HUMAN RESOURCES CODE

TITLE 2. HUMAN SERVICES AND PROTECTIVE SERVICES IN GENERAL

SUBTITLE D. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES; CHILD WELFARE AND PROTECTIVE SERVICES

CHAPTER 40. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 40.001. DEFINITIONS. In this subtitle:

(1) Repealed by Acts 2005, 79th Leg., Ch. 268, Sec. 1.129(1), eff. September 1, 2005.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(50), eff. April 2, 2015.

(2-a) "Council" means the Family and Protective Services Council.

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

(4) "Commissioner" means the commissioner of the Department of Family and Protective Services.

(4-a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(50), eff. April 2, 2015.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944 , Sec. 86(42), eff. September 1, 2015.

(6) "State supported living center" has the meaning assigned by Section 531.002, Health and Safety Code.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 1.10, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.75, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.129(1), eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 23, eff. June 11, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(50), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(42), eff. September 1, 2015.

Sec. 40.002. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES; GENERAL DUTIES OF DEPARTMENT. (a) The Department of Family and Protective Services is composed of the council, the commissioner, an administrative staff, and other employees necessary to efficiently carry out the purposes of this chapter.

(b) Except as provided by Section 40.0025, the department shall:

(1) provide protective services for children and elderly persons and persons with disabilities, including investigations of alleged abuse, neglect, or exploitation in facilities of the Department of State Health Services and the Department of Aging and Disability Services or the successor agency for either of those agencies;

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

(3) license, register, and enforce regulations applicable to child-care facilities, child-care administrators, and child-placing agency administrators; and

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

(c) The department is the state agency designated to cooperate with the federal government in the administration of programs under:

(1) Parts B and E, Title IV, federal Social Security Act (42 U.S.C. Sections 620 et seq. and 670 et seq.);

(2) the Child Abuse Prevention and Treatment Act (42 U.S.C. Section 5101 et seq.); and

(3) other federal law for which the department has administrative responsibility.

(d) The department shall cooperate with the United States Department of Health and Human Services and other federal and state

agencies in a reasonable manner and in conformity with the provisions of federal law and this subtitle to the extent necessary to qualify for federal assistance in the delivery of services.

(e) If the department determines that a provision of state law governing the department conflicts with a provision of federal law, the executive commissioner may adopt policies and rules necessary to allow the state to receive and spend federal matching funds to the fullest extent possible in accordance with the federal statutes, this subtitle, and the state constitution and within the limits of appropriated funds.

(f) Repealed by Acts 2007, 80th Leg., R.S., Ch. 268, Sec. 32(f), eff. September 1, 2008.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 489, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 1.11, 2.128, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 13.07, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.76, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 4.05, eff. June 14, 2005.

Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 32(f), eff. September 1, 2008.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.185, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.18, eff. September 1, 2017.

Sec. 40.0025. AGENCY FUNCTIONS.

Text of subsection effective until April 01, 2025

(a) In this section, "function" includes a power, duty, program, or activity and an administrative support services function associated with the power, duty, program, or activity, unless consolidated under Section 531.02012, Government Code.

Text of subsection effective on April 01, 2025

(a) In this section, "function" includes a power, duty, program, or activity and an administrative support services function associated with the power, duty, program, or activity, unless consolidated under former Section 531.02012, Government Code.

Text of subsection effective until April 01, 2025

(b) In accordance with Subchapter A-1, Chapter 531, Government Code, and notwithstanding any other law, the department performs only functions, including the statewide intake of reports and other information, related to the following services:

(1) child protective services, including services that are required by federal law to be provided by this state's child welfare agency;

(2) adult protective services, other than investigations of the alleged abuse, neglect, or exploitation of an elderly person or person with a disability:

(A) in a facility operated, or in a facility or by a person licensed, certified, or registered, by a state agency; or

(B) by a provider that has contracted to provide home and community-based services; and

(3) family support services functions, including:

(A) family support services as defined under Section 137.002; and

(B) programs that:

(i) provide parent education;

(ii) promote healthier parent-child relationships; or

(iii) prevent family violence.

Text of subsection effective on April 01, 2025

(b) In accordance with former Subchapter A-1, Chapter 531, Government Code, and notwithstanding any other law, the department performs only functions, including the statewide intake of reports and other information, related to the following services:

(1) child protective services, including services that are required by federal law to be provided by this state's child welfare agency;

(2) adult protective services, other than investigations of the alleged abuse, neglect, or exploitation of an elderly person or person with a disability:

(A) in a facility operated, or in a facility or by a person licensed, certified, or registered, by a state agency; or

(B) by a provider that has contracted to provide home and community-based services; and

(3) family support services functions, including:

(A) family support services as defined under Section 137.002; and

(B) programs that:

(i) provide parent education;

(ii) promote healthier parent-child relationships; or

(iii) prevent family violence.

Added by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.19, eff. September 1, 2017.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.91, eff. April 1, 2025.

Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 13, eff. September 1, 2023.

Sec. 40.0026. REFERENCES IN LAW MEANING DEPARTMENT. In this code or any other law, a reference to the department or the commission in relation to a function described by Section 40.0025(b) means the department.

Added by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.19, eff. September 1, 2017.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 28, eff. September 1, 2017.

Sec. 40.0027. REFERENCES IN LAW MEANING COMMISSIONER OR DESIGNEE. In this code or in any other law, a reference to the commissioner or the executive commissioner in relation to a function described by Section 40.0025(b) means the commissioner.

Added by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.19, eff. September 1, 2017.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 28, eff. September 1, 2017.

Sec. 40.003. SUNSET PROVISION. The Department of Family and Protective Services is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2027.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 3, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.77, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 3.04, eff. June 15, 2007.

Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 2.10, eff. July 10, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 2.13, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 4.04, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 596 (S.B. 619), Sec. 4.09, eff. June 10, 2019.

Sec. 40.004. PUBLIC INTEREST INFORMATION AND PUBLIC ACCESS. (a) The commissioner shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commissioner and to speak on any issue under the jurisdiction of the department.

(b) The commissioner, with the advice of the council, shall prepare information of public interest describing the functions of the department. The commission shall make the information available to the public and appropriate state agencies.

(c) The commissioner shall grant an opportunity for a public hearing before the council makes recommendations to the commissioner regarding a substantive rule if a public hearing is requested by:

(1) at least 25 persons;

(2) a governmental entity; or

(3) an association with at least 25 members.

(d) The executive commissioner shall consider fully all written and oral submissions about a proposed rule.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 4, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 1.12, eff. Sept. 1, 2003.

Sec. 40.0041. COMPLAINT PROCESS. (a) The executive commissioner by rule shall develop and implement a uniform process for receiving and resolving complaints against the department throughout the state. The process shall include:

(1) statewide procedures through which the public, consumers, and service recipients are informed:

(A) of the right to make a complaint against the department, including the mailing addresses and telephone numbers of appropriate department personnel responsible for receiving complaints and providing related assistance; and

(B) of the department's procedures for resolving a complaint, including the right to appeal a decision made at the local level;

(2) development and statewide distribution of a form or telephone system that may be used to make a complaint;

(3) a requirement that the department provide information by mail or telephone regarding the department's procedures for investigating and resolving a complaint to each person who makes a complaint; and

(4) a requirement that the department provide status information at least quarterly to a person with a pending complaint against the department, unless the information would jeopardize an undercover investigation.

(b) In addition to other appropriate methods, the

department may provide the information specified by Subsection (a)(1):

(1) on each registration form, application, or written contract for services of a person regulated by the department;

(2) on a sign prominently displayed in the place of business of each person regulated by the department; or

(3) in a bill for service provided by a person regulated by the department.

(c) The department shall keep an information file about each complaint made against the department that the department has authority to resolve.

(d) The executive commissioner shall develop a consistent, statewide process for addressing an appeal by a person dissatisfied with the resolution of a complaint at the regional level. The process shall include an opportunity for appeal of a complaint without the participation of the department's ombudsman office.

(e) The department shall develop and maintain a centralized tracking system to gather information concerning all complaints made against the department throughout the state. The department shall require its personnel to provide information regarding each complaint for inclusion in records maintained under the tracking system at the department's state headquarters, regardless of the location or level at which the complaint is initiated or resolved. The department shall require at least the following information to be maintained for each complaint:

(1) the date the complaint is received;

(2) the name of the person making the complaint;

(3) the subject matter of the complaint;

(4) a record of all persons contacted by the department in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) for each complaint determined by the department to require no corrective action, an explanation of the reason that the complaint was closed without action.

(f) The department shall periodically prepare and deliver reports to the executive commissioner and the commissioner

regarding the number, type, and resolution of complaints made in the state against the department.

(g) The department shall cooperate with the ombudsman for children and youth in foster care to create consequences, based on the circumstances of the complaint and the severity of the retaliation, for any person who is found to have retaliated against a child or youth in the conservatorship of the department because of a complaint made to the ombudsman.

(h) The executive commissioner shall adopt rules requiring all residential child-care facilities in which children and youth in the conservatorship of the department are placed to display information about the ombudsman for children and youth in foster care and the process for filing a complaint with the ombudsman in a location that is easily accessible and offers maximum privacy to the children and youth residing at the facility.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 4, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.186, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1168 (S.B. 830), Sec. 2, eff. September 1, 2015.

Sec. 40.005. CONFIDENTIALITY OF INFORMATION. (a) The executive commissioner shall establish and the department shall enforce rules governing the custody, use, and preservation of the department's records, papers, files, and communications.

(b) The executive commissioner shall prescribe safeguards to govern the use or disclosure of information relating to a recipient of a department service or to an investigation the department conducts in performing its duties and responsibilities. The safeguards must be consistent with the purposes of the department's programs and must comply with applicable state and federal law and department rules.

(c) Notwithstanding any other provision of law, the executive commissioner by rule may prescribe a process by which an administrative law judge may disclose requested confidential information that the department possesses. The rules must provide

that the information may be disclosed by the administrative law judge only if the administrative law judge:

(1) provides notice to the department and any interested party; and

(2) determines after 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.

(d) Except as otherwise provided, a person who is authorized to receive confidential information shall maintain its confidentiality and shall prevent disclosure of the information to a person who is not authorized to receive the information.

(e) A person commits an offense if the person discloses without authorization confidential information contained in the department's records, papers, files, or communications. An offense under this subsection is a Class A misdemeanor.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.187, eff. April 2, 2015.

Sec. 40.006. APPLICATION OF OTHER LAWS. (a) The department is subject to Chapters 551, 2001, and 2002, Government Code.

(b) The department is not required to comply with Chapter 53, Occupations Code, in issuing a license or conducting a background check under Chapter 42 or 43.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 720 (S.B. 68), Sec. 1, eff. September 1, 2009.

Sec. 40.007. REPORTING REQUIREMENT; PROFESSIONAL FEES. (a) The department shall include in any report required by law concerning the department's expenditures information relating to fees for professional or consultative services provided for the general administration of the department.

(b) The report required under Subsection (a) may not include:

(1) professional fees paid for routine or special examinations to determine an individual's eligibility for a program administered by the department;

(2) professional fees for treatment, services, or care for individual recipients; or

(3) fees for providing for the special needs of individual recipients, including the provision of appliances.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 21.01(a), eff. Sept. 1, 1997.

Sec. 40.008. PROGRAM ACCESSIBILITY. The department shall comply with federal and state laws related to program and facility accessibility. The department shall also prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the department's programs and services.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 5, eff. Sept. 1, 1997.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 40.021. FAMILY AND PROTECTIVE SERVICES COUNCIL. (a) The Family and Protective Services Council is created to assist the commissioner in developing rules and policies for the department.

(b) The council is composed of nine members of the public appointed by the governor. In making appointments to the council, the governor shall consider persons who have a demonstrated knowledge of the department and the health and human services system in general, including former department employees, court-appointed special advocates, foster care providers, and employees of child advocacy centers.

Text of subsection effective until April 01, 2025

(c) The council shall study and make recommendations to the commissioner regarding the management and operation of the department, including policies and rules governing the delivery of services to persons who are served by the department, the rights and duties of persons who are served or regulated by the department, and the consolidation of the provision of administrative support

services as provided by Section 531.00553, Government Code. The council may not develop policies or rules relating to administrative support services provided by the commission for the department.

Text of subsection effective on April 01, 2025

(c) The council shall study and make recommendations to the commissioner regarding the management and operation of the department, including policies and rules governing the delivery of services to persons who are served by the department, the rights and duties of persons who are served or regulated by the department, and the consolidation of the provision of administrative support services as provided by Subchapter E, Chapter 524, Government Code. The council may not develop policies or rules relating to administrative support services provided by the commission for the department.

(d) Chapter 551, Government Code, applies to the council.

(e) Chapter 2110, Government Code, does not apply to the council.

(f) A majority of the members of the council constitute a quorum for the transaction of business.

Added by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 29, eff. September 1, 2017.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.92, eff. April 1, 2025.

Sec. 40.022. APPOINTMENTS. (a) Appointments to the council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(b) Appointments to the council shall be made so that each geographic area of the state is represented on the council. Notwithstanding Subsection (a), appointments to the council must reflect the ethnic diversity of this state.

Added by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 29, eff. September 1, 2017.

Sec. 40.023. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A person who is appointed as a member of the council may not vote, deliberate, or be counted as a member in attendance at a meeting of the council until the person completes a training program that complies with this section.

(b) The training program must provide information to the member regarding:

(1) the legislation that created the department and the council;

(2) the programs operated by the department;

(3) the role and functions of the department and the council, including detailed information regarding the advisory responsibilities of the council;

(4) the role of the commission and the responsibilities of the commission in relation to the department;

(5) the rules of the department, with an emphasis on rules that relate to disciplinary and investigatory authority;

(6) the current budget for the department;

(7) the results of the most recent formal audit of the department;

(8) the requirements of the:

(A) open meetings law, Chapter 551, Government Code;

(B) public information law, Chapter 552, Government Code; and

(C) administrative procedure law, Chapter 2001, Government Code;

(9) the requirements of the conflict-of-interest laws and other laws relating to public officials; and

(10) any applicable ethics policies adopted by the commissioner or the Texas Ethics Commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 29, eff. September 1, 2017.

Sec. 40.024. TERMS; VACANCY. (a) Members of the council serve for staggered six-year terms, with the terms of three members expiring February 1 of each odd-numbered year.

(b) A member of the council may not serve more than two consecutive full terms as a council member.

(c) A vacancy on the council shall be filled in the same manner as the original appointment.

Added by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 29, eff. September 1, 2017.

Sec. 40.025. REIMBURSEMENT FOR EXPENSES. A council member may not receive compensation for service as a member of the council but is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the council as provided by the General Appropriations Act.

Added by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 29, eff. September 1, 2017.

Sec. 40.026. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS. (a) The governor shall designate a member of the council as the presiding officer to serve in that capacity at the pleasure of the governor.

(b) The members of the council shall elect any other necessary officers.

(c) The council shall meet quarterly and at other times at the call of the presiding officer. The council may hold meetings in different areas of the state.

Added by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 29, eff. September 1, 2017.

Sec. 40.027. COMMISSIONER. (a) The governor, with the advice and consent of the senate, shall appoint a commissioner. The commissioner is to be selected according to education, training, experience, and demonstrated ability.

(b) The commissioner serves a term of two years.

(c) The commissioner shall:

(1) act as the department's chief administrative officer;

(2) oversee the development and implementation of policies and guidelines needed for the administration of the

department's functions;

(3) oversee the development of rules relating to the matters within the department's jurisdiction, including the delivery of services to persons and the rights and duties of persons who are served or regulated by the department; and

(4) serve as a liaison between the department and commission.

(d) The commissioner shall administer this chapter and other laws relating to the department.

(e) Notwithstanding any other law, the commissioner shall adopt rules and policies for the operation of and the provision of services by the department.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1460, Sec. 2.04, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 1.12, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.188, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 30, eff. September 1, 2017.

Sec. 40.030. ADVISORY COMMITTEES. (a) The commissioner or the commissioner's designee may appoint advisory committees in accordance with Chapter 2110, Government Code.

(b) The commissioner shall adopt rules, in compliance with Chapter 2110, Government Code, regarding the purpose, structure, and use of advisory committees by the department. The rules may include provisions governing:

(1) an advisory committee's size and quorum requirements;

(2) qualifications for membership of an advisory committee, including:

(A) requirements relating to experience and geographic representation; and

(B) requirements for the department to include as members of advisory committees youth who have aged out of foster care and parents who have successfully completed family service

plans and whose children were returned to the parents, as applicable;

(3) appointment procedures for an advisory committee;

(4) terms for advisory committee members; and

(5) compliance with Chapter 551, Government Code.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.78, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 70, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.13, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 31, eff. September 1, 2017.

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

(b) An investigator in the unit shall determine whether an elderly person or person with a disability who is the subject of a report made under Section 48.051(a) may have suffered from abuse, neglect, or exploitation as a result of the criminal conduct of another person. If the investigator determines that criminal conduct may have occurred, the investigator shall immediately notify:

(1) the commission's office of inspector general if the person with a disability who is the subject of the report resides in a state supported living center or the ICF-IID component of the Rio Grande State Center; and

(2) the appropriate law enforcement agency, unless the law enforcement agency reported the alleged abuse, neglect, or exploitation to the department.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.01, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 24, eff. June 11, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 4, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.189, eff. April 2, 2015.

Sec. 40.032. PERSONNEL. (a) The department may employ personnel necessary to administer the department's duties.

(b) The department shall develop an intradepartmental career ladder program that addresses opportunities for mobility and advancement for employees within the department. The program shall require the intradepartmental posting of all positions concurrently with any public posting.

(c) The department shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for department employees must be based on the system established under this subsection.

(d) The department shall provide to the department's employees, as often as is necessary, information regarding their qualifications for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(e) The department shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel, that comply with Chapter 21, Labor Code;

(2) a comprehensive analysis of the department's workforce that meets federal and state laws, rules, and regulations and instructions adopted under those laws, rules, and regulations;

(3) procedures by which a determination can be made about the extent of underuse in the department's workforce of all

persons for whom federal or state laws, rules, and regulations and instructions adopted under those laws, rules, and regulations encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(f) The policy statement required under Subsection (e) shall:

(1) be filed with the governor's office;

(2) cover an annual period;

(3) be updated at least annually; and

(4) be reviewed by the Texas Workforce Commission civil rights division for compliance with Subsection (e)(1).

(g) The governor's office shall develop and deliver a biennial report to the legislature based on the information submitted under Subsection (f). The report may be made separately or as a part of other biennial reports made to the legislature.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 13, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.190, eff. April 2, 2015.

Sec. 40.0321. SALARY SUPPLEMENTATION BY COUNTY OR MUNICIPALITY. (a) A county or municipality may supplement, from its own funds, the salary of a department employee whose duties include providing services as part of, or relating to, the provision of child protective services and adult protective services by the department.

(b) A department employee who has worked in the same position for the department in a different region is not eligible for a salary supplement under Subsection (a) for a minimum of six months after assuming the position in the new region.

(c) Section 659.020, Government Code, does not apply to the supplement authorized by this section.

(d) The department may not require a salary supplement as a condition for creating or maintaining a position in the region.

Added by Acts 2001, 77th Leg., ch. 606, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.191, eff. April 2, 2015.

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

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

(c) Subject to the availability of funds, the executive commissioner by rule shall develop and the department shall implement an incentive program to encourage each department employee whose duties include the duties described by Subsection (a) to obtain professional credentials described by that subsection if the employee does not have those credentials.
Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.02, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.192, eff. April 2, 2015.

Sec. 40.0323. COORDINATION REGARDING RECRUITMENT FOR AND CURRICULUM OF CERTAIN CERTIFICATE OR DEGREE PROGRAMS. Subject to the availability of funds, the department and the Texas Higher Education Coordinating Board jointly shall develop strategies to:

(1) promote certificate or degree programs in the

fields of social work and psychology to individuals enrolled in or admitted to institutions of higher education in this state; and

(2) ensure that persons receiving a certificate or degree, including a graduate degree, in social work or psychology from an institution of higher education in this state have the knowledge and skills regarding protective services that are provided directly to elderly persons or persons with disabilities and necessary for successful employment by the adult protective services division of the department.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.02, eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.193, eff. April 2, 2015.

Sec. 40.0325. STUDY OF CASEWORKER EDUCATION REIMBURSEMENT. (a) The department shall study the effect that providing reimbursement for certain educational expenses would have on recruiting and retaining qualified child protective services caseworkers. The study must include a comparative analysis of the cost of training new caseworkers and the benefits of having an experienced caseworker staff with the cost of providing reimbursement for educational expenses.

(b) In determining the cost of reimbursing caseworkers for educational expenses, the department shall consider reimbursing caseworkers for tuition, academic fees, and other academic expenses the caseworker paid to an institution of higher education or a private or independent institution of higher education, as those terms are defined by Section 61.003, Education Code, while the caseworker was enrolled in a bachelor's degree or advanced degree program in an academic program that the department determines provides necessary training for child protective services caseworkers.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(113), eff. June 17, 2011.

Added by Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 24, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(113), eff. June 17, 2011.

Sec. 40.0326. RECRUITMENT OF CASEWORKERS. When recruiting child protective services caseworkers, the department shall target its recruitment efforts toward individuals who hold a bachelor's degree or advanced degree in at least one of the following academic areas:

(1) social work;

(2) counseling;

(3) early childhood education;

(4) psychology;

(5) criminal justice;

(6) elementary or secondary education;

(7) sociology; or

(8) human services.

Added by Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 24, eff. September 1, 2007.

Sec. 40.033. MERIT SYSTEM. (a) Subject to rules adopted by the executive commissioner, the department may establish a merit system for its employees.

(b) The merit system may be maintained in conjunction with other state agencies that are required by federal law to operate under a merit system.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.194, eff. April 2, 2015.

Sec. 40.034. PROHIBITED ACTIVITIES BY FORMER OFFICERS OR EMPLOYEES. (a) For one year after the date on which a former officer or employee of the department terminates service or employment with the department, the individual may not, directly or indirectly, attempt or aid in the attempt to procure a contract with the department that relates to a program or service in which the

individual was directly concerned or for which the individual had administrative responsibility.

(b) This section does not apply to:

(1) a former employee who is compensated on the last date of service or employment below the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule, including a state employee who is exempt from the state's position classification plan; or

(2) a former officer or employee who is employed by another state agency or a community center.

(c) A former officer or employee of the department commits an offense if the former officer or employee violates this section. An offense under this section is a Class A misdemeanor.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.035. TRAINING PROGRAM FOR ADULT PROTECTIVE SERVICES; CONTINUING EDUCATION. (a) The department shall develop and implement a training program that, except as provided by Subsection (a-1), each newly hired or assigned department employee must successfully complete before:

(1) initiating an investigation of a report of alleged abuse, neglect, or exploitation of an elderly person or person with a disability under Chapter 48; or

(2) providing protective services to elderly persons or persons with disabilities under that chapter.

(a-1) A newly hired or assigned department employee may initiate an investigation of a report of alleged abuse, neglect, or exploitation of an elderly person or a person with a disability under Chapter 48 or provide protective services to an elderly person or a person with a disability under that chapter only if the employee:

(1) is in the process of receiving the training required by Subsection (a); and

(2) initiates the investigation or provides protective services under the direct supervision of the person who is providing the training to the employee.

(b) The training program must:

(1) provide the employee with appropriate comprehensive information regarding:

(A) the incidence and types of reports of abuse, neglect, and exploitation of elderly persons or persons with disabilities that are received by the department, including information concerning false reports; and

(B) the use and proper implementation of:

(i) the risk assessment criteria developed under Section 48.004;

(ii) the criteria used by caseworkers to determine whether elderly persons or persons with disabilities lack capacity to consent to receive protective services; and

(iii) the legal procedures available under Chapter 48 for the protection of elderly persons or persons with disabilities, including the procedures for obtaining a court order for emergency protective services under Section 48.208;

(2) include best practices for management of a case from the intake process to the provision of protective services, including criteria that specify the circumstances under which an employee should:

(A) consult a supervisor regarding a case; or

(B) refer an elderly person or person with a disability to an appropriate public agency or community service provider for guardianship or other long-term services after the delivery of protective services to that person has been completed;

(3) provide appropriate specialized training in any necessary topics, including:

(A) investigation of suspected identity theft and other forms of financial exploitation and suspected self-neglect; and

(B) establishment and maintenance of working relationships with community organizations and other local providers who provide services to elderly persons and persons with disabilities;

(4) include on-the-job training, which must require another department caseworker with more experience to accompany and

train the caseworker in the field;

(5) provide for the development of individualized training plans;

(6) include training in working with law enforcement agencies and the court system when legal intervention is sought for investigations or emergency orders;

(7) to the maximum extent possible, include nationally recognized best practices in addition to the best practices required under Subdivision (2); and

(8) include testing, progress reports, or other evaluations to assess the performance of trainees.

(c) The department at least annually shall provide comprehensive case management training to supervisors of department employees who conduct investigations under Chapter 48. The training must be designed to enable the supervisors to provide guidance on investigations of reports of alleged abuse, neglect, or exploitation that are complex or present unique problems.

(d) The department shall develop and implement appropriate continuing education programs for employees of the adult protective services division who have completed initial training under this section. The continuing education programs must include nationally recognized best practices to the maximum extent possible and must be designed to provide an annual update regarding changes in:

(1) adult protective services division policies and procedures; and

(2) applicable law, including statutory changes affecting the adult protective services division or elderly persons or persons with disabilities served by the division.

(e) A department employee required to participate in a continuing education program under this section must complete the program at least once each calendar year.

(f) The department shall:

(1) make curriculum developed for a training or continuing education program under this section readily available to department employees in written form; and

(2) periodically revise a training and continuing education program established under this section as necessary to satisfy training needs identified by the department or department employees.

(g) The circumstances specified under Subsection (b)(2) under which an employee should consult a supervisor regarding a case must be consistent with the risk assessment criteria developed under Section 48.004 that require consultation with a supervisor.

(h) The executive commissioner by rule shall provide policies and procedures by which the department incorporates examples of actual cases investigated by the department in the training programs under this section for use as training tools.

(i) In implementing the training program and continuing education programs under this section, the department, to the maximum extent possible, shall contract with persons who are not department employees to conduct the programs.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.03, eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.195, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 264 (S.B. 2261), Sec. 1, eff. September 1, 2023.

Sec. 40.036. ALZHEIMER'S DISEASE AND DEMENTIA TRAINING. (a) In this section:

(1) "Adult protective services employee" means a division employee who performs a function described by Section 40.035(a).

(2) "Division" means the department's adult protective services division.

(b) Except as provided by Subsections (c) and (d), the department shall develop a training program for adult protective services employees on identifying and interacting with individuals who have Alzheimer's disease or dementia. The program must include an initial four-hour training requirement and an annual two-hour continuing education requirement. The requirements are in

addition to the training required by Section 40.035, but may be provided in conjunction with that training. The training program must cover, at a minimum, information about:

(1) dementia, including behavioral and psychiatric symptoms;

(2) interaction with an individual who has impaired communication skills, including effective and respectful communication techniques;

(3) techniques for understanding and approaching an individual's behavioral symptoms;

(4) specific aspects of safety, including wandering by an individual;

(5) abuse, neglect, and exploitation, as defined by Section 48.002, of an individual with Alzheimer's disease or dementia, including:

(A) identifying the most common types of abuse;

(B) recognizing signs of abuse, neglect, and exploitation; and

(C) identifying when it is necessary to contact a law enforcement agency about potential criminal behavior toward an individual with Alzheimer's disease or dementia that is committed by a family member or caretaker of the individual or that occurs in an institution;

(6) identification of self-neglect by an individual with Alzheimer's disease or dementia; and

(7) protocols for connecting an individual with Alzheimer's disease or dementia to local care resources or professionals who are skilled in dementia care to encourage cross-referring the individual for services and increase reporting of incidents of abuse, neglect, or exploitation.

(c) The division may use a training program developed or adopted by the Health and Human Services Commission or the Department of State Health Services if the program is equivalent to or more extensive than the program requirements under Subsection (b).

(d) If another state law or a federal law or regulation requires training on Alzheimer's disease or dementia that is more

rigorous or extensive than the training required by Subsection (b), the division shall provide training to adult protective services employees that complies with that law or regulation.

(e) An area agency on aging must ensure that the agency's employees or volunteers who provide services directly to an elderly individual or the individual's family members or caregivers receive training on Alzheimer's disease and dementia. The training must:

(1) be evidence-based or evidence-informed; and

(2) focus on:

(A) recognizing the signs and symptoms of cognitive impairments caused by Alzheimer's disease or dementia; and

(B) understanding how the cognitive impairments may affect the screening of and service planning for an elderly individual.

(f) An area agency on aging may provide the training described by Subsection (b) through:

(1) a course developed by the agency; or

(2) a course that is available from the department, the Health and Human Services Commission, the Department of State Health Services, or an entity that is involved in education or services relating to Alzheimer's disease or dementia, including the Alzheimer's Association and caregiver organizations.

Added by Acts 2019, 86th Leg., R.S., Ch. 1177 (H.B. 3428), Sec. 1, eff. September 1, 2019.

Sec. 40.037. TRAINING PROGRAM FOR CHILD PROTECTIVE SERVICES MANAGERS. (a) The department shall develop and implement a training program that each employee who is newly hired or promoted to a management position in the child protective services division must complete as soon as is practicable, but not later than the 60th day after the date the employee is hired or promoted to the management position.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944 , Sec. 86(48), eff. September 1, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944 , Sec. 86(48), eff. September 1, 2015.

Added by Acts 2013, 83rd Leg., R.S., Ch. 445 (S.B. 771), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 71, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(48), eff. September 1, 2015.

Sec. 40.038. SECONDARY TRAUMA SUPPORT FOR CASEWORKERS. (a) In this section, "secondary trauma" means trauma incurred as a consequence of a person's exposure to acute or chronic trauma.

(b) The department shall develop and make available a program to provide ongoing support to caseworkers who experience secondary trauma resulting from exposure to trauma in the course of the caseworker's employment. The program must include critical incident stress debriefing. The department may not require that a caseworker participate in the program.

Added by Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 15, eff. September 1, 2017.

Sec. 40.039. REVIEW OF RECORDS RETENTION POLICY. The department shall periodically review the department's records retention policy with respect to case and intake records relating to department functions. The department shall make changes to the policy consistent with the records retention schedule submitted under Section 441.185, Government Code, that are necessary to improve case prioritization and the routing of cases to the appropriate division of the department. The department may adopt rules necessary to implement this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 26(a), eff. September 1, 2017.

Added by Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 8(a), eff. September 1, 2017.

Sec. 40.040. CASE MANAGEMENT VENDOR QUALITY OVERSIGHT AND ASSURANCE DIVISION; MONITORING OF CONTRACT ADHERENCE. (a) In this section, "case management," "catchment area," and "community-based

care" have the meanings assigned by Section 264.152, Family Code.

(b) The department shall create within the department the case management services vendor quality oversight and assurance division. The division shall:

(1) oversee quality and ensure accountability of any vendor that provides community-based care and full case management services for the department under community-based care;

(2) conduct assessments on the fiscal and qualitative performance of any vendor that provides foster care services for the department under community-based care;

(3) create and administer a dispute resolution process to resolve conflicts between vendors that contract with the department to provide foster care services under community-based care and any subcontractor of a vendor; and

(4) monitor the transfer from the department to a vendor of full case management services for children and families receiving services from the vendor, including any transfer occurring under a pilot program.

(c) The commission shall contract with an outside vendor with expertise in quality assurance to develop, in coordination with the department, a contract monitoring system and standards for the continuous monitoring of the adherence of a vendor providing foster care services under community-based care to the terms of the contract entered into by the vendor and the commission. The standards must include performance benchmarks relating to the provision of case management services in the catchment area where the vendor operates.

(d) The division shall collect and analyze data comparing outcomes on performance measures between catchment areas where community-based care has been implemented and regions where community-based care has not been implemented.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 26(a), eff. September 1, 2017.

Added by Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 8(a), eff. September 1, 2017.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 10.001,

eff. September 1, 2019.

Sec. 40.041. OFFICE OF DATA ANALYTICS. The department shall create an office of data analytics. The office shall report to the deputy commissioner and may perform any of the following functions, as determined by the department:

(1) monitor management trends;

(2) analyze employee exit surveys and interviews;

(3) evaluate the effectiveness of employee retention efforts, including merit pay;

(4) create and manage a system for handling employee complaints submitted by the employee outside of an employee's direct chain of command, including anonymous complaints;

(5) monitor and provide reports to department management personnel on:

(A) employee complaint data and trends in employee complaints;

(B) compliance with annual department performance evaluation requirements; and

(C) the department's use of positive performance levels for employees;

(6) track employee tenure and internal employee transfers within both the child protective services division and the department;

(7) use data analytics to predict workforce shortages and identify areas of the department with high rates of employee turnover, and develop a process to inform the deputy commissioner and other appropriate staff regarding the office's findings;

(8) create and monitor reports on key metrics of agency performance;

(9) analyze available data, including data on employee training, for historical and predictive department trends; and

(10) conduct any other data analysis the department determines to be appropriate for improving performance, meeting the department's current business needs, or fulfilling the powers and duties of the department.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 26(a),

eff. September 1, 2017.

Added by Acts 2017, 85th Leg., R.S., Ch. 552 (S.B. 497), Sec. 1, eff. September 1, 2017.

Added by Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 8(a), eff. September 1, 2017.

Sec. 40.042. INVESTIGATIONS OF CHILD ABUSE, NEGLECT, AND EXPLOITATION. (a) In this section, "child-care facility" includes a facility, licensed or unlicensed child-care facility, family home, residential child-care facility, employer-based day-care facility, or shelter day-care facility, as those terms are defined in Chapter 42.

(b) For all investigations of child abuse, neglect, or exploitation conducted by the child protective services division of the department, the department shall adopt the definitions of abuse, neglect, and exploitation provided in Section 261.001, Family Code.

(c) The department shall establish standardized policies to be used during investigations.

Text of subsection as added by Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 8

(d) The commissioner shall establish units within the child protective services division of the department to specialize in investigating allegations of child abuse, neglect, or exploitation occurring at a child-care facility.

Text of subsection as added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 26

(d) The commissioner shall establish units within the child protective services division of the department to specialize in investigating allegations of child abuse, neglect, and exploitation occurring at a child-care facility.

(e) The department may require that investigators who specialize in allegations of child abuse, neglect, and exploitation

occurring at child-care facilities receive ongoing training on the minimum licensing standards for any facilities that are applicable to the investigator's specialization.

(f) After an investigation of abuse, neglect, or exploitation occurring at a child-care facility, the department shall provide the state agency responsible for regulating the facility with access to any information relating to the department's investigation. Providing access to confidential information under this subsection does not constitute a waiver of confidentiality.

Text of subsection as added by Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 8

(g) The executive commissioner or the commissioner of the department, as appropriate, may adopt rules to implement this section.

Text of subsection as added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 26

(g) The department may adopt rules to implement this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 26(a), eff. September 1, 2017.

Added by Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 8(a), eff. September 1, 2017.

Sec. 40.043. CHILD SAFETY AND RUNAWAY PREVENTION PROCEDURES. The commissioner by rule shall establish the department's strategy to:

(1) develop trauma-informed protocols for reducing the number of incidents in which a child in the conservatorship of the department runs away from a residential treatment center; and

(2) balance measures aimed at protecting child safety with federal and state requirements related to normalcy and decision making under the reasonable and prudent parent standard

prescribed by 42 U.S.C. Section 675 and Sections 264.001 and 264.125, Family Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 394 (S.B. 781), Sec. 1, eff. September 1, 2019.

Sec. 40.045. EFFICIENCY AUDIT. (a) For purposes of this section, "efficiency audit" means an investigation of the operations of the department to examine fiscal management, efficiency, outcomes for children and families served by the department, and utilization of resources.

(b) During the state fiscal year ending August 31, 2022, and every fourth year after that date, the department shall conduct an efficiency audit.

(c) In a year in which an efficiency audit is completed as required by this section, the efficiency audit shall satisfy the department's annual internal audit requirements under Chapter 2102, Government Code.

(d) The department shall pay the costs associated with an efficiency audit required under this section using money appropriated for administrative and internal audit operations in the state fiscal year the audit is conducted.

(e) Not later than March 1 of the state fiscal year in which an efficiency audit is required under this section, the commissioner, in collaboration with the council, the department's chief financial officer, and the department's internal audit director, shall select an external auditor to conduct the efficiency audit.

(f) The external auditor shall be independent of the department's direction.

(g) The external auditor shall complete the audit not later than the 90th day after the date the auditor is selected.

(h) The Legislative Budget Board shall establish the scope of the efficiency audit and determine the areas of investigation for the audit, including:

(1) reviewing the department's resources to determine whether they are being used effectively and efficiently to achieve desired outcomes for children and families served by the

department, including the following outcomes:

(A) ensuring the safety of children in placements;

(B) preventing entry into foster care through the use of family preservation services;

(C) reducing the amount of time that a child is placed in substitute care and is in the conservatorship of the department;

(D) increasing the placement of children with relative or kinship caregivers when possible;

(E) ensuring sufficient state capacity for foster care and kinship placements;

(F) reducing the number of children who age out of care and enhancing supports for youth at risk of aging out of care; and

(G) increasing the reunification of children with the biological parents of the children when possible;

(2) identifying cost savings or reallocations of resources; and

(3) identifying opportunities for the department to partner with other state agencies and community organizations to improve services through consolidation of essential functions, outsourcing, and elimination of duplicative efforts.

(i) Not later than November 1 of the calendar year an efficiency audit is conducted, the auditor shall prepare and submit a report of the audit and recommendations for efficiency improvements to the governor, the Legislative Budget Board, the state auditor, the commissioner, the council, and the chairs of the House Human Services Committee and the Senate Health and Human Services Committee.

Added by Acts 2021, 87th Leg., R.S., Ch. 342 (H.B. 2374), Sec. 1, eff. September 1, 2021.

SUBCHAPTER C. GENERAL FUNCTIONS OF DEPARTMENT

Sec. 40.0505. DIVISIONS OF DEPARTMENT. (a) The commissioner shall establish the following divisions and offices

within the department:

(1) an investigations division;

(2) a consolidated data division;

(3) a legal division that oversees the following:

(A) legal matters relating to human resources, as necessary to manage the department's workforce and establish the department's hiring and termination policies;

(B) open records;

(C) privacy and confidentiality;

(D) litigation; and

(E) contract compliance;

(4) an operations division that oversees department operations and human resources functions of the department; and

(5) a financial management and accounting services division.

(b) The commissioner may establish additional divisions within the department as the commissioner determines appropriate.

(c) The commissioner may assign department functions among the department's divisions.

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 2.05, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.196, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 32, eff. September 1, 2017.

Sec. 40.051. STRATEGIC PLAN FOR DEPARTMENT. The department shall develop a departmental strategic plan based on:

(1) furthering the policy of family preservation;

(2) the goal of ending the abuse and neglect of children in the conservatorship of the department; and

(3) the goal of increasing the capacity and availability of foster, relative, and kinship placements in this state.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 14, eff. Sept. 1,

1997.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 9, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 1147 (S.B. 956), Sec. 5, eff. September 1, 2023.

Sec. 40.0512. CONTINUITY OF SERVICES; INFORMATION SHARING. The department shall make a good faith effort to share relevant and appropriate information with health and human services agencies regarding persons receiving services from the department to ensure continuity of care and the best possible coordination of state-funded resources among health and human services agencies.

Added by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 33, eff. September 1, 2017.

Sec. 40.0515. QUALITY ASSURANCE PROGRAM FOR ADULT PROTECTIVE SERVICES; QUARTERLY REPORTS. (a) The department shall develop and implement a quality assurance program for adult protective services provided by or on behalf of the department.

(b) In developing the program, the department shall establish:

(1) client-centered outcome measures for each of the following functions of the adult protective services program:

(A) intake process;

(B) investigations;

(C) risk assessment determinations; and

(D) delivery of protective services;

(2) minimum job performance standards for personnel and each work department of the adult protective services division of the department; and

(3) procedures for conducting periodic performance reviews to monitor compliance with the standards established under Subdivision (2), which must include requirements that, for each caseworker in the adult protective services division of the department, a supervisor shall conduct:

(A) at least two performance reviews each year,

if the employee has less than two years of adult protective services casework experience; and

(B) at least one performance review each year, if the employee has at least two years of adult protective services casework experience.

(c) The department shall promptly address a person's or work department's failure to meet minimum job performance standards established under Subsection (b)(2):

(1) by issuing to the person or work department, as appropriate, a corrective action plan detailing the actions required to comply with the standards; or

(2) if necessary, through disciplinary action, including a person's demotion or discharge, for repeated failure to meet the standards.

Text of subsection effective until April 01, 2025

(d) A performance review conducted under Subsection (b)(3) is considered a performance evaluation for purposes of Section 40.032(c) of this code or Section 531.009(c), Government Code, as applicable. The department shall ensure that disciplinary or other corrective action is taken against a supervisor or other managerial employee who is required to conduct a performance evaluation for adult protective services personnel under Section 40.032(c) of this code or Section 531.009(c), Government Code, as applicable, or a performance review under Subsection (b)(3) and who fails to complete that evaluation or review in a timely manner.

Text of subsection effective on April 01, 2025

(d) A performance review conducted under Subsection (b)(3) is considered a performance evaluation for purposes of Section 40.032(c) of this code or Section 523.0055(b), Government Code, as applicable. The department shall ensure that disciplinary or other corrective action is taken against a supervisor or other managerial employee who is required to conduct a performance evaluation for adult protective services personnel under Section 40.032(c) of this code or Section 523.0055(b), Government Code, as applicable, or a performance review under Subsection (b)(3) and who fails to complete that evaluation or review in a timely manner.

Text of subsection effective until April 01, 2025

(e) The annual performance evaluation required under Section 40.032(c) of this code or Section 531.009(c), Government Code, as applicable, of the performance of a supervisor in the adult protective services division must:

(1) be performed by an appropriate program administrator; and

(2) include:

(A) an evaluation of the supervisor with respect to the job performance standards applicable to the supervisor's assigned duties; and

(B) an evaluation of the supervisor with respect to the compliance of employees supervised by the supervisor with the job performance standards applicable to those employees' assigned duties.

Text of subsection effective on April 01, 2025

(e) The annual performance evaluation required under Section 40.032(c) of this code or Section 523.0055(b), Government Code, as applicable, of the performance of a supervisor in the adult protective services division must:

(1) be performed by an appropriate program administrator; and

(2) include:

(A) an evaluation of the supervisor with respect to the job performance standards applicable to the supervisor's assigned duties; and

(B) an evaluation of the supervisor with respect to the compliance of employees supervised by the supervisor with the job performance standards applicable to those employees' assigned duties.

(f) A summary of the findings of outcome measures established and performance reviews conducted under this section must be reported to regional directors and other senior management employees of the adult protective services division.

(g) Each fiscal quarter the department shall file with the governor and the presiding officer of each house of the legislature a report that includes:

(1) a comprehensive review of the adult protective services division's overall performance during the preceding quarter; and

(2) a summary of the adult protective services division's performance during the preceding quarter on each of the outcome measures established under Subsection (b)(1).

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.04(a), eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.20, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.93, eff. April 1, 2025.

Sec. 40.0516. COLLECTION OF DATA; ANNUAL REPORT. (a) The department shall collect and compile the following data on the state and county level:

(1) the following information for reports of abuse and neglect in residential child-care facilities, as defined by Section 42.002:

(A) the number of reports of abuse and neglect made to the department hotline;

(B) the types of abuse and neglect reported;

(C) the investigation priority level assigned to each report;

(D) the investigation response times, sorted by investigation priority;

(E) the disposition of each investigation;

(F) the number of reports of abuse and neglect to which the department assigned a disposition of call screened out or alternative or differential response provided; and

(G) the overall safety and risk finding for each investigation;

(2) the number of families referred to family preservation services, organized by the risk level assigned to each family through structured decision-making;

(3) the number of children removed from the child's

home as the result of an investigation of a report of abuse or neglect and the primary circumstances that contributed to the removal;

(4) the number of children placed in substitute care, organized by type of placement;

(5) the number of children placed out of the child's home county or region;

(6) the number of children in the conservatorship of the department at each service level;

(7) the number of children in the conservatorship of the department who are pregnant or who are a parent;

(8) the number of children in the managing conservatorship of the department who are the parent of a child who is also in the managing conservatorship of the department;

(9) the recurrence of child abuse or neglect in a household in which the department investigated a report of abuse or neglect within six months and one year of the date the case was closed separated by the following type of case:

(A) cases that were administratively closed without further action;

(B) cases in which the child was removed and placed in the managing conservatorship of the department; and

(C) cases in which the department provided family preservation services;

(10) the recurrence of child abuse and neglect in a household within five years of the date the case was closed for cases described by Subdivisions (9)(B) and (C); and

(11) workforce turnover data for child protective services employees, including the average tenure of caseworkers and supervisors and the average salary of caseworkers and supervisors.

(b) Not later than February 1 of each year, the department shall publish a report containing data collected under this section. The report must include the statewide data and the data reported by county.

Added by Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 16, eff. September 1, 2017.

Sec. 40.0521. RULES REGARDING DOMESTIC VIOLENCE. (a) The executive commissioner shall adopt and the department shall implement rules that require an investigating employee to document indications of domestic violence, including elder, spousal, and child abuse. The department may develop forms to facilitate the documentation process.

(b) The executive commissioner by rule shall require that written information, printed in English and Spanish, concerning community services that are available to victims of domestic violence be distributed to those victims. The department may coordinate its efforts under this subsection with local law enforcement agencies already providing that information.

(c) The department shall include in its annual report statistical compilations of information regarding domestic abuse documented under Subsection (a).

Added by Acts 1997, 75th Leg., ch. 165, Sec. 21.02(a), eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.198, eff. April 2, 2015.

Sec. 40.0522. COMMUNITY EDUCATION AND TRAINING RELATING TO CHILD ABUSE OR NEGLECT. (a) The department shall assure the availability of community education programs designed to improve participation of the general public in preventing, identifying, and treating cases of child abuse or neglect, including parent education programs.

(b) The department shall assure that training concerning child abuse or neglect is available to professionals who are required by law to report, investigate, or litigate those cases.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 16, eff. Sept. 1, 1997.

Sec. 40.0524. MULTIDISCIPLINARY TEAMS. (a) In a jurisdiction for which a children's advocacy center has not been established under Section 264.402, Family Code, the department shall, to the extent possible, 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 executive commissioner 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) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944 , Sec. 86(51), eff. September 1, 2015.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 16, eff. Sept. 1, 1997. Renumbered from Human Resources Code Sec. 40.0523 by Acts 2001, 77th Leg., ch. 157, Sec. 1.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.200, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 72, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(51), eff. September 1, 2015.

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

(b) The strategy must include plans to:

(1) move staff from centralized office sites into

community-based settings to the greatest extent feasible; and

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

(A) children's advocacy centers;

(B) law enforcement officials;

(C) prosecutors;

(D) health care providers; and

(E) domestic violence shelters.

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

(1) local legal liaisons who support the prosecution in each region of legal cases through the judicial system by improving coordination and cooperation in case consultation and preparation of cases for court; and

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

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

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.86, eff. September 1, 2005.

Sec. 40.0527. PUBLIC AWARENESS. (a) Subject to the availability of funds, the executive commissioner by rule shall develop and the department shall implement a statewide public awareness campaign designed to educate the public regarding the abuse, neglect, and exploitation of elderly persons and persons with disabilities.

(b) The department may use mass communications media, the Internet, publications, or other means of public education in conducting the campaign.

(c) A public awareness strategy implemented for the program must include:

(1) the provision of information on the incidence and types of reports of abuse, neglect, and exploitation of elderly

persons or persons with disabilities; and

(2) practices that can reduce the incidences of abuse, neglect, and exploitation of elderly persons or persons with disabilities in this state.

(d) The department shall enlist the support and assistance of civic, philanthropic, and public service organizations in the performance of the duties imposed under this section.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.05, eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.201, eff. April 2, 2015.

Sec. 40.05275. BUSINESS PLAN FOR CHILD PROTECTIVE SERVICES. (a) The department shall develop and implement a business plan for the child protective services program to prioritize the department's activities and resources to improve the program.

(b) The department shall coordinate with the department's regional staff in developing the business plan under this section.

(c) The business plan developed under this section must include:

(1) long-term and short-term performance goals;

(2) identification of priority projects and ongoing initiatives that are clearly linked to established goals; and

(3) a statement of staff expectations that includes identification of:

(A) the person or team responsible for each project;

(B) the specific tasks and deliverables expected;

(C) the resources needed to accomplish each project;

(D) a time frame for the completion of each deliverable and project; and

(E) the expected outcome for each project and the method and procedure for measuring the outcome to ensure effective evaluation for each project.

(d) Not later than October 1 of each even-numbered year, the department shall submit the business plan developed under this section to the governor, lieutenant governor, speaker of the house of representatives, and chairs of the standing committees of the senate and house of representatives having primary jurisdiction over child protection issues.

Added by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 73, eff. September 1, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.36, eff. September 1, 2019.

Sec. 40.0528. GOALS FOR BUSINESS PLAN FOR CHILD PROTECTIVE SERVICES; REPORTING CASELOAD INFORMATION. (a) The department shall consider the following goals in developing the business plan required under Section 40.05275 for the child protective services program:

(1) reducing caseloads;

(2) enhancing accountability;

(3) improving the quality of investigations;

(4) eliminating delays; and

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

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944 , Sec. 86(53), eff. September 1, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944 , Sec. 86(53), eff. September 1, 2015.

(d) In reporting information relating to caseloads of child protective services caseworkers, in addition to reporting caseload by each individual affected by the case, the department shall report the number of cases for each caseworker on the basis of family unit.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.87, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 25, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 75, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(53), eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.37, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.38, eff. September 1, 2019.

Sec. 40.0529. CASELOAD MANAGEMENT. (a) Subject to a specific appropriation for that purpose, the department shall develop and implement a caseload management system for child protective services caseworkers and managers that:

(1) ensures equity in the distribution of workload, based on the complexity of each case;

(2) calculates caseloads based on the number of individual caseworkers who are available to handle cases;

(3) includes geographic case assignment in areas with concentrated high risk populations, to ensure that an adequate number of caseworkers and managers with expertise and specialized training are available;

(4) includes a plan to deploy master investigators in anticipation of emergency shortages of personnel; and

(5) anticipates vacancies in caseworker positions in areas of the state with high caseworker turnover to ensure the timely hiring of new caseworkers in those areas.

(b) In calculating the caseworker caseload under Subsection (a)(2), the department shall consider at least the following:

(1) caseworkers who are on extended leave;

(2) caseworkers who worked hours beyond a normal work week; and

(3) caseworkers who are on a reduced workload.

Added by Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 17, eff. September 1, 2017.

For expiration of this section, see Subsection (c).

Sec. 40.05291. ELECTRONIC CASE MANAGEMENT SYSTEM. (a) The

department shall develop a plan to eliminate the department's use of paper case files and fully transition to an electronic case management system.

(b) The department shall implement a fully electronic case management system not later than September 1, 2023.

(c) This section expires September 1, 2025.

Added by Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 16, eff. June 14, 2021.

Sec. 40.053. DUTY TO PERFORM OTHER FUNCTIONS. The department shall perform other functions as required by law.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.054. ACCESS TO CRIMINAL HISTORY. Subject to the availability of funds appropriated by the legislature, the department is entitled to obtain any criminal history information from records maintained by:

(1) the Department of Public Safety, as prescribed by Section 411.114, Government Code;

(2) another law enforcement agency in this state, subject to the same procedures and limitations prescribed by Section 411.114, Government Code, as applicable; or

(3) federal agencies, as provided by federal law.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.055. LEGISLATIVE APPROPRIATION REQUEST. The department shall submit any legislative appropriation request to the commission for comment and for incorporation into the commission's consolidated health and human services budget recommendation. The legislative appropriation request must comply with state priorities and federal requirements.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.056. USE OF FUNDS. (a) Notwithstanding any other provision of law, the department may extend the scope of its programs to the extent necessary to ensure that federal matching funds are available, if the department determines that the

extension of scope is feasible and within the limits of appropriated funds.

(b) The department may accept, spend, and transfer federal and state funds appropriated for programs authorized by federal law. The department may accept, spend, and transfer funds received from any source, including a county, municipality, or public or private agency.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.0564. DEPARTMENT FUNDS. All money paid to the department under this chapter is subject to Subchapter F, Chapter 404, Government Code.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 18, eff. Sept. 1, 1997.

Sec. 40.057. GIFTS AND GRANTS. The department may accept a gift or grant from a public or private source to perform any of the department's powers or duties.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.058. CONTRACTS AND AGREEMENTS. (a) The department may enter into contracts or agreements with any person, including a federal, state, or other public or private agency, as necessary to perform any of the department's powers or duties.

(b) A contract for the purchase of program-related client services must include:

(1) clearly defined goals and outcomes that can be measured to determine whether the objectives of the program are being achieved;

(2) clearly defined sanctions or penalties for noncompliance with contract terms; and

(3) clearly specified accounting, reporting, and auditing requirements applicable to money received under the contract.

(b-1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(53), eff. April 2, 2015.

(c) The department shall monitor a contractor's performance

under a contract for the purchase of program-related client services. In monitoring performance, the department shall:

(1) use a risk-assessment methodology to ensure compliance with financial and performance requirements under the contract; and

(2) obtain and evaluate program cost information to ensure that all costs, including administrative costs, are reasonable and necessary to achieve program objectives.

(d) An agreement made under this section is not subject to Chapter 771 or 791, Government Code.

(e) This section does not prohibit the department from entering into a contract or agreement subject to Chapter 771 or 791, Government Code, for a purpose authorized in the applicable chapter.

(f) A contract for residential child-care services provided by a general residential operation or by a child-placing agency must include provisions that:

(1) enable the department and commission to monitor the effectiveness of the services;

(2) specify performance outcomes, financial penalties for failing to meet any specified performance outcomes, and financial incentives for exceeding any specified performance outcomes;

(3) authorize the department or commission to terminate the contract or impose monetary sanctions for a violation of a provision of the contract that specifies performance criteria or for underperformance in meeting any specified performance outcomes;

(4) authorize the department or commission, an agent of the department or commission, and the state auditor to inspect all books, records, and files maintained by a contractor relating to the contract; and

(5) are necessary, as determined by the department or commission, to ensure accountability for the delivery of services and for the expenditure of public funds.

(g) A contract with a private agency for the provision of substitute care or case management services for a child must

include provisions that require the agency to provide access to the agency's information and records relating to the child to the child's attorney ad litem and guardian ad litem.

(h) In contracting with licensed child-placing agencies for residential child-care services, the department shall:

(1) determine and evaluate, using best practice standards, the home screening, assessment, and preservice training requirements used by substitute care providers before the verification and approval of caregivers, including:

(A) risk assessment evaluations used; and

(B) the curriculum and models used and topics covered in caregiver training; and

(2) publish on the department's Internet website the information collected by the department regarding the curriculum and training models used and topics covered during caregiver training by substitute care providers.

(i) The department and the commission shall enter into contracts for the provision of shared administrative services, including payroll, procurement, information resources, rate setting, purchasing, and contracting.

(j) The department shall collaborate with the commission to ensure the efficient provision of administrative support services by the commission.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 19, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.88, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(53), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1008 (H.B. 781), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 34, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 27(a), eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 10(a), eff. September 1, 2017.

Sec. 40.0581. PERFORMANCE MEASURES FOR CERTAIN SERVICE PROVIDER CONTRACTS. (a) The commission, in collaboration with the department, shall contract with a vendor or enter into an agreement with an institution of higher education to develop, in coordination with the department, performance quality metrics for family-based safety services and post-adoption support services providers. The quality metrics must be included in each contract with those providers.

(b) Each provider whose contract with the commission to provide department services includes the quality metrics developed under Subsection (a) must prepare and submit to the department a report each calendar quarter regarding the provider's performance based on the quality metrics.

(c) The commissioner shall compile a summary of all reports prepared and submitted to the department by family-based safety services providers as required by Subsection (b) and distribute the summary to appropriate family-based safety services caseworkers and child protective services region management once each calendar quarter.

(d) The commissioner shall compile a summary of all reports prepared and submitted to the department by post-adoption support services providers as required by Subsection (b) and distribute the summary to appropriate conservatorship and adoption caseworkers and child protective services region management.

(e) The department shall make the summaries prepared under Subsections (c) and (d) available to families that are receiving family-based safety services and to adoptive families.

(f) Repealed by Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 26(3), eff. June 14, 2021.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 28(a), eff. September 1, 2017.

Added by Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 11(a), eff. September 1, 2017.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 10.002, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 26(3), eff. June 14, 2021.

Acts 2021, 87th Leg., R.S., Ch. 858 (S.B. 910), Sec. 2(2), eff. June 16, 2021.

Sec. 40.0582. QUALITY CONTRACTING FRAMEWORK. (a) The department shall monitor and coordinate with general residential operations providing treatment services to children or young adults with emotional disorders to maintain and improve the quality of residential child-care services purchased by the department.

(b) In implementing the requirements of Subsection (a), the department shall consider any information the department determines relevant to assess the ability of a contractor or potential contractor to provide quality residential child-care services, including:

(1) the strength of the operational plan and all required components of the operational plan described by Section 42.252;

(2) the regulatory history of the contractor; and

(3) the history of the contractor on satisfying the performance measures developed under Section 40.058.

Added by Acts 2019, 86th Leg., R.S., Ch. 394 (S.B. 781), Sec. 2, eff. September 1, 2019.

Sec. 40.0583. STATE AUDITOR REVIEW OF CONTRACTS. The state auditor shall annually review the department's performance-based contracts to determine whether the department is properly enforcing contract provisions with providers and to provide recommendations for improving department oversight and execution of contracts.

Added by Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 17, eff. June 14, 2021.

Sec. 40.059. FEES. The executive commissioner by rule may set and the department may collect appropriate fees in the administration and delivery of services.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.202, eff. April 2, 2015.

Sec. 40.060. INDEMNIFICATION FOR LEGAL EXPENSES. If a present or former employee of the department who is or was involved in activities relating to the protection of children or elderly persons or persons with disabilities is criminally prosecuted for conduct involving 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 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.203, eff. April 2, 2015.

Sec. 40.061. IMMUNITY. (a) A department employee, a member of a multidisciplinary team established under Section 40.0524, 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.

(b) 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 rendering those services.

(c) This section does not provide immunity to a department employee who, in a suit affecting the parent-child relationship in which child abuse is alleged or that arises out of a child abuse investigation, in a criminal prosecution for an offense in which

child abuse is an element, or in the preparation of the suit or prosecution:

(1) commits or attempts to commit perjury;

(2) fabricates or attempts to fabricate evidence;

(3) knowingly conceals or intentionally withholds information that would establish that a person alleged to have committed child abuse did not commit child abuse; or

(4) violates state or federal law in the investigation or prosecution of the suit.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 20, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 157, Sec. 2, eff. Sept. 1, 2001.

Sec. 40.062. EXEMPTION FROM CERTAIN COSTS AND FEES. The department is not required to pay any cost or fee otherwise imposed for court proceedings or other services, including a:

(1) filing fee or fee for issuance or service of process imposed by Section 110.002, Family Code, or by Section 51.319, Government Code;

(2) transfer fee imposed by Section 110.002 or 110.005, Family Code;

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

(4) cost or security fee imposed by Section 53.051, 53.052, 1053.051, or 1053.052, Estates Code; or

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

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 21, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 426, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 9.001(g), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 733, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.204, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 4.07, eff. January 1, 2022.

Sec. 40.063. EXCEPTIONS FROM CERTAIN PROVISIONS OF ADMINISTRATIVE PROCEDURE ACT. Section 2001.038 and Subchapters C through H, Chapter 2001, Government Code, do not apply to the granting, payment, denial, or withdrawal of financial or medical assistance or benefits under a service program of the department.
Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.064. INTERAGENCY COOPERATION AND EXCHANGE OF INFORMATION. (a) The department may execute a memorandum of understanding with another state agency to facilitate the implementation of a program or the delivery of a service that the department is required by law to implement or deliver.

(b) The department may establish procedures to exchange with another state agency or governmental entity information that is necessary for the department or the agency or entity to properly execute its respective duties and responsibilities. An exchange of information does not affect whether the information is subject to disclosure under Chapter 552, Government Code.
Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.065. COMMUNICATIONS OFFICER; PLAN. (a) The department shall designate one or more department employees to be primarily responsible for communicating with the public regarding the department's powers and duties. Through the use of designated employees, the department shall ensure:

(1) effective communications between the department and persons seeking to report abuse or neglect or inquiring about the status of a case; and

(2) effective and timely response to questions from the public within the department's confidentiality guidelines.

(b) The department shall develop and implement a communication plan to ensure statewide public and government awareness of child abuse or neglect investigated by the department. The plan shall include information detailing the procedure followed by the department during the investigation and the responsibilities of the department in child abuse cases. In

implementing the plan, the department shall establish a process for expediting the reporting of child abuse or neglect to the department. The executive commissioner shall adopt rules to implement this subsection.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.205, eff. April 2, 2015.

Sec. 40.066. COOPERATION WITH STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) Except as provided by Subsection (e), the department and the chief administrative law judge of the State Office of Administrative Hearings shall adopt a memorandum of understanding under which the State Office of Administrative Hearings, on behalf of the department, conducts all contested case hearings authorized or required by law to be conducted by the department under the administrative procedure law, Chapter 2001, Government Code.

(b) The memorandum of understanding shall require the chief administrative law judge, the department, and the commissioner to cooperate in connection with a contested case hearing and may authorize the State Office of Administrative Hearings to perform any administrative act, including the giving of notice, that is required to be performed by the department or commissioner.

(c) The administrative law judge who conducts a contested case hearing for the State Office of Administrative Hearings on behalf of the department shall enter the final decision in the case after completion of the hearing.

(d) The department by interagency contract shall reimburse the State Office of Administrative Hearings for the costs incurred in conducting contested case hearings for the department. The department may pay an hourly fee for the costs of conducting those hearings or a fixed annual fee negotiated biennially by the department and the State Office of Administrative Hearings to coincide with the department's legislative appropriations request.

(e) This section does not apply to a personnel grievance hearing involving a department employee.

(f) Unless otherwise agreed by all parties to a contested case, a hearing conducted by the State Office of Administrative Hearings on behalf of the department under this section must be held in the department's administrative region in which the conduct at issue in the case occurred.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 22, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1128, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.206, eff. April 2, 2015.

Sec. 40.067. DELIVERY OF SERVICES IN AREAS BORDERING UNITED MEXICAN STATES. The department shall:

(1) study issues related to providing child and adult protective services in areas bordering the United Mexican States;

(2) develop a plan for providing those services in the most efficient manner; and

(3) pursue and enter into agreements for coordinated services, to the extent permissible under federal law, with the United Mexican States or any of its political subdivisions.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 22, eff. Sept. 1, 1997.

Sec. 40.068. LOCAL ACCOUNTS. (a) The department may establish and maintain local bank or savings accounts for a client of the department as necessary to administer funds belonging to the client or received in trust for or on behalf of the client.

(b) Funds maintained in an account for the benefit of a child who is under the managing conservatorship of the department may be used by the department for the support of the child, including the payment of foster care expenses, or may be paid to a person providing care for the child.

(c) The department shall spend funds in a guardianship of a client's estate in compliance with Title 3, Estates Code.

(d) Except as provided by Subsection (c), funds maintained in an account for the benefit of a client of the department may be

used to provide care, including medical care, for the client.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 22, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.207, eff. April 2, 2015.

Sec. 40.070. SUPPORT SERVICES FOR CERTAIN FAMILIES. (a) If the department places a child who is in the conservatorship of the state in the home of a grandparent of the child, the department shall:

(1) refer the grandparent to support services offered by the department; and

(2) inform the grandparent of the availability of financial assistance under Chapter 31, including supplemental financial assistance, if the eligibility requirements of that chapter are satisfied.

(b) The department shall maintain complete records and compile statistics regarding the number of children who are placed by the department in the home of a grandparent of the child.

Added by Acts 1999, 76th Leg., ch. 471, Sec. 2, eff. Sept. 1, 1999.

Sec. 40.071. DRUG-ENDANGERED CHILD INITIATIVE. The department shall establish a drug-endangered child initiative aimed at protecting children who are exposed to heroin, cocaine or any of its forms, or methamphetamine or to chemicals and other hazardous materials used in the illicit manufacture of methamphetamine.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.89, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 26, eff. September 1, 2007.

Sec. 40.072. DUTY TO REPORT; DEPARTMENT RECORDS. (a) To the extent that reporting does not interfere with an ongoing criminal investigation, the Department of Public Safety and each

local law enforcement agency shall report to the department on discovering the presence of a child in a location where methamphetamine is manufactured.

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

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.89, eff. September 1, 2005.

Sec. 40.075. PROTECTIVE ORDERS. (a) The executive commissioner shall adopt rules to provide procedures for the filing of protective orders by the department for the protection of a member of a family or household as provided by Title 4, Family Code.

(b) The department shall provide prior notice to a nonabusive parent or adult member of a household of the department's intent to file an application for a protective order for a child or older person and shall request the assistance of the person receiving the notice in developing a safety plan for household members and the child or older person for whom the order is sought. The department shall exercise reasonable safety precautions to protect a nonabusive parent or other member of a household while providing notice and requesting assistance under this section.

Transferred, redesignated and amended from Human Resources Code, Chapter 54 by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 76, eff. September 1, 2015.

Sec. 40.080. STRATEGIC PLAN TO IMPLEMENT FEDERAL LAW REGARDING SPECIFIED SETTINGS FOR PLACEMENT OF FOSTER CHILDREN. (a) The department shall develop a strategic plan regarding the placement of children in settings eligible for federal financial participation under the requirements of the federal Family First Prevention Services Act (Title VII, Div. E, Pub. L. No. 115-123).

(b) The strategic plan required under this section must:

(1) assess any available evidence regarding the impact of accreditation on qualitative performance of accredited

providers;

(2) assess a potential structure and any funding requirements necessary to incentivize providers to become accredited;

(3) study any available evidence regarding the qualitative outcomes in qualified residential treatment providers, as defined in the federal Family First Prevention Services Act (Title VII, Div. E, Pub. L. No. 115-123);

(4) assess the fiscal implications to this state of developing settings that meet the federal definition of qualified residential treatment providers and all associated requirements; and

(5) make any appropriate recommendations related to implementation of the requirements for qualified residential treatment providers.

Added by Acts 2019, 86th Leg., R.S., Ch. 394 (S.B. 781), Sec. 3, eff. September 1, 2019.

Sec. 40.081. IMPLEMENTATION OF FEDERAL LAW. (a) In furtherance of department duties under Section 40.002(d), the department shall to the greatest extent possible develop capacity for placement settings that are eligible for federal financial participation under 42 U.S.C. Section 672, including settings:

(1) specializing in providing prenatal, postpartum, or parenting support for youth;

(2) providing high-quality residential care and supportive services to children and youth who this state has reasonable cause to believe are, or who are at risk of being, sex trafficking victims in accordance with 42 U.S.C. Section 671(a)(9)(C);

(3) providing supervised independent living for young adults;

(4) offering residential family-based substance abuse treatment as described by 42 U.S.C. Section 672(j); and

(5) serving as a qualified residential treatment program.

(b) In developing capacity for settings described by

Subsection (a)(2), the department shall:

(1) promote the use of nationally recognized tools such as the Commercial Sexual Exploitation-Identification Tool (CSE-IT) and any other indicated treatment models or best practices for the treatment and prevention of sex trafficking victimization; and

(2) use providers that:

(A) use a trauma-informed care model;

(B) have defined programming to address the specific needs of trafficking survivors and youth at risk of trafficking;

(C) have leadership and direct-care staff who have completed training regarding the specific needs of trafficking survivors and youth at risk of trafficking;

(D) have established policies and procedures to minimize risk to a child who is a victim of trafficking placed with the provider and other children placed with the provider, including risks related to running away from the placement or becoming a victim of trafficking; and

(E) provide case management services or contract with an entity in the geographic area of the provider to provide case management services to trafficking victims or potential victims.

Added by Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 18, eff. June 14, 2021.

Sec. 40.082. REPORT OF CRIMINAL CONDUCT; PENALTY. (a) Each employee of the department or of a department contractor who becomes aware of conduct constituting a criminal offense engaged in by another employee of the department or by a department contractor against a person receiving services from the department or a department contractor shall report the conduct to a local law enforcement agency not later than the 48th hour after the hour the employee becomes aware of the conduct.

(b) A person commits an offense if the person is required to make a report under Subsection (a) and knowingly fails to make the report.

(c) An offense under Subsection (b) is a Class A misdemeanor, except that the offense is a state jail felony if it is shown on the trial of the offense that the actor intended to hinder an investigation of or conceal the criminal conduct described by Subsection (a).

Added by Acts 2023, 88th Leg., R.S., Ch. 1044 (S.B. 182), Sec. 1, eff. September 1, 2023.

Sec. 40.083. EMPLOYER RETALIATION PROHIBITED. (a) In this section, "adverse employment action" means an action that affects an employee's compensation, promotion, transfer, work assignment, or performance evaluation, or any other employment action that would dissuade a reasonable employee from submitting or supporting a report under Section 40.082.

(b) An employer may not suspend or terminate the employment of, discriminate against, or take any other adverse employment action against a person who in good faith:

(1) reports conduct constituting a criminal offense as required by Section 40.082; or

(2) initiates or cooperates with an investigation or proceeding relating to the conduct constituting a criminal offense reported under Section 40.082.

(c) An employee may sue for injunctive relief, damages, or both if, in violation of this section, the employee:

(1) is suspended or terminated from the person's employment;

(2) is discriminated against; or

(3) suffers any other adverse employment action.

(d) A plaintiff who prevails in a suit under this section may recover:

(1) actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown;

(2) exemplary damages under Chapter 41, Civil Practice and Remedies Code, if the employer is a private employer;

(3) court costs; and

(4) reasonable attorney's fees.

(e) In addition to amounts recovered under Subsection (d), a

plaintiff who prevails in a suit under this section is entitled to:

(1) reinstatement to the person's former position or a comparable position in terms of compensation, benefits, and other conditions of employment;

(2) reinstatement of any fringe benefits and seniority rights lost because of the suspension, termination, or discrimination; and

(3) compensation for wages lost during the period of suspension or termination.

(f) A department employee who alleges a violation of this section may sue the department for the relief provided for by this section. Sovereign immunity is waived and abolished to the extent of liability created by this section.

(g) A plaintiff suing under this section has the burden of proof, except there is a rebuttable presumption that the plaintiff's employment was suspended or terminated or that the plaintiff was otherwise discriminated against for reporting abuse or neglect if the suspension, termination, or discrimination occurs before the 61st day after the date on which the person submitted a report in good faith.

(h) A suit under this section may be brought in a district or statutory county court of the county in which:

(1) the plaintiff was employed by the defendant; or

(2) the defendant conducts business.

(i) It is an affirmative defense to a suit under Subsection (c) that an employer would have taken against the employee the action that forms the basis of the suit based solely on information, observation, or evidence unrelated to the fact that the employee made a report under Section 40.082 or initiated or cooperated with an investigation or proceeding relating to the conduct constituting a criminal offense reported under Section 40.082.

(j) A public employee who has a cause of action under Chapter 554, Government Code, based on conduct described by Subsection (b) may not bring an action based on that conduct under this section.

(k) This section does not apply to a person who reports the person's own criminal conduct or who initiates or cooperates with

an investigation or proceeding by a governmental entity relating to an allegation of the person's own criminal conduct.

Added by Acts 2023, 88th Leg., R.S., Ch. 1044 (S.B. 182), Sec. 1, eff. September 1, 2023.