICATION. (a) Notwithstanding other law, an unlicensed person may provide administration of medication to a client without the requirement that a registered nurse delegate or oversee each administration if:

(1) the medication is:

(A) an oral medication;

(B) a topical medication; or

(C) a metered dose inhaler;

(2) the medication is administered to the client for a stable or predictable condition;

(3) the client has been personally assessed by a registered nurse initially and in response to significant changes in the client's health status, and the registered nurse has determined that the client's health status permits the administration of medication by an unlicensed person; and

(4) the unlicensed person has been:

(A) trained by a registered nurse or licensed vocational nurse under the direction of a registered nurse regarding proper administration of medication; or

(B) determined to be competent by a registered nurse or licensed vocational nurse under the direction of a registered nurse regarding proper administration of medication, including through a demonstration of proper technique by the unlicensed person.

(b) The administration of medication other than the medications described by Subsection (a)(1) is subject to the rules of the Texas Board of Nursing regarding the delegation of nursing tasks to unlicensed persons in independent living environments such as the facilities and programs listed in Section 161.092.

Added by Acts 2011, 82nd Leg., R.S., Ch. 677 (S.B. 1857), Sec. 1, eff. June 17, 2011.

Sec. 161.094. DEPARTMENT DUTIES. (a) The department shall ensure that:

(1) administration of medication by an unlicensed person under this subchapter is reviewed at least annually and after any significant change in a client's condition by a registered nurse or a licensed vocational nurse under the supervision of a registered nurse; and

(2) a facility or program listed in Section 161.092 has policies to ensure that the determination of whether an unlicensed person may provide administration of medication to a client under Section 161.093 may be made only by a registered nurse.

(b) The department shall verify that:

(1) each client is assessed to identify the client's

needs and abilities regarding the client's medications;

(2) the administration of medication by an unlicensed person to a client is performed only by an unlicensed person who is authorized to perform that administration under Section 161.093; and

(3) the administration of medication to each client is performed in such a manner as to ensure the greatest degree of independence, including the use of an adaptive or assistive aid, device, or strategy as allowed under program rules.

(c) The department shall enforce this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 677 (S.B. 1857), Sec. 1, eff. June 17, 2011.

Sec. 161.095. LIABILITY. (a) A registered nurse performing a client assessment required under Section 161.093, or a registered nurse or licensed vocational nurse training an unlicensed person or determining whether an unlicensed person is competent to perform administration of medication under Section 161.093, may be held accountable or civilly liable only in relation to whether the nurse properly:

(1) performed the assessment;

(2) conducted the training; and

(3) determined whether the unlicensed person is competent to provide administration of medication to clients.

(b) The Texas Board of Nursing may take disciplinary action against a registered nurse or licensed vocational nurse under this subchapter only in relation to whether:

(1) the registered nurse properly performed the client assessment required by Section 161.093;

(2) the registered nurse or licensed vocational nurse properly trained the unlicensed person in the administration of medication; and

(3) the registered nurse or licensed vocational nurse properly determined whether an unlicensed person is competent to provide administration of medication to clients.

(c) A registered nurse or licensed vocational nurse may not be held accountable or civilly liable for the acts or omissions of

an unlicensed person performing administration of medication.
Added by Acts 2011, 82nd Leg., R.S., Ch. 677 (S.B. 1857), Sec. 1, eff. June 17, 2011.

Sec. 161.096. CONFLICT WITH OTHER LAW. This subchapter controls to the extent of a conflict with other law.
Added by Acts 2011, 82nd Leg., R.S., Ch. 677 (S.B. 1857), Sec. 1, eff. June 17, 2011.

SUBCHAPTER E. GUARDIANSHIP SERVICES

Sec. 161.101. GUARDIANSHIP SERVICES. (a) The department shall file an application under Section 1101.001 or 1251.003, Estates Code, to be appointed guardian of the person or estate, or both, of a minor referred to the department under Section 48.209(a)(1) for guardianship services if the department determines:

(1) that the minor, because of a mental or physical condition, will be substantially unable to provide for the minor's own food, clothing, or shelter, to care for the minor's own physical health, or to manage the individual's own financial affairs when the minor becomes an adult; and

(2) that a less restrictive alternative to guardianship is not available for the minor.

(b) The department shall conduct a thorough assessment of the conditions and circumstances of an elderly person or person with a disability referred to the department under Section 48.209(a)(2) for guardianship services to determine whether a guardianship is appropriate for the individual or whether a less restrictive alternative is available for the individual. In determining whether a guardianship is appropriate, the department may consider the resources and funds available to meet the needs of the elderly person or person with a disability. The executive commissioner shall adopt rules for the administration of this subsection.

(c) Subject to Subsection (c-1), if after conducting an assessment of an elderly person or person with a disability under

Subsection (b) the department determines that:

(1) guardianship is appropriate for the elderly person or person with a disability, the department shall:

(A) file an application under Section 1101.001 or 1251.003, Estates Code, to be appointed guardian of the person or estate, or both, of the individual; or

(B) if the department determines that an alternative person or program described by Section 161.102 is available to serve as guardian, refer the individual to that person or program as provided by that section; or

(2) a less restrictive alternative to guardianship is available for the elderly person or person with a disability, the department shall pursue the less restrictive alternative instead of taking an action described by Subdivision (1).

(c-1) Not later than the 70th day after the date the department receives a referral under Section 48.209(a)(2) for guardianship services, the department shall make the determination required by Subsection (c) and, if the department determines that guardianship is appropriate and that the department should serve as guardian, file the application to be appointed guardian under Section 1101.001 or 1251.003, Estates Code. If the department determines that an alternative person or program described by Section 161.102 is available to serve as guardian, the department shall refer the elderly person or person with a disability to that alternative person or program in a manner that would allow the alternative person or program sufficient time to file, not later than the 70th day after the date the department received the referral, an application to be appointed guardian.

(c-2) With the approval of the Department of Family and Protective Services, the department may extend, by not more than 30 days, a period prescribed by Subsection (c-1) if the extension is:

(1) made in good faith, including any extension for a person or program described by Section 161.102 that intends to file an application to be appointed guardian; and

(2) in the best interest of the elderly person or person with a disability.

(d) The department may not be required by a court to file an

application for guardianship, and except as provided by Subsection (f) and Section 1203.108(b), Estates Code, the department may not be appointed as permanent guardian for any individual unless the department files an application to serve or otherwise agrees to serve as the individual's guardian of the person or estate, or both.

(e) A guardianship created for an individual as a result of an application for guardianship filed under Subsection (a) may not take effect before the individual's 18th birthday.

(f) On appointment by a probate court under Section 1203.108(b), Estates Code, the department shall serve as the successor guardian of the person or estate, or both, of a ward described by that section.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 726 (S.B. 271), Sec. 2, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 935 (H.B. 3112), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.456, eff. April 2, 2015.

Sec. 161.102. REFERRAL TO GUARDIANSHIP PROGRAM, COURT, OR OTHER PERSON. (a) If the department becomes aware of a guardianship program, private professional guardian, or other person willing and able to provide the guardianship services that would otherwise be provided by the department to an individual referred to the department by the Department of Family and Protective Services under Section 48.209, the department shall refer the individual to that person or program for guardianship services.

(b) If requested by a court, the department shall notify the court of any referral made to the department by the Department of Family and Protective Services relating to any individual who is domiciled or found in a county where the requesting court has probate jurisdiction and who may be appropriate for a court-initiated guardianship proceeding under Chapter 1102,

Estates Code. In making a referral under this subsection and if requested by the court, the department shall, to the extent allowed by law, provide the court with all relevant information in the department's records relating to the individual. The court, as part of this process, may not require the department to:

(1) perform the duties of a guardian ad litem or court investigator as prescribed by Chapter 1102, Estates Code; or

(2) gather additional information not contained in the department's records.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.457, eff. April 2, 2015.

Sec. 161.103. CONTRACT FOR GUARDIANSHIP SERVICES. If appropriate, the department may contract with a political subdivision of this state, a guardianship program as defined by Section 1002.016, Estates Code, a private agency, or another state agency for the provision of guardianship services under this section.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.458, eff. April 2, 2015.

Sec. 161.104. QUALITY ASSURANCE PROGRAM. The department shall develop and implement a quality assurance program for guardianship services provided by or on behalf of the department. If the department enters into a contract with a political subdivision, guardianship program, private agency, or other state agency under Section 161.103, the department shall establish a monitoring system as part of the quality assurance program to ensure the quality of guardianship services for which the department contracts under that section.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff.

September 1, 2005.

Sec. 161.105. OATH. A representative of the department shall take the oath required by the Estates Code on behalf of the department if the department is appointed guardian of the person or estate, or both, of a ward under Title 3 of that code.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.459, eff. April 2, 2015.

Sec. 161.106. GUARDIANSHIP POWERS AND DUTIES. In serving as guardian of the person or estate, or both, for an incapacitated individual, the department has all the powers granted and duties prescribed to a guardian under Title 3, Estates Code, or any other applicable law.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.460, eff. April 2, 2015.

Sec. 161.107. EXEMPTION FROM GUARDIANSHIP BONDS, CERTAIN COSTS, FEES, AND EXPENSES. (a) The department or a political subdivision of this state or state agency with which the department contracts under Section 161.103 is not required to post a bond or pay any cost or fee associated with a bond otherwise required by the Estates Code in guardianship matters.

(b) The department is not required to pay any cost or fee otherwise imposed for court proceedings or other services, including:

(1) a filing fee or fee for issuance of service of process imposed by Section 51.319, Government Code;

(2) a judge's fee imposed by Section 25.0008 or 25.0029, Government Code;

(3) a cost or security fee imposed by Section 53.051,

53.052, 1053.051, or 1053.052, Estates Code; or

(4) a fee imposed by a county officer under Section 118.011 or 118.052, Local Government Code.

(c) The department may not be required to pay fees associated with the appointment of a guardian ad litem or attorney ad litem.

(d) A political subdivision of this state or state agency with which the department contracts under Section 161.103 is not required to pay any cost or fee otherwise required by the Estates Code.

(e) If the department is appointed guardian, the department is not liable for funding services provided to the department's ward, including long-term care or burial expenses.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.461, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 4.08, eff. January 1, 2022.

Sec. 161.108. SUCCESSOR GUARDIAN. The department shall review each of the department's pending guardianship cases at least annually to determine whether a more suitable person, including a guardianship program or private professional guardian, is willing and able to serve as successor guardian for a ward of the department. If the department becomes aware of any person's willingness and ability to serve as successor guardian, the department shall notify the court in which the guardianship is pending as required by Section 1203.151, Estates Code.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.462, eff. April 2, 2015.

Sec. 161.109. ACCESS TO RECORDS OR DOCUMENTS. (a) The

department shall have access to all of the records and documents concerning an individual who is referred for guardianship services or to whom guardianship services are provided under this subchapter that are necessary to the performance of the department's duties under this subchapter, including:

(1) client-identifying information; and

(2) medical, psychological, educational, financial, and residential information.

(b) The department is exempt from the payment of a fee otherwise required or authorized by law to obtain a financial or medical record, including a mental health record, from any source if the request for a record is related to an assessment for guardianship services conducted by the department or the provision of guardianship services by the department.

(c) If the department cannot obtain access to a record or document that is necessary to properly perform a duty under this subchapter, the department may petition the probate court or the statutory or constitutional court having probate jurisdiction for access to the record or document.

(d) The court with probate jurisdiction shall, on good cause shown, order the person or entity who denied access to a record or document to allow the department to have access to the record or document under the terms and conditions prescribed by the court.

(e) A person or entity is entitled to notice of and a hearing on the department's petition for access as described by this section.

(f) Access to, or disclosure of, a confidential record or other confidential information under this section does not constitute a waiver of confidentiality for other purposes or as to other persons.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 599 (S.B. 220), Sec. 3, eff. September 1, 2011.

Sec. 161.110. LEGAL REPRESENTATION OF DEPARTMENT. (a)

Except as provided by Subsection (b), (c), or (f), the prosecuting attorney representing the state in criminal cases in the county court shall represent the department in any proceeding under this subchapter unless the representation would be a conflict of interest.

(b) If the attorney representing the state in criminal cases in the county court is unable to represent the department in an action under this subchapter because of a conflict of interest, the attorney general shall represent the department in the action.

(c) If the attorney general is unable to represent the department in an action under this subchapter, the attorney general shall deputize an attorney who has contracted with the department under Subsection (d) or an attorney employed by the department under Subsection (e) to represent the department in the action.

(d) Subject to the approval of the attorney general, the department may contract with a private attorney to represent the department in an action under this subchapter.

(e) The department may employ attorneys to represent the department in an action under this subchapter.

(f) In a county having a population of more than 2.8 million, the prosecuting attorney representing the state in civil cases in the county court shall represent the department in any proceeding under this subchapter unless the representation would be a conflict of interest. If such attorney is unable to represent the department in an action under this subchapter because of a conflict of interest, the attorney general shall represent the department in the action.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.

Sec. 161.111. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION. (a) All files, reports, records, communications, or working papers used or developed by the department in the performance of duties relating to the assessment for or the provision of guardianship services to an individual referred for guardianship services under this subchapter are confidential and not subject to disclosure under Chapter 552, Government Code.

(b) Confidential information may be disclosed only for a purpose consistent with this subchapter, as required by other state or federal law, or as necessary to enable the department to exercise its powers and duties as guardian of the person or estate, or both, of an individual.

(c) A court may order disclosure of confidential information only if:

(1) a motion is filed with the court requesting release of the information and a hearing on that request;

(2) notice of the hearing is served on the department and each interested party; and

(3) the court determines after the hearing and an in camera review of the information that disclosure is essential to the administration of justice and will not endanger the life or safety of any individual who:

(A) is being assessed by the department for guardianship services under this subchapter;

(B) is a ward of the department; or

(C) provides services to a ward of the department.

(d) The executive commissioner shall establish a policy and procedures for the exchange of information with another state agency or governmental entity, including a court, with a local guardianship program to which an individual is referred for services, or with any other entity who provides services to a ward of the department, as necessary for the department, state agency, governmental entity, or other entity to properly execute its respective duties and responsibilities to provide guardianship services or other needed services to meet the needs of the ward under this subchapter or other law. An exchange of information under this subsection does not constitute a release for purposes of waiving the confidentiality of the information exchanged.

(e) To the extent consistent with department policies and procedures, the department on request may release confidential information in the record of an individual who is assessed by the department or is a former ward of the department to:

(1) the individual;

(2) the individual's guardian; or

(3) an executor or administrator of the individual's estate.

(f) Before releasing confidential information under Subsection (e), the department shall edit the information to protect the identity of the reporter to the Department of Family and Protective Services and to protect any other individual whose life or safety may be endangered by the release. A release of information under Subsection (e) does not constitute a release for purposes of waiving the confidentiality of the information released.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 599 (S.B. 220), Sec. 4, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.463, eff. April 2, 2015.

Sec. 161.112. INDEMNIFICATION FOR LEGAL EXPENSES. If a present or former employee of the department who was involved in activities related to the provision of guardianship services under this subchapter is criminally prosecuted for conduct related to the person's misfeasance or nonfeasance in the course and scope of the person's employment and is found not guilty after a trial or appeal or if the complaint or indictment is dismissed without a plea of guilty or nolo contendere being entered, the department may indemnify the person or the person's estate for the reasonable attorney's fees incurred in defense of the prosecution up to a maximum of $10,000.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.

Sec. 161.113. IMMUNITY. (a) In this section, "volunteer" means a person who:

(1) renders services for or on behalf of the department under the supervision of a department employee; and

(2) does not receive compensation that exceeds the authorized expenses the person incurs in performing those services.

(b) A department employee or an authorized volunteer who performs a department duty or responsibility under this subchapter is immune from civil or criminal liability for any act or omission that relates to the duty or responsibility if the person acted in good faith and within the scope of the person's authority.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.

Sec. 161.114. USE OF VOLUNTEERS. (a) In this section, "volunteer" has the meaning assigned by Section 161.113.

(b) The department shall encourage the involvement of volunteers in guardianships in which the department serves as guardian of the person or estate, or both. To encourage that involvement, the department shall identify issues and tasks with which a volunteer could assist the department in a guardianship, subject to Subsection (c).

(c) A volunteer may provide life enrichment activities, companionship, transportation services, and other services to or for the ward in a guardianship, except the volunteer may not provide services that would require the volunteer to be certified under Section 155.102, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 599 (S.B. 220), Sec. 5, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 42 (S.B. 966), Sec. 2.27, eff. September 1, 2014.

SUBCHAPTER F. LIFESPAN RESPITE SERVICES PROGRAM

Sec. 161.151. DEFINITIONS. In this subchapter:

(1) "Chronic serious health condition" means a health condition that:

(A) requires periodic treatment by a health care provider, including a nurse as authorized by Chapter 301, Occupations Code, or a physician assistant as authorized by Chapter

204, Occupations Code; and

(B) continues over an extended period, including recurring episodes of a single underlying health condition such as asthma, diabetes, epilepsy, or multiple sclerosis.

(2) "Respite services" means support services, including in-home services or day activity and health services, that are provided for the purpose of temporarily giving relief to a primary caregiver who provides care to an individual with a chronic serious health condition or disability.

(3) "Respite services coordinator" means a community-based organization or local governmental entity with which the department enters into a contract to facilitate access to respite services under Section 161.154.

Added by Acts 2009, 81st Leg., R.S., Ch. 330 (H.B. 802), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 18, eff. June 19, 2015.

Sec. 161.152. LIFESPAN RESPITE SERVICES PROGRAM. The department shall implement the lifespan respite services program to promote the provision of respite services through contracts with eligible community-based organizations or local governmental entities.

Added by Acts 2009, 81st Leg., R.S., Ch. 330 (H.B. 802), Sec. 1, eff. September 1, 2009.

Sec. 161.153. ELIGIBILITY. (a) A person is eligible to participate in the program if the person:

(1) is the primary caregiver for a person who:

(A) is related to the caregiver within the second degree of consanguinity or affinity;

(B) has a chronic serious health condition or disability;

(C) requires assistance with one or more activities of daily living; and

(D) is not eligible for or not able to

participate in any other existing program that provides respite services; and

(2) meets criteria specified in rules adopted by the executive commissioner.

(b) The executive commissioner may not specify criteria that limit a person's eligibility based on the type of chronic serious health condition or disability of the person receiving care.

Added by Acts 2009, 81st Leg., R.S., Ch. 330 (H.B. 802), Sec. 1, eff. September 1, 2009.

Sec. 161.154. RESPITE SERVICES CONTRACTS. (a) The department shall contract with at least three eligible community-based organizations or local governmental entities selected by the department to:

(1) provide respite services; and

(2) facilitate access to respite services.

(b) The department may award a contract under this section only after issuing a request for proposals for the contract.

(c) A community-based organization or local governmental entity is eligible to contract under this section only if the organization or entity has experience in and an existing procedure for:

(1) coordinating support services for multiple groups of persons who need support services, including persons with a physical or intellectual disability and elderly persons;

(2) connecting caregivers with respite services providers;

(3) maintaining and providing information regarding available respite services; and

(4) conducting public awareness activities regarding available respite services.

(d) The department shall include in each contract with a respite services coordinator provisions requiring the coordinator to:

(1) subject to the availability of money, provide vouchers for respite services to caregivers participating in the

program who are not eligible for respite services provided through other programs; and

(2) connect caregivers participating in the program with available respite services.

(e) The department shall provide each community-based organization or local governmental entity with which the department contracts under this subchapter with:

(1) technical assistance; and

(2) policy and program development support.

(f) The department shall monitor a contractor's performance under a contract entered into under this subchapter using clearly defined and measurable performance objectives.

Added by Acts 2009, 81st Leg., R.S., Ch. 330 (H.B. 802), Sec. 1, eff. September 1, 2009.

Sec. 161.155. RESPITE SERVICES COORDINATOR FUNCTIONS. A respite services coordinator under contract with the department shall:

(1) maintain information regarding respite services providers;

(2) build partnerships with respite services providers; and

(3) implement public awareness activities regarding respite services.

Added by Acts 2009, 81st Leg., R.S., Ch. 330 (H.B. 802), Sec. 1, eff. September 1, 2009.

Sec. 161.156. RULES. The executive commissioner shall adopt rules necessary to implement this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 330 (H.B. 802), Sec. 1, eff. September 1, 2009.

SUBCHAPTER G. LEGISLATIVE COMMITTEE ON AGING

Sec. 161.251. DEFINITIONS. In this subchapter:

(1) "Committee" means the Legislative Committee on Aging.

Text of subdivision effective until April 01, 2025

(2) "Health and human services agency" has the meaning assigned by Section 531.001, Government Code.

Text of subdivision effective on April 01, 2025

(2) "Health and human services agency" has the meaning assigned by Section 521.0001, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 318 (H.B. 610), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.114, eff. April 1, 2025.

Sec. 161.252. LEGISLATIVE COMMITTEE ON AGING ESTABLISHED. The Legislative Committee on Aging is established to:

(1) study issues relating to the aging population of Texas, including issues related to the health care, income, transportation, housing, education, and employment needs of that population; and

(2) make recommendations to address those issues.

Added by Acts 2009, 81st Leg., R.S., Ch. 318 (H.B. 610), Sec. 1, eff. September 1, 2009.

Sec. 161.253. COMPOSITION OF COMMITTEE; PRESIDING OFFICER. (a) The committee is composed of:

(1) two members of the senate appointed by the lieutenant governor;

(2) two members of the house of representatives appointed by the speaker of the house of representatives; and

(3) two public members appointed by the governor.

(b) A member of the committee serves at the pleasure of the appointing official.

(c) The lieutenant governor and the speaker of the house of representatives shall appoint the presiding officer of the committee on an alternating basis. The presiding officer shall serve a two-year term expiring February 1 of each odd-numbered year.

Added by Acts 2009, 81st Leg., R.S., Ch. 318 (H.B. 610), Sec. 1,

eff. September 1, 2009.

Sec. 161.254. COMMITTEE POWERS AND DUTIES. (a) The committee shall:

(1) meet at least biannually at the call of the presiding officer;

(2) conduct a continuing study of issues relating to the aging population, including issues that are affected by the demographic and geographic diversity of the aging population in this state;

(3) analyze the availability of, and unmet needs for, state and local services for the aging population; and

(4) request reports and other information relating to the aging population as necessary from the executive commissioner, the department, other health and human services agencies, the attorney general, and any other state agency.

(b) The executive commissioner, the department, other health and human services agencies, the attorney general, and any other applicable state agency shall fully cooperate with the committee in performing the committee's duties under this subchapter.

(c) The committee may issue process, in accordance with Section 301.024, Government Code, to compel attendance of witnesses and the production of books, records, documents, and instruments required by the committee.

(d) The committee shall use the existing staff resources of the senate and the house of representatives to assist the committee in performing its duties under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 318 (H.B. 610), Sec. 1, eff. September 1, 2009.

Sec. 161.255. REPORT. (a) The committee shall report to the standing committees of the senate and the house of representatives having jurisdiction of issues related to the needs of the aging population not later than November 15 of each even-numbered year.

(b) The report must include:

(1) a summary of the hearings and studies conducted by the committee during the preceding year;

(2) a statement of findings based on the hearings and studies conducted by the committee; and

(3) recommendations, if any, for legislation.

Added by Acts 2009, 81st Leg., R.S., Ch. 318 (H.B. 610), Sec. 1, eff. September 1, 2009.

SUBCHAPTER H. CERTAIN INITIATIVES RELATING TO AGING

Sec. 161.301. DEFINITION. In this subchapter, "fund" means the Chris Kyker Endowment for Seniors Fund established under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 318 (H.B. 610), Sec. 1, eff. September 1, 2009.

Sec. 161.302. CONTRACT TO PROVIDE OUTREACH AND INPUT RELATING TO AGING POPULATION. (a) The executive commissioner may contract with an entity to:

(1) conduct local forums throughout this state to solicit input on and discuss policies regarding aging-related issues, including issues that are affected by the demographic and geographic diversity of the aging population in this state;

(2) provide analysis, education, and research services with respect to aging-related issues; and

(3) identify problems encountered by the aging population in this state and develop and recommend to the executive commissioner and the legislature solutions to those problems.

(b) If a contract entered into under this section includes a provision that allows a person performing duties under the contract on behalf of the entity to receive a per diem for days spent performing those duties and to be reimbursed for travel expenses incurred in performing those duties, the per diem and reimbursement for travel expenses incurred must be paid at the same rate set in the General Appropriations Act for state employees.

Added by Acts 2009, 81st Leg., R.S., Ch. 318 (H.B. 610), Sec. 1, eff. September 1, 2009.

Sec. 161.303. ESTABLISHMENT AND ADMINISTRATION OF FUND. (a) The Chris Kyker Endowment for Seniors Fund is a special fund outside the state treasury held by the comptroller.

(b) The comptroller shall deposit in the fund:

(1) money appropriated to the fund;

(2) grants, gifts, and donations from any other public or private source; and

(3) income and interest, including depository interest, as provided by Subsection (f).

(c) The comptroller shall administer and manage the assets of the fund in accordance with this section and the rules adopted by the executive commissioner under Section 161.304(c). In managing the assets of the fund, the comptroller may acquire, exchange, sell, supervise, manage, or retain, through procedures and subject to restrictions the comptroller considers appropriate, any kind of investment that a prudent investor, exercising reasonable care, skill, and caution, would acquire or retain in light of the purposes, terms, distribution requirements, and other circumstances of the fund then prevailing, taking into consideration the investment of all the assets of the fund rather than a single investment.

(d) The expenses of managing fund investments shall be paid from the fund.

(e) On request, the comptroller shall fully disclose all details concerning the investments of the fund.

(f) Interest earned on the fund shall be credited to the fund.

Added by Acts 2009, 81st Leg., R.S., Ch. 318 (H.B. 610), Sec. 1, eff. September 1, 2009.

Sec. 161.304. USE OF FUND. (a) The following may be used only to fund a contract entered into under Section 161.302:

(1) contributions to the fund described by Section 161.303(b)(2); and

(2) income and interest earned on money in the fund described by Section 161.303(b)(3).

(b) Except as provided by Subsection (a), money in the fund may not be used for any purpose.

(c) The executive commissioner may adopt rules regarding distribution of money in the fund in accordance with this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 318 (H.B. 610), Sec. 1, eff. September 1, 2009.

SUBCHAPTER I. FALL PREVENTION AWARENESS

Sec. 161.351. LEGISLATIVE FINDINGS. The legislature finds that:

(1) in 2008, 1.14 million older Texans were expected to sustain falls;

(2) the risk factors associated with falling increase with age;

(3) approximately 20 to 30 percent of older adults who fall suffer moderate to severe injuries, resulting in almost 80,000 hospitalizations annually and constituting 40 percent of all nursing facility placements;

(4) according to the Centers for Disease Control and Prevention of the United States Public Health Service, the total direct cost of all fall-related injuries in 2000 for people 65 years of age and older exceeded $19 billion nationwide; and

(5) research shows that a well-designed fall prevention program that includes risk factor assessments, a focused physical activity program, and improvement of the home environment can reduce the incidence of falls by 30 to 50 percent.

Added by Acts 2009, 81st Leg., R.S., Ch. 95 (H.B. 703), Sec. 1, eff. May 23, 2009.

Redesignated from Human Resources Code, Section 161.151 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(39), eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.464, eff. April 2, 2015.

Sec. 161.352. FALL PREVENTION AWARENESS WEEK. The week that

begins on the first Sunday of each year that falls after the date of the autumnal equinox is declared "Fall Prevention Awareness Week."

Added by Acts 2009, 81st Leg., R.S., Ch. 95 (H.B. 703), Sec. 1, eff. May 23, 2009.

Redesignated from Human Resources Code, Section 161.152 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(39), eff. September 1, 2011.

Sec. 161.353. FALL PREVENTION POLICY. The department may develop recommendations to:

(1) raise public awareness about fall prevention;

(2) educate older adults and individuals who provide care to older adults about best practices to reduce the incidence and risk of falls among older adults;

(3) encourage state and local governments and the private sector to promote policies and programs that help reduce the incidence and risk of falls among older adults;

(4) encourage area agencies on aging to include fall prevention education in their services;

(5) develop a system for reporting falls to improve available information on falls; and

(6) incorporate fall prevention guidelines into state and local planning documents that affect housing, transportation, parks, recreational facilities, and other public facilities.

Added by Acts 2009, 81st Leg., R.S., Ch. 95 (H.B. 703), Sec. 1, eff. May 23, 2009.

Redesignated from Human Resources Code, Section 161.153 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(39), eff. September 1, 2011.