STAFF EVALUATION

Texas Department of Human Services

A Staff Report
to the
Sunset Advisory Commission

1986

TEXAS DEPARTMENT OF HUMAN SERVICES

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SUMMARY OF STAFF REPORT

The Texas Department of Human Services (TDHS) is responsible for administering a multitude of state and federal programs which provide assistance to the poor, families and children, the elderly and the disabled. The department is governed by a part-time three member board comprised of individuals with a demonstrated interest and knowledge of public welfare, and experience as an executive or administrator. The department is headquartered in Austin, Texas and operates through ten major regional offices across the state. In fiscal year 1986, total funding for the department was over $2.3 billion, 58 percent of which was federal funding, and it employed 12,679 people statewide.

The major responsibilities of the department are carried out through the five following programs: (1) Income Assistance, which includes Aid to Families with Dependent Children (AFDC) and the Food Stamp Program; (2) Health Care Services, which primarily involves the department's administration of the Medicaid program in Texas; (3) Services to Families and Children, which involves providing protective services for families and children and family self-support services such as employment assistance, child day care, and family planning; (4) Licensing of child care facilities and administrators, and social work practitioners; and (5) Services to Aged and Disabled Persons, which involves providing a variety of medical and social services, as well as protective services, for aged or disabled individuals.

The need for each of these programs was analyzed and the review indicated a continuing need for state involvement in these areas. The department is fulfilling the purposes for which these programs were created, and should be continued for a 12 year period. If the department is continued, a number of changes should be made to improve the efficiency and effectiveness of its operations. These changes are summarized as follows.

I.
RECOMMENDATIONS

THE AGENCY SHOULD BE CONTINUED FOR A 12-YEAR PERIOD WITH THE FOLLOWING CHANGES:

POLICY-MAKING STRUCTURE

Board Size and Qualifications

1. **The Board of Human Services should be expanded to six members.** (p. 43)

A six-member board would allow for additional geographic representation, division of workload by subcommittee, and increased public access to members without significantly increasing costs of department operations.

2. **The board member requirement for experience as an executive or administrator should be deleted.** (p. 43)

This change would remove an outdated provision and allow the governor to appoint any qualified member of the general public to the board. In addition, the qualification for the person to have a demonstrated interest in and knowledge of public welfare should be updated to use the term "human services".

Selection of the Chairperson

3. **The Human Resources Code should be amended to require that the governor select the chairman of the department's board.** (p. 44)

The governor's selection of the chair encourages and helps ensure continuity of policy from the state's chief executive officer down to the various agencies which serve the citizens of the state.

Senate Confirmation of the Commissioner

4. **The statutory requirement that the commissioner of the department be confirmed by the senate should be removed.** (p. 44)

Removing the statutory requirement that the commissioner be confirmed by the senate removes a potential conflict with the Texas Constitution and aligns the appointment process with practices of other state agencies.

Use and Structure of Advisory Committees

5. **Clear statutory directives concerning the department's use of advisory committees should be developed.** (p. 45)

The department actively uses advisory committees but there is a lack of statutory directive concerning their structure and relationship to the board. Several actions are needed: 1) develop clear statutory authority to use and appoint advisory committee; 2) clarify that the board appoints the membership upon recommendation of the commissioner; 3) require that each committee have a balanced composition that represents the viewpoints of providers, consumers and other groups or persons with knowledge and interests in the committee's field of work; 4) require the board to specify each committee's purpose; 5) require the board to specify how the committees are to report to the board; and 6) require that appropriate committee(s) have opportunity to comment during the development of rule changes and prior to final adoption except in emergency situations.

Changes in the Medical Care Advisory Committee

6. **Statutory language governing the composition and appointment of the Medical Care Advisory Committee should be modified.** (p. 47)

The current composition of the MCAC has an unbalanced representation of providers (23 providers to four consumers) which needs adjustment to provide for greater consumer representation. The size of the committee is unusually large compared to other committees (29 compared to an average of less than 13 for the other committees). The statutory appointment process also needs to be brought in line with current practice to allow the board to appoint upon recommendation of the commissioner.

Merger of Two Advisory Committees on Childcare

7. **The department's two advisory committees on child care should be merged.** (p. 48)

Two advisory committees, structured in statute, currently advise the department concerning child care facility standards and child care administrator requirements. It appears one committee could address both kinds of issues and reduce time demands on department staff.

Issues Concerning Aged and Disabled Persons

8. **The Advisory Committee for Services to Aged and Disabled Persons should review issues related to the department's services for disabled persons and report concerns to the board.** (p. 49)

During the review of the department, interest groups have raised issues concerning the priority it places on services to disabled persons. It appears appropriate that this committee examine these issues and report concerns and solutions to the commissioner and board.

OVERALL ADMINISTRATION

Maximizing Third Party Resources

9. **The department should be authorized to match Medicaid recipient data against Workers Compensation claims information to identify private insurance coverage.** (p. 51)

Data matches with the Texas Employment Commission and other state agencies have proved useful in identifying third party resources which can be used to reduce Medicaid outlays. The match against Workers Compensation data is currently prohibited by law. Removing this restriction and using the data match is estimated to reduce Medicaid outlays up to $168,000 per year.

10. **The department should be authorized to obtain insurance payments directly from the insurance companies of absent parents of AFDC recipients.** (p. 52)

The department needs clear authority to recover Medicaid expenses for care provided to a child when a parent without custody provides health insurance. The attorney general's office is working to ensure that court orders require noncustodial parents of children on Medicaid to provide insurance for the children whenever employment related insurance is available. When fully implemented in fiscal year 1989, it is expected that these changes will enable the department to recover $1,332,450 over and above its current annual recovery level in this area.

11. **The department should examine all accident and trauma Medicaid claims over $500. (Non-statutory management improvement)** (p. 53)

The department currently examines Medicaid recipient accident and trauma claims over $1,000. With improved management techniques it appears the department could examine all such claims over $500 and recover an additional $100,000 per

year from liability settlements related to accidents suffered by Medicaid recipients.

Estate Recovery from Medicaid Nursing Home Recipients

12. **The Human Resources Code should authorize the department to recover Medicaid expenses through liens and from the estates of deceased recipients.** (p. 54)

This practice, in place in eighteen states, provides for the recovery of Medicaid outlays from the estates of deceased nursing home recipients. Preliminary estimates indicate that several million dollars could be recovered from such estates. The TDMHMR already uses this process and recovered over $2 million in fiscal year 1985. Federal law governing the Medicaid program outlines that recovery can be made from an estate only if the deceased person has no surviving spouse and no dependent or disabled child.

13. **The Probate Code should be amended to give the department priority as a claimant against the estate of a deceased recipient.** (p. 55)

In addition to the change recommended above, it appears useful to amend the Probate Code to place the department above common creditors in the priority order established for estate division. This change would establish a separate category for the department following claims for taxes, penalties and interest and establish a priority for payment of publicly funded services. This structure is similar to those used in other states that are active in recovering Medicaid outlays from estates.

Physician Reimbursement Structure

14. **The Statutory provision requiring the department to reimburse medical care providers according to the usual and customary rate system should be replaced with general rate system development authority.** (p. 56)

The Human Resources Code currently requires the department to use a rate system that is inequitable and subject to change by the federal government. Allowing the department to develop a reimbursement structure that is equitable and cost effective will provide a more flexible approach and allow it to modify the system as needed. Since the system would have to be developed through rules of the department, there will be opportunity for public and physician input.

Public Awareness of Department Programs

15. **Memoranda of understanding should be developed to provide for distribution of public awareness information. (Non-statutory management improvement)** (p. 57)

Several state agencies (TDH, TDMHMR and TRC) have local service delivery components which serve clients who are potentially eligible for services from other state agencies. Having these agencies develop a written understanding for sharing and distribution of information regarding their various services should help persons obtain a continuum of services for which they may be eligible.

16. **Contracts with service providers should allow the department to require contractors to display public awareness information. (Non-statutory management improvement)** (p. 57)

The department contracts with a wide variety of service providers including doctors, hospitals, etc. These providers may also serve clients who are potentially eligible for services from TDHS but are unaware of these services. The department should add a clause to appropriate contracts allowing the department to display public awareness information in locations best suited for reaching potential service populations.

Contracts for Services

17. **The TDHS should develop cost estimates and performance standards for activities it conducts which are also available in the private sector, compare these estimates with competitive bids, and contract for the performance of commercially available activities wherever it is determined that the cost of contracting would be less than the department's cost of performing the activity.** (p. 59)

This requirement, known as "A-76" review, has been in place for federal agencies for many years. This recommendation would force the examination of activities of the TDHS that could be contracted out. The Department of Human Services is already active in contracting out many of its services, but certain of its operations are done in-house which are available commercially (two claims payment systems for example). Under this approach, it is suggested that contracting out would only occur when the private cost is at least ten percent less than the department's cost of performing the activity.

18. **The State Purchasing and General Services Commission should be required to assist TDHS in its completion of A-76 reviews.** (p. 60)

This requirement will ensure that independent oversight is available to review the department's estimation process.

Internal Audit Independence

19. **The department's statute should be amended to require the Inspector General to report to the chairman of the Board of Human Services for the purpose of accomplishing internal audit functions of the department.** (p. 61)

This change is intended to provide a structure that ensures the independence of the Inspector General in the performance of internal audit functions. For all other functions, the Inspector General would report to the Commissioner.

Range of Sanctions for Medicaid Fraud

20. **The Human Resources Code should be amended to allow the department to levy administrative penalties against providers involved in Medicaid fraud and abuse.** (p. 63)

The state has a range of sanctions to deal with Medicaid fraud. These sanctions include criminal proceedings that are conducted by the Attorney General's Medicaid Fraud Unit, certain administrative proceedings the department can instigate to exclude providers from the program and civil penalty measures that can be instigated by the federal government. This civil penalty sanction is important, but requires the action of the federal government and must be handled through court proceedings. On the average, these civil penalty proceedings have taken over one year to complete with one case taking two years and four months. Allowing the department to levy the penalties administratively appears to offer a more timely alternative to implement this important sanction.

EVALUATION OF PROGRAMS

PROTECTIVE SERVICES FOR FAMILIES AND CHILDREN

Definition of Child Abuse and Neglect

21. **The Family Code should include definitions of child abuse and neglect.** (p. 66)

Every state except Texas has definitions of child abuse and neglect in their child abuse laws. Defining these terms in Texas' statute would clarify when a person can

be prosecuted for failure to report abuse or neglect, aid the public in more accurately reporting child abuse and neglect, and give TDHS a clearer mandate as to what should be investigated as child abuse or neglect.

22. **The Department of Human Services should be directed in statute to prioritize the investigations of child abuse and neglect within available resources.** (p. 66)

Recognizing that the number of child abuse and neglect reports may exceed the department's investigative resources, TDHS should be given the authority in statute to prioritize investigations based on the severity and immediacy of harm alleged to a child. This will ensure that the department's resources are focused on the children most in need of protection, and clarify the false expectations that the department investigate every report it receives regardless of severity.

Changing Requirements for Physical Examinations

23. **Physical examinations of all children in a home where a child has allegedly been abused or neglected should be optional, however, TDHS should be authorized to obtain medical examinations of these children when necessary.** (p. 67)

This change will amend the statute to allow caseworkers to physically examine all children in a home where a child has allegedly been abused or neglected only when necessary, and to obtain medical examinations of these children on an as needed basis. The department does not routinely obtain medical exams now due to the cost, although the statute is unclear as to whether these exams are required.

Protection of TDHS Employees

24. **The Department of Human Services should be authorized to reimburse employees for legal expenses up to $10,000 per employee incurred in criminal actions arising in the course of good faith performance of their duties.** (p. 68)

Employees of TDHS are personally responsible for all legal expenses resulting from criminal prosecution for actions taken in the course of their jobs. This change in the statute would allow the department to reimburse TDHS employees up to $10,000 from existing funds for these costs when and only if there is a finding of not guilty or the charges are dropped.

Clarification of State Agencies' Responsibilities Concerning "Out-of-Home" Child Abuse and Neglect

25. **Out-of-home abuse or neglect should be included under the statutory requirements for the reporting and investigation of child abuse and neglect.** (p. 70)

This will clarify in statute that the requirement for reporting child abuse and neglect applies not only to "in-home" abuse of children by their parents, but also any "out-of-home" abuse or neglect by persons responsible for a child's care such as an employee or volunteer in a child care facility. Employees will often only report such incidences to their supervisors, with the expectation that the supervisor will take any necessary action. Reporting to TDHS will ensure that a full investigation is made, and that the local law enforcement officials are notified when necessary.

26. **State agencies should have full responsibility for the investigation of alleged abuse of neglect in facilities they operate or regulate for the care of children, and should adopt and publish formal rules governing how these investigations will be conducted.** (p. 71)

Currently, it is unclear if TDHS or the agency that operates or regulates a child care facility is responsible for investigating any alleged abuse or neglect. This recommendation clarifies that it is the responsibility of the state agency which operates or regulates the child care facility to investigate abuse in their facilities, and requires formal published rules concerning these investigations. Due to the potential for a conflict of interest, investigations conducted by a state agency in facilities they directly operate will be overseen by the Office of Youth Care Investigations (OYCI). Because there is no similar potential for a conflict of interest in facilities licensed by a state agency, these investigations will not be routinely overseen by OYCI, but OYCI will investigate any complaints concerning investigations conducted by a licensing agency.

27. **The functions of the Office of Youth Care Investigations should be modified and placed in the attorney general's office.** (p. 71)

The Office of Youth Care Investigations (OYCI) currently oversees investigations of child abuse or neglect in facilities operated, licensed, or regulated by the state. The functions should be modified to focus on the oversight of investigations in state-operated facilities, and limit OYCI's oversight of state licensed facilities to the investigation of complaints if a person is dissatisfied with the findings of the licensing agency's original investigation. Moving the OYCI from TDHS to the

attorney general's office will help ensure independent oversight by placing OYCI in an agency that is not included in its oversight responsibilities. The state agencies that operate facilities for the care of children will be required to jointly fund OYCI by contract with the attorney general's office to ensure continued funding. Any concerns noted by the OYCI will be reported to the policy-making body of the state agency operating or licensing the problem facility.

Participation of TDHS in Independent Adoptions and Child Custody Cases.

28. **The Family Code should direct the courts to use private agencies or individuals to conduct social studies involving independent adoptions or child custody disputes.** (p. 73)

This change would direct the courts to utilize private agencies or individuals rather than department staff to conduct social studies in independent adoptions and child custody disputes. The department indicates there are a number of qualified professionals willing to conduct these social studies. This action would free up protective services staff time that is currently being used to conduct these social studies to more appropriately be used in investigating cases of child abuse or neglect, and would result in direct savings of $191,000 per year.

Interstate Compact on Placement of Children

29. **Texas membership in the Interstate Compact on Placement of Children should be continued with modifications.** (p. 75)

This recommendation would authorize Texas' continued participation in this compact, which coordinates the placement of children out-of-state, with two minor modifications. The first change is to allow the TDHS commissioner to designate an alternate person to attend national compact meetings, when he is unable to attend. The second change is to require TDHS to file public notice of the national compact meetings. Participation in the compact expedites the placement of children who are being placed out of Texas and ensures that financial responsibility for these children is clearly established prior to placement.

Increased Use of Federal Funds for Child Care

30. **The Family Code should be amended to allow TDHS and the Texas Youth Commission to obtain federal funding for IV-E eligible children under TYC's care.** (p. 76)

Title IV-E provides federal funds for children removed from their home by the courts and placed in foster care. Traditionally, these funds were intended for the

child welfare population, however, this recommendation would make it possible to utilize these funds for certain delinquent children. Preliminary estimates indicate that close to $1 million in federal funds could be obtained each year through this change, which would offset state funds currently being used to pay for the care of these children.

Better Coordination of Youth Services Could Help Children with Multiple Problems

31. An interagency group should be established under the Health and Human Services Coordinating Council to coordinate youth services at the state level. (p. 78)

This change will establish a mechanism to address the reduction of fragmentation and overlap of services being provided to youth through five state agencies: TDHS, TDMHMR, TYC, TJPC, and the Texas Education Agency. The group will also include a representative of a private sector youth agency and a judge involved in placement of children. This state level coordinating group will define each agency's capabilities and authority, identify gaps in services, and facilitate cost-effective use of existing resources by developing means for agencies to "split-fund" services for multi-problem youth. This group will also develop a model for initiating local level interagency staffings of multi-problem youth by January 1, 1988.

32. Local level interagency staffings of multi-problem youth should be implemented through a memorandum of understanding between the five state agencies serving youth. (p. 79)

Local level interagency staffings will help ensure that multi-problem youth are afforded the consideration and services available through a variety of local level agencies including TDHS, TDMHMR, TYC, local school districts, juvenile probation departments, and the private sector. Any of the local level representatives to this group will be able to submit a child's case history for consideration when appropriate services cannot be obtained through one single agency.

33. The Health and Human Services Coordinating Council should conduct a study of the costs and benefits of combining youth services in Texas. (p. 79)

Several states have resolved the problems of coordination by centralizing youth services into a single agency. This recommendation will direct the HHSCC to analyze the merits of how this approach could work in Texas, and report their findings to the legislature by January 1989.

Statewide Distribution of Program Support and Development Funds

34. The statute should require that funds for the general support and development of programs should be allocated equitably across the state. (p. 81)

This recommendation will ensure that when TDHS is appropriated funds to assist in the general support or development of services that are needed statewide, that these funds will be equitably distributed across the state. This approach will necessitate that TDHS reassess its current allocation of funds for the Alternative Treatment for Youth, as well as any other such support or development programs, to ensure that the funds are being equitably distributed statewide. Pilot projects will not be affected by this requirement.

FAMILY SELF SUPPORT

Data Collection Efforts for Employment Programs

35. The Department should collect information and conduct studies on the effectiveness of the employment programs it funds or operates. (Non statutory management improvement) (p. 83)

The department currently does not collect information on its employment programs sufficient to determine the effectiveness of individual programs. Job placements are only followed for 30 days, and it is not know whether the client returns to AFDC or food stamps after this time. Collecting longer term information is essential to determine which programs are the most successful and should be continued, and which programs need to be changed or discontinued.

Increased Use of Job Training

36. The Job Training Partnership Act policy statement should include emphasis on serving AFDC recipients. (p. 84)

This addition to the policy statement in the Texas Job Training Partnership Act will provide clear statutory direction for JTPA programs to serve AFDC recipients in order to reduce dependency on public assistance.

37. The State Job Training Coordinating Council should be required by statute to assist local councils in developing programs to serve more AFDC clients. (p. 85)

This duty fits in with the council's current responsibilities for planning and coordination, while placing emphasis on the need to assist local Private Industry

Councils and TDHS local offices in developing effective programs to train greater numbers of AFDC recipients.

38. **The Texas Job Training Partnership Act should require that a representative of the local TDHS region serve on each Private Industry Council.** (p. 85)

Lack of communication and knowledge of agencies' differing program requirements can often cause difficulties in developing well-coordinated programs. This approach will increase coordination of employment services on the local level and reduce barriers in providing needed services to AFDC recipients.

Coordination of Family Planning Services

39. **The department should enter into a Memorandum of Understanding (MOU) to be adopted as formal rules of each agency with the Texas Department of Health to provide for continuing coordination of Family Planning Services.** (p. 86)

Both agencies, TDHS and TDH, use a total of four separate federal funding sources to provide family planning services in the state at an annual cost of more than $38 million. Standards required by the different funding sources are dissimilar as are provider reporting requirements. It is important that the regional funding allocations used by the two agencies ensure, as best as possible, an equitable distribution of funds throughout the state. The development of an MOU on an annual basis will ensure that efforts to coordinate this complicated program and funding structure are maximized.

Follow-up in EPSDT Program

40. **The department should follow up EPSDT screenings and encourage treatment of health problems identified. (Non-statutory management improvement)** (p. 87)

Efforts to follow up and treat childhood medical and dental problems are critical to avoid future expenses in programs such as Medicaid. A recent study indicates that as many as 60 percent of children identified as having medical problems may not have received follow-up diagnosis or treatment. Increased efforts to contact families and encourage the treatment of identified problems should help avoid long-term cost implications.

Temporary Emergency Relief Program

41. The Temporary Emergency Relief Program should be continued. (p. 88)

The TERP is expected to serve approximately 64,000 persons in fiscal year 1986. Through its local match structure, state dollars can be maximized to serve needy people with non-cash assistance in the form of food, utilities, housing and clothing. The need for such a program is ongoing and future legislative action can adjust the dollars funneled through its structure as economic conditions fluctuate.

LICENSING

Regulation of Family Homes

42. The department should examine the merits of using family home associations to strengthen the department's regulation of family homes. (Non-statutory management improvement) (p. 91)

Family homes, on the average, care for fewer than five children and operate out of the homes of the care givers. Concerns were noted through the review that the "registration" approach used to monitor the homes may not go far enough to measure the safety of the homes and the quality of care provided in the homes. One improvement that could be made is to utilize a self-monitoring approach that capitalizes on the exchange of information that can occur within associations of family homes. Although the associations have no regulatory authority they can provide a valuable information exchange concerning family home care and an informal monitoring function which can alert the department of problems within the care system. The department should examine whether the activities of such associations can be better integrated with the activities of the registration program and then incorporate needed changes into its approach concerning family homes.

43. The Human Resources Code should be amended to limit the number of children in family homes to no more than six and no fewer than three. (p. 92)

This approach will more clearly focus the aim of the department's program on those homes that are in the business of child care. This focus will also remove confusion that exists now between the need to license group day care homes which care for more than six children and the need to register family homes which will care for six or fewer children.

Flexibility in Child Care Facility Licensure

44. **The Human Resources Code should be amended to allow the department to determine if an on-site inspection is necessary for all facilities up for biennial license renewal.** (p. 92)

Currently, the department is required by statute to physically inspect each of 7,000 child care facilities prior to their biennial license renewal. The approach recommended would allow the department to determine if the on-site inspection is necessary based on the compliance record of the facility. This would assist the department in maximizing the resources it has to regulate child care facilities.

Use of Local Prosecutors

45. **The Human Resources Code should be amended to authorize local prosecutors to represent the department in suits seeking injunctive relief to close a child placing or child care facility.** (p. 92)

The statute currently does not provide specific authority for local prosecutors to represent the department in injunctive relief suits against child care and child placing facilities. Because of this lack of clarity, some prosecutors have been reluctant to assist the department in these kinds of cases. Providing this specific authority would assist the department when it needs to take legal action against child care and child placing facilities.

Statutory Structure for Regulation of Agency Group Homes

46. **The Human Resources Code should be amended to add the definition of "agency group home" as a facility that provides care for 7 to 12 children for 24 hours a day.** (p. 93)

The "agency group home" is a type of facility that did not exist when the licensing statutes were developed in 1975. Since this type of facility now operates, a definition needs to be added to the statute that fits into the department's regulatory program.

47. **The Human Resources Code should be amended to exempt an agency group home from having to obtain a separate license and provide for the licensing of the facility as part of the child placing agency that operates it.** (p. 93)

Agency group homes actually operate as part of licensed child placing agencies. Therefore, there is no need to license the agency group homes as separate entities.

SERVICES TO AGED AND DISABLED PERSONS

Penalty for Abuse of Elderly or Disabled Persons

48. Failure to report abuse, neglect or exploitation of elderly or disabled individuals should be a Class B misdemeanor. (p. 95)

Although persons are now required to report abuse, neglect or exploitation of elderly or disabled persons, there is no penalty for failure to report. The statutes governing the reporting of child abuse impose a Class B misdemeanor penalty for failure to report and it appears appropriate to amend statutes related to elderly and disabled abuse in a similar manner.

Clarification of Responsibilities for Investigation of Abuse of Elderly and Disabled Persons in State-Operated or Licensed Facilities.

49. State agencies should have responsibility for the investigation of alleged abuse or neglect of elderly or disabled persons in the facilities they operate or regulate and should adopt rules for conducting these investigations. (p. 95)

Currently, TDHS has statutory responsibility for investigation of elderly or disabled abuse wherever it occurs. Abuse can occur in facilities operated or licensed by state agencies that have formal procedures developed to investigate and resolve such problems. It appears unnecessary to require TDHS to also investigate in these situations. Agencies affected by this recommendation would be directed to ensure that any alleged abuse is investigated by those agencies rather than TDHS. The next recommendation addresses the need for oversight of this investigation process.

50. The TDHS should review investigations of abuse and neglect of elderly and disabled persons in state operated facilities and in state regulated facilities when there is a complaint about the original investigation. (p. 96)

In connection with the preceding recommendation, TDHS would receive reports regarding the investigations conducted in state operated facilities. Upon review of the report or receipt of a complaint regarding the investigation, TDHS would examine the problem or problems associated with the abuse situation. Upon completion of their review, the TDHS staff would report findings and recommendations to the policy-making body of the agency involved for appropriate action. In relation to abuse or neglect problems in facilities licensed by a state agency, TDHS would become involved only upon a complaint concerning the

investigation conducted by the regulating agency. TDHS would report any findings and recommendations concerning the situation to the policy-making body of the regulating agency for appropriate action.

Structure of the ICF-MR Program

51. Statutory modifications should direct TDHS to transfer the primary administrative responsibilities for the ICF-MR program to TDMHMR. (p. 100)

The Intermediate Care Facility Program for Mentally Retarded Persons (ICF-MR) provides residential care and treatment for mentally retarded persons through a mix of state and federal (Medicaid) dollars. The TDMHMR's state schools, outreach programs, community centers as well as private providers participate in the program. Over 10,000 of the state school beds are supported by the program and some 4,000 community based beds supported by the program are available outside the state school system. Since the program is part of the Medicaid system, the state receives a favorable match on the general revenue dollars it makes available for the program. The match has averaged about 54 percent (federal) to 46 percent (state) over the past several years. In fiscal year 1986, this match "generated" 130 million federal dollars in conjunction with state expenditures for state school facilities and provided over 36 million federal dollars for support of community based ICF-MR beds.

The structure of the program is complicated, requiring the involvement of three major state agencies to carry out its requirements. As the designated single state agency for Medicaid, the TDHS administers the program. The Department of Health "certifies" or approves the facilities and determines whether persons are medically and programmatically eligible for the program. The TDMHMR has the broad planning responsibility for programs serving mentally retarded persons and is specifically responsible for the development of standards that govern the program.

Over the years, this structure has proven cumbersome and confusing. Decisions regarding changes in program have been slow and mixes of state and federal dollars have not occurred to maximum benefit to the state because of the trifurcated structure. Transferring responsibility for the program to TDMHMR appears to offer a solution to the problems. The many details of the transfer are outlined on pages 101 through 103 of the report.

52. **The TDHS should modify the Medicaid State Plan to reflect the shift in responsibility for the ICF-MR program. (Non-statutory management improvement)** (p. 100)

Each state's Medicaid program structure must be set out in a specific "plan" adopted by the state. This mechanical change would be needed to reflect the changes made in the preceding recommendation.

53. **Statutory provisions should ensure that any future federal decisions to reduce Medicaid funding will result in proportionate cuts to all programs using Medicaid dollars.** (p. 104)

The state's Medicaid program expends over $1 billion annually to support three major programs: purchased health services, nursing home and ICF-MR care. Should the Medicaid program be capped or reduced at the federal level, as has been discussed over the years, this recommendation would ensure that all Medicaid programs would share in a proportionate reduction.

54. **The TDMHMR should appoint an ICF-MR advisory committee.** (p. 104)

The shift of responsibilities and development of ongoing control of the program at the TDMHMR will take time. It appears that providing the routine assistance of an advisory committee made up of providers, consumers and others interested in the program can be useful in working out immediate and long-range operations of the program.

55. **The TDMHMR should expand its use of the ICS waiver program. (Non-statutory management improvement)** (p. 104)

The Intermediate Community Services (ICS) program provides an alternative to traditional residential programs for mentally retarded persons by providing a range of services that assist persons in remaining in the community. The program is funded through state and federal Medicaid dollars. The more centralized system proposed under these recommendations can better maximize the use of state dollars in this kind of program. As state institutional populations decline, state dollars shifted to the community can be used to draw down federal dollars available for this program. Further, pure state funded programs can also benefit from the federal match available if appropriately structured.

AGENCY EVALUATION

The review of the current operations of an agency is based on several criteria contained in the Sunset Act. The analysis made under these criteria is intended to give answers to the following basic questions:

1. Does the policy-making structure of the agency fairly reflect the interests served by the agency?
2. Does the agency operate efficiently?
3. Has the agency been effective in meeting its statutory requirements?
4. Do the agency's programs overlap or duplicate programs of other agencies to a degree that presents serious problems?
5. Is the agency carrying out only those programs authorized by the legislature?
6. If the agency is abolished, could the state reasonably expect federal intervention or a substantial loss of federal funds?

AGENCY BACKGROUND

Creation and Powers

The Texas Department of Human Services (TDHS) was created by the Public Welfare Act in 1939. The department is currently active and is directed, as it has been since its inception, by the three-member policy-making Board of Human Services. As identified in the department's mission statement, it is responsible for administering a multitude of state and federal programs designed to "promote the individual's worth and dignity by providing services to families and children, elderly, and disabled individuals to encourage their self sufficiency and prevent long-term dependence on public assistance." To accomplish this mission, the department operates five major programs: Income Assistance, Health Care Services; Services to Families and Children; Licensing; and Services to Aged and Disabled.

The origin of the department has its roots in the early 1900's. The first direct action leading to its current structure was the creation in 1931 of the Child Welfare Division as part of the Board of Control. The creation of the Department of Public Welfare in 1939 provided a state-level structure for implementation of federal Old Age Assistance and Aid to Dependent Children programs. The department also assisted in determining employment eligibility for persons entering Works Progress Administration and Civilian Conservation Corps programs. By 1957 the department had assumed responsibility for two more major federal programs -- Aid to the Blind and Aid to Permanently and Totally Disabled Persons.

The next major addition to the department's responsibilities came with the Medicaid program established in 1965 (Title XIX of the Social Security Act). The state Medical Assistance Act of 1967 outlined the state's role in administering the program which provides services to needy aged, blind and disabled persons and dependent children. The program provides payment for hospitalization, physicians' services and nursing home payments, and help with pharmacy bills. "Medicare" provides similar coverage for those over 65 years of age. The Medicaid program is administered by TDHS, while the Medicare program is a federal function.

Throughout the years, the department has also been involved in administration of food distribution programs for the needy. The food stamp program, initiated in the mid-sixties, has grown from $235,174 worth of food coupons distributed in 1967 to over $700 million in fiscal year 1986.

The department has undergone many organizational changes. Staffing for the agency has fluctuated from 1,059 in fiscal year 1944 to 14,451 in 1977 to 12,122 in fiscal year 1985. Its name has changed twice in the last nine years and it continues to modify its organizational structure to react to changing state and federal program mandates.

Board Structure

The Board of Human Services is composed of three part-time members appointed by the governor for staggered six-year terms. The board chairman is elected by the board members, who are appointed to represent all geographic regions of the state. Each member must have a demonstrated interest in and knowledge of public welfare and experience as an executive or administrator.

The board carries out general policy making duties which include: approving the biennial budget; submitting the budget to the Legislative Budget Board and the governor; establishing goals, objectives and basic policies to guide to the department in carrying out its duties; adopting rules for program operations; and appointing the Commissioner of Human Services, with the advice and consent of the senate, to serve at the pleasure of the board.

Organization and Funding

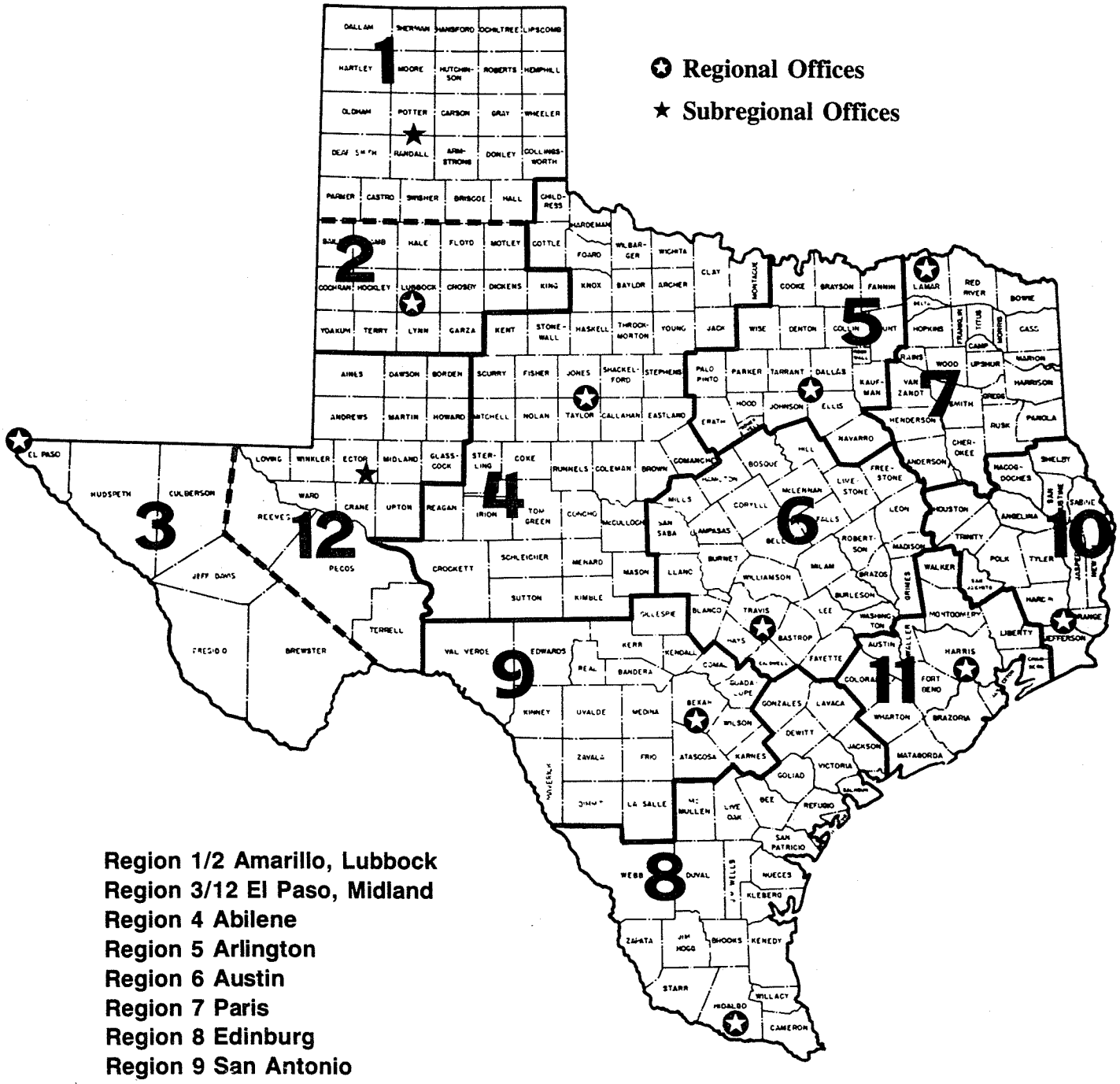
The TDHS has its headquarters in Austin and operates through a regional administrative structure. As seen in Exhibit 1, the state is divided into 12 regions with ten major regional offices. State headquarter's employees in Austin provide general policy and administrative guidance while the employees in the regions carry out the many day-to-day activities and responsibilities of the department. The statewide allocation of regional staff represented 84.1 percent or 10,663 of the total 12,679 employees of the department during fiscal year 1986. Exhibit 2 provides a detail of the allocation of staff by region as of May 1986.

Funding for the department comes from both state and federal funds. Overall, funds for fiscal year 1986 total $2,380,507,882. Federal funds represent 58 percent of the department's fiscal year 1986 budget. The mixture of federal and state dollars varies depending on the program. This mix, as well as general workload information is provided in a summarized chart format in Exhibit 3 for each of the department's major programs.

Exhibit 1

Texas Department of Human Services

Regional Boundaries



Region 1/2 Amarillo, Lubbock
Region 3/12 El Paso, Midland
Region 4 Abilene
Region 5 Arlington
Region 6 Austin
Region 7 Paris
Region 8 Edinburg
Region 9 San Antonio
Region 10 Beaumont
Region 11 Houston

Exhibit 2

TDHS REGIONAL STAFF ALLOCATION
May 1986

Region	Regional Office	Number of Staff
1/2	Lubbock	608.0
3/12	El Paso	725.0
4	Abilene	505.5
5	Arlington	1,767.0
6	Austin	943.5
7	Paris	703.0
8	Edinburg	1,678.5
9	San Antonio	1,098.5
10	Beaumont	632.5
11	Houston	2,001.5
Total	--	**10,663.0**

Programs and Functions

As can be seen in Exhibit 3, the department operates five major programs with some 27 sub-components. To carry out the elements of these programs, the department purchases services, provides grants of assistance, directly delivers services and contracts with other agencies. Exhibit 4 provides a pie chart depiction of how the department's money is spent. Over 88 percent of the department's funding is spent through grants (e.g. AFDC payments and food stamps) and purchased services (e.g. payment of medical expenses for the poor). The general program structures through which these dollars are spent are described in the material that follows.

Income Assistance

The income assistance program is composed of two major activities, Aid to Families with Dependent Children (AFDC) and the Food Stamp program, and a smaller program called Food Services. The AFDC program, created and mandated through Title 4-A of the federal Social Security Act, provides financial assistance to families with children who are deprived of support due to the absence or disability of one or both parents. The program began in Texas in 1943 with a caseload of 11,257 families receiving services. In fiscal year 1986, the projected

Exhibit 3

TDHS PROGRAM SUMMARY

Program	State	Federal	Other Fund Source	1986 Estimated Expenditures	1986 Client/Service Information	Number of Employees
I. Income Assistance				**$445,363,295**		**5,034**
A. Aid to Families with Dependent Children	46%	Title IV-A 54%		281,841,601	409,677 AFDC Recipients	
B. Income Assistance Program Delivery	50%	Multi-Source 50%		122,162,799		4,972
1. Eligibility Determination				(104,127,359)	409,677 AFDC Recipients	(4,590)
2. Program Support				(9,831,831)		(380)
3. Food Stamp Issuance				(8,203,609)	407,069 Food Stamp Cases/Month	(2)
C. Food Services (Commodity Distribution)	2%	96%	Commodity Fees	41,358,895	$ 210.0 Million Total Value of Food Dist.	62
II. Health Care Services				**715,126,347**		**122**
		Title XIX				
A. Purchased Health Services	46%	54%		708,277,433		
1. Aged & Disabled Premiums				(299,925,930)	309,253 Recipient Months	
2. AFDC & Foster Care Premiums				(286,933,344)	445,521 Recipient Months	
3. Children in Two-Parent Households				(35,298,418)	21,286 Recipient Months	
4. Pregnant Women				(12,072,333)	6,434 Recipient Months	
5. Medically Needy				(29,040,548)	11,037 Recipient Months	
6. SMIB Premiums	45%	55%		(41,780,176)	224,624 Recipient Months	
7. Utilization Review	25%	75%		(3,226,684)	Number of On-site Compliance Reviews by TMF - 84	
B. Health Care Services Program Support		Title XIX		4,518,270	See A	114
1. Program Support	43%	57%		(3,917,223)		(81)
2. SMIB Support	50%	50%		(601,047)		(33)
C. Indigent Health Care	100%	-0-		2,330,644	75 Hospitals Qualifying	8

Exhibit 3

TDHS PROGRAM SUMMARY
(cont.)

Program	State	Federal	Other Fund Source	1986 Estimated Expenditures	1986 Client/Service Information		Number of Employees
III. Services to Families & Chilren				**$227,515,250**			**3,555**
A. Protective Services to Families & Children		Multi-source		123,258,660			2,844
1. Foster Care Payments	73%	27%		(29,306,203)	4,853	Children in Dept. Paid Foster Care/Mo.	
2. Child Protective Services	27%	73%	Fees	(81,452,268)	69,925	Abuse & Neglect Investig.	(2,595)
3. Alternate Treatment for Youth	100%	-0-		(1,685,167)	164	Children Served	
4. Truant & Runaway Services	-0-	100%		(2,032,576)	5,628	Children Receiving T&R Svc.	(3)
5. Family Violence Services	10%	90%		(2,444,095)	21,715	Residential Clients Served	(2)
6. Program Support	31%	69%		(6,338,351)			(244)
B. Children's Trust Fund	100%	-0-		6,000		Services Begin in FY 1987	0
C. Family Self-Support Services		Multi-source		104,250,590			711
1. Family Planning Services (XIX)	10%	90%		(9,142,733)	51,020	Title XIX Clients/Year	
2. Family Planning Services (XX)	6%	94%		(16,079,993)	194,909	Title XX Clients/Year	
3. Child Day Care Services	-0-	100%		(32,705,969)	12,719	Children Per Day	
4. EPSDT	46%	54%		(17,813,326)	85,062	Medical/116,909 Dental Screenings/Year	
5. Employment Services	26%	74%		(8,027,299)	17,962	Clients Entering Employment	
6. Program Delivery	41%	59%		(16,841,609)	116,988	Clients Receiving Support Svc.	(622)
7. Program Support	41%	59%		(2,488,161)			(89)
8. Temporary Emergency Relief Services	100%	-0-		(1,151,500)	63,697	Clients Served	
IV. Licensing				**10,381,523**			**338**
A. Licensing of Child Caring and Child Placing		Title XX					
1. Licensing of Child Care Facilities	27%	73%		9,110,967	29,954	Day Care Facilities Licensed and Registered	300
2. Program Support	28%	72%	Fees	1,043,334	5,150	Complaints Investigated/Year	34
3. Certification of Social Workers	100%	-0-	Fees	227,222	8,000	Social Workers Certified	4

Exhibit 3

TDHS PROGRAM SUMMARY
(cont.)

Program	State	Federal	Other Fund Source	1986 Estimated Expenditures	1986 Client/Service Information	Number of Employees
V. Services to Aged & Disabled Persons				**$859,688,870**		**1,899**
A. Long-Term Institutional Care		Title XIX		463,567,543		
1. ICF II Vendor Payments	46%	54%		(18,105,616)	2,417 Average Recipients/Day	
2. ICF III Vendor Payments				(406,095,678)	48,678 Average Recipients/Day	
3. Skilled Vendor Payments (XIX)				(36,328,185)	2,783 Average Recipients/Day	
4. Skilled Vendor Payments (XVIII)				(2,862,294)	230 Average Recipients/Month	
5. Rehabilitation Services				(175,770)	37 Recipients Served/Month	
B. Intermediate Care for the Mentally Retarded	46%	Title XIX 54%		84,950,689		
1. ICF-MR I				(20,899,680)	1,150 Average Recipients/Day	
2. ICF-MR V				(24,201,461)	1,590 Average Recipients/Day	
3. ICF-MR VI				(21,356,470)	1,116 Average Recipients/Day	
4. Vendor Payments for State School & State Centers				(10,400,000)	8,619 Average Recipients/Day	
5. Program Support				(8,093,078)		
C. Vendor Drugs	46%	Title XIX 54%		110,620,347		30
1. Vendor Payments				(109,746,827)	7,215,439 Prescriptions/Year	
2. Quality Assurance and Consultation				(873,520)	3,490 Contracted Providers	(30)
D. Medical Transportation	46%	Title XIX 54%		4,668,477	705,805 One-way Trips	30
E. Community Care for Aged and Diabled Persons	40%	60% Titles XIX and XX		148,815,403		
1. In-Home Services				(138,977,248)	48,853 In-Home Clients/Month	
2. Out-of-Home Services				(5,676,409)	1,953 Out-of-Home Clients/Month	
3. Supervised Living				(3,143,762)	570 Clients/Month	
4. Client Managed Attendant Care				(567,084)	129 Clients/Month	
5. 1915(c) Waiver for Medically Dependent Children				(450,900)	50 Number of Children	

Exhibit 3

TDHS PROGRAM SUMMARY
(cont.)

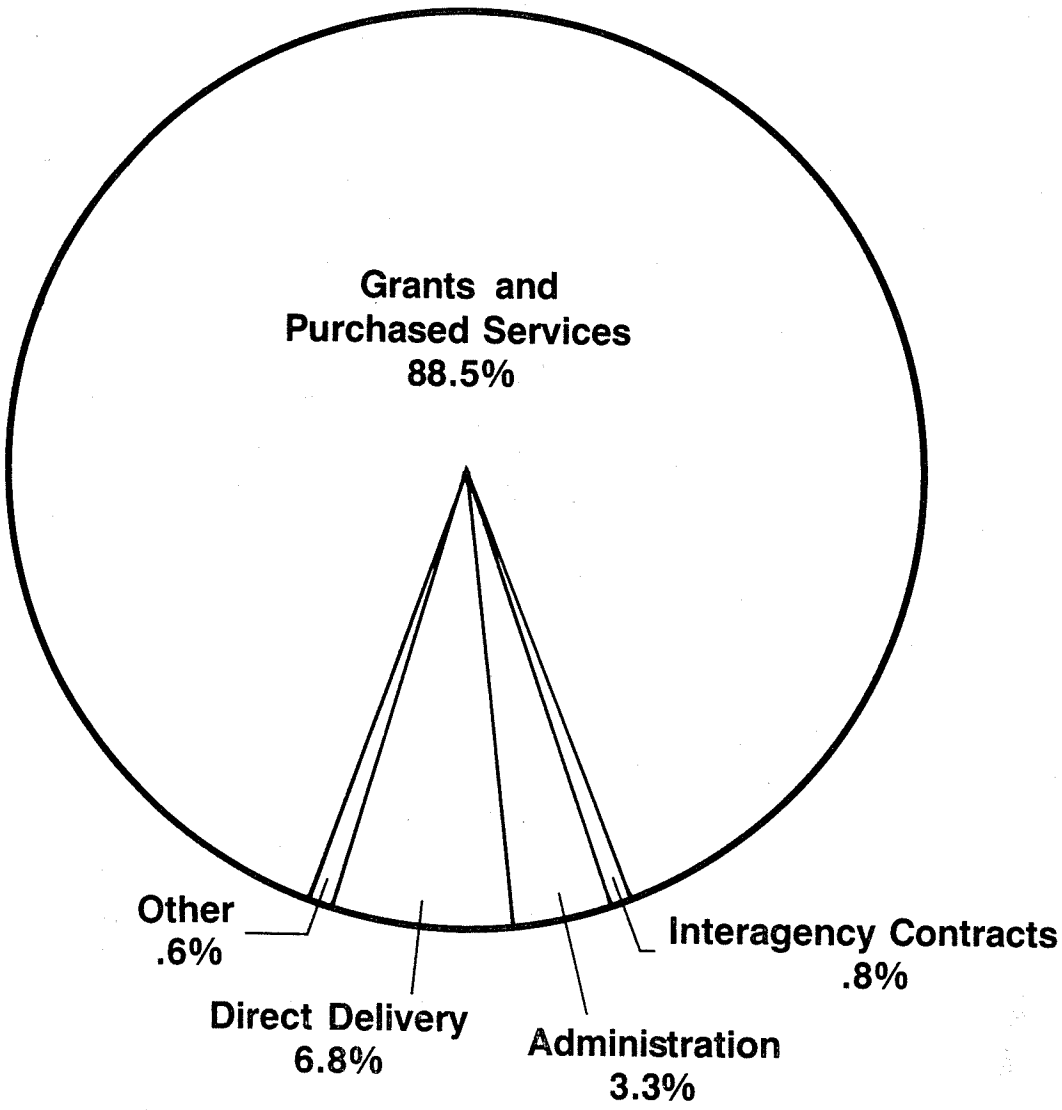
Program	State	Federal	Other Fund Source	1986 Estimated Expenditures	1986 Client/Service Information	Number of Employees
F. Adult Protective Services	5%	Title XX 95%		$ 6,809,439	13,536 Annual No. of Investigations	223
G. Services to Aged & Disabled Program Delivery	30%	70% Titles XIX and XX		40,256,972		1,616
1. Eligibility Determination			Local	(33,546,184)	190 MAO/Nursing Home Caseload	(1,374)
2. Program Support				(6,710,788)	140 Average Family Care Case Load	(242)
VI. Agency Administration		Multi-source		**70,353,939**		**1,612**
A. Central Management Support	44%	56%	Fees	19,417,575	Staff Support Function	525
B. Field Management Support	39%	61%		19,480,938	Staff Support Function	634
C. Information Systems	45%	55%		26,604,372	Staff Support Function	453
D. Renovations & Capital Outlay	88%	12%		4,851,054	NA	-
VII. Other Programs				**52,507,855**		**119**
A. Energy Assistance	-	100%		36,316,791	315,188 Households Rec. Heating Asst. 334,112 Households Rec. Heating Asst.	37
B. Disaster Assistance	29%	71%		605,071	280 Cases -- 1 Disaster	1
C. Refugee Assistance	-	100%		10,291,400	1,800 Refugee Recipients/Month	46
D. Special Projects	2%	98%		4,865,396	e.g. Long-Term Care Case Mix Project	35
TOTAL	**42%**	**58%**		**$2,380,507,882**		**12,679**

Exhibit 4

Texas Department of Human Services

Budget by Functional Category *

FY 1986



*The chart includes all funds appropriated to the department as well as $850 million worth of food stamps and commodities for which the department is accountable.

average monthly caseload is 132,582 families. To be eligible for AFDC, family income and resources cannot exceed certain limits depending on family size and other factors.

AFDC families receive a monthly assistance payment which, in combination with other benefits such as Medicaid, is intended to furnish an income sufficient for ensuring the health and safety of the children. The average AFDC recipient payment was $57.33 in fiscal year 1986. Families on the AFDC program automatically receive full Medicaid health care benefits and are usually eligible for food stamps and energy assistance. A family of three (one parent and two children) with no outside income could receive an AFDC grant of $184 and $185 in food stamps.

The food stamp program helps families and individuals whose low income threatens their ability to maintain minimum nutritional standards for good health. This assistance is provided in the form of coupons used to purchase food. To be eligible for the 100 percent federally funded coupons, a household must have income below 130 percent of the federal poverty level for their family size (currently the poverty level is $9,120 for a family of three). During fiscal year 1986, eligible households received $715 million in food stamps and there was an average of 407,069 cases per month. Administrative costs of the program are split evenly with the federal government, and are $88.3 million in fiscal year 1986. Throughout much of the state, individual workers can determine eligibility for AFDC, food stamps and, in some cases, Medicaid benefits.

The department also administers a food program for children and aged and disabled adults who otherwise might not receive needed nutrition. Surplus food is donated by the U.S. Department of Agriculture and is distributed to individuals and families through non-profit organizations. The program is 100 percent federally funded, however, administrative funds received have been insufficient for an entire fiscal year and are supplemented by state funds.

Health Care Services

This program provides comprehensive health care services to Medicaid-eligible aged and disabled individuals, AFDC families, foster care children, and certain other eligibility groups which meet income and resource requirements. Medicaid services are provided only after Medicare, personal insurance and other third-party resources are used. Payments for medical services to clients are made directly to physicians and certain other providers by the National Heritage

Insurance Company (NHIC), the department's health insurance contractor. A monthly premium ($53.67 for AFDC recipients; $80.82 for Aged and Disabled persons in fiscal year 1986) is paid by the department to NHIC for each person covered by the Medicaid program. Medical services provided and cost control measures are similar to those of other health insurance carriers.

In fiscal year 1985, an average of 17,199 people received inpatient hospital services each month at a cost of $21,981,913. Another 200,523 clients required the services of a physician each month at a cost of $13,324,895. Premiums and associated costs for all health care services totalled roughly $742 million in fiscal year 1985. The Medicaid program is generally funded on a matching basis, with 54 percent paid by the federal government through the Health Care Finance Administration (Title XIX funds) and 46 percent through state appropriations. Administration funds are contributed on a 50-50 or 75-25 federal-state matching basis depending on the function.

In order to control costs, the department and NHIC attempt to identify third-party resources available to the client to pay for medical care. This often necessitates the "recovery" of funds from third-party sources after Medicaid has paid the provider. Other health insurance coverage, workman's compensation and liability settlements from accidental injuries are some examples of third-party resources.

Another program operated through the department's health care services division is the indigent health care program created in 1985 by the 69th Legislature. Through this program, counties must provide basic medical care services to indigent residents who are not covered by any public or private health program. The program provides state funds to help counties meet health care needs of indigent residents and reimburse hospitals which provide a disproportionate share of services to the indigent. Counties and public hospitals are then required to provide certain health care services to indigents.

Services to Families and Children

The services to families and children division provides mostly direct services in two basic areas: 1) protective services in cases of child abuse or neglect and in family violence situations; and 2) support services for families to help them attain levels of self-support so department services will no longer be needed.

The largest activity in the protective services area is child protective services. The department is mandated by Chapter 34 of the Family Code to

provide services which protect children from abuse or neglect. The department receives reports of abuse or neglect which are assigned a priority for investigation based on the severity of harm or threatened harm to the child. Investigations of reports involving life-endangering situations are initiated within 24 hours of receipt. When abuse or neglect is indicated, the department may take a series of actions to address the situation. In-home protective services are intended to help prevent recurrence of abuse or neglect through counseling, protective day care and other services. If the situation warrants, temporary foster care can be ordered by the court and provided until the child can be safely returned to the natural family or be placed in a permanent setting. When a child cannot be safely returned to the natural family, a court can terminate parents' rights and the child receives adoption services.

Protective services are provided by a staff of 2,595 workers throughout the state who will investigate some 70,000 cases of abuse and neglect in fiscal year 1986. About $81.5 million is spent on child protective services (73 percent federal; 27 percent state) and about $29.3 million on payments for foster care (27 percent federal; 73 percent state) for an average of 4,853 children for whom payments were made each month.

Other protective service programs operated include Alternative Treatment for Youth ($1.7 million; 100 percent state) which provides treatment for 164 emotionally disturbed and delinquent youth in fiscal year 1986; Truant and Runaway Services ($2 million, 100 percent federal) which will serve 5,628 youth in 16 emergency shelters for runaways, and Family Violence Services ($2.4 million, 90 percent federal, 10 percent state) which helps support 46 family violence shelters in Texas which are estimated to serve 21,715 clients in fiscal year 1986.

Family self-support services include family planning, child day care, preventive health care for children, employment assistance and temporary emergency relief services. About $25.2 million is being spent on family planning services in fiscal year 1986 (about 93 percent federal through two federal funding sources; seven percent state) which reach approximately 246,000 clients. Unplanned pregnancies impact both the families and government services. For example, national statistics indicate that 31 percent of births to teenage mothers are paid for by Medicaid, and some 60 percent of AFDC mothers have their first child when they are teenagers. In 1985, almost 50 percent of all AFDC children dependent on welfare were born out-of-wedlock. Family planning services available through the

department enable individuals to voluntarily limit family size, space their children, or prevent out-of-wedlock births.

Preventive health care for children is provided through the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program. The program provides periodic medical and dental check-ups and follow-up treatment for Medicaid eligible children. Problems that can be identified early can be more safely and cost effectively treated. For fiscal year 1986, there are 85,062 medical screens and 116,909 dental treatments expected at a cost of about $17.8 million (54 percent federal; 46 percent state).

Child day care services are primarily provided to children receiving protective services and children of parents receiving employment services. An average of 12,719 children receive day care each day at a total fiscal year 1986 cost of about $32.7 million (100 percent federal).

The department's employment service activities are intended to help AFDC clients become self-sufficient. Services are provided to AFDC recipients directly by the department and through contracts with public and private agencies. These services include employability assessment, pre-employment preparation classes, job search activities, job development, placement, and support services such as transportation and day care. Food stamp recipients are provided specialized job search assistance through a contract with the Texas Employment Commission. The department also works with the Texas Department of Community Affairs to help AFDC recipients receive job training through the federal Job Training Partnership Act program. About 30,700 AFDC and Food Stamp clients are expected to enter employment through all the above programs in fiscal year 1986 at a cost of about $15 million (61 percent federal, 39 percent state). For 1985, the department estimated that 15,967 AFDC employment placements resulted in net state and federal savings of about $45 million in AFDC, Medicaid and Food Stamp payments as these recipients were no longer eligible for these services.

The Temporary Emergency Relief Program (TERP) is operated jointly with the Emergency Nutrition program (ENTERP) created through the Texas Omnibus Hunger Act in 1985. These programs, through cooperative agreements with county commissioners' courts, other political subdivisions, and private non-profit organizations, provide food, utilities, housing, and clothing to needy people throughout the state. Direct cash assistance is not allowed. The state allocations to counties in fiscal year 1986 range from $1,000 to $100,000 with an average of $4,533 which

must be matched on a 50-50 basis by the community. A total of $1,151,500 was distributed through the combined programs in fiscal year 1986 which are expected to reach about 63,600 clients.

Licensing

The department's licensing activities include regulation of day care centers, family day homes, 24-hour child care facilities and administrators, and child placing agencies. The purpose of these activities is to protect the health and safety of children under the care of a person or facility outside their own home.

Day care regulation essentially falls into two categories. Day care facilities which care for 12 or more children are required to obtain a license and are inspected for compliance with standards set in department rules. Family day homes which generally take care of 12 or fewer children must register with the department, but are not inspected unless there is a problem with the application or a complaint is received. Three hundred thirty-four licensing staff are located throughout the state to administer the program, inspect facilities and respond to complaints. It is estimated that 8,239 day care facilities will be licensed and 21,715 family homes will be registered in 1986. Twenty-four hour child care institutions and child-placing agencies are also licensed. There are currently 439 such institutions in the state which are inspected at least once a year, and may be visited more often in response to complaints. The cost of these activities in fiscal year 1986 was $10.1 million (27 percent state, 73 percent federal). Fees are required for all facility licensing and registration, with $1.3 million expected in fiscal year 1986.

The Human Resources Code (Sec. 43.003) requires the licensing of all administrators of 24-hour child care institutions. The licensing program evaluates the qualifications of persons to be administrators, issues biennial licenses and renewals, and investigates complaints against licensed administrators. There are currently 550 licensed administrators in Texas, and only three complaints were investigated in fiscal year 1986. Licensing fees are $75 for new licenses and $50 for renewals. Approximately $15,000 is expected to be collected through fees in fiscal year 1986.

The approximately 8,000 social work practitioners in Texas are also certified through a program which pays for itself through fees. The program has a separate sunset date and is scheduled to be considered in 1989.

Services to Aged and Disabled Persons

To meet the needs of a growing population of elderly and disabled people, the department provides a variety of medical and social services which can often be tailored to an individual's particular needs. The department's philosophy is to design programs which prolong independence as long as possible by providing services in the least restrictive appropriate setting. In addition to medical and social services, the department provides protective services for aged and disabled adults who are abused, neglected, or exploited.

To qualify for community care or institutional services, an aged or disabled person must have a demonstrated need for the service and meet the financial eligibility requirements. Need for service is determined through functional and medical assessments of the person's condition. Financial eligibility is based on resources and income. To be eligible for these Medicaid services, resources must not exceed $1,700 and income cannot exceed $670.20 per month in 1986.

When institutional care is needed, services are provided through skilled nursing facilities (SNF) and intermediate care facilities (ICF). These facilities receive Medicaid vendor payments based on the level of nursing and medical care needed. The maximum payments are $32.73 per day for most of the ICF patients and $44.05 per day for the SNF patients. In fiscal year 1986, the average number of ICF recipients is 51,095 per day, while the SNF average is 2,783 recipients per day. Estimated expenditures for fiscal year 1986 are $424,201,294 for ICF's, and $36,328,185 for SNF's (54 percent federal, 46 percent state).

Institutional care is also provided to needy mentally retarded people in three levels of intermediate care facilities for the mentally retarded (ICF-MR). The program is administered through the involvement of TDHS, TDMHMR, and TDH. An average of 3,856 clients per day receive care in 160 community-based ICF-MR facilities at a cost of about $66.5 million a year.

Mentally retarded and developmentally disabled Texans who are eligible for Medicaid also receive care in state institutions. About 8,619 recipients per day were served in state schools and state centers.

The department's vendor drug program pays participating pharmacists for drugs dispensed to persons who are medically and financially eligible for medicaid, excluding state school residents. The drugs must be medically essential to health care, and there is a limit of three paid prescriptions per month, per recipient. About 7.2 million of these prescriptions will be filled in fiscal year 1986 through

3,490 contracted providers (pharmacies) at a cost of about $109.7 million (54 percent federal, 48 percent state).

Under a 1975 federal court order, the department must ensure the availability of non-ambulance transportation for Medicaid eligible recipients to and from allowable medical care. Such transportation is available throughout Texas through competitively procurred department contracts with local taxi companies, city and county governments, private corporations, volunteers and other community and service organizations. Medicaid recipients in nursing homes receive transportation from the nursing home provider as required in the home's Medicaid contract. Estimated expenditures for 1986 are $4.7 million for about 705,800 trips to obtain medical care.

The department provides a number of community care services to help low-income elderly and disabled people with chronic health conditions remain at home or in community settings. An array of in-home and out-of-home services are provided to avoid premature, costly nursing home placements. Estimated expenditures for fiscal year 1986 are $148.8 million with about 50,800 clients receiving services. Of these clients, 48,850 receive in-home services.

Family care services help functionally limited elderly and disabled adults with personal care activities, housekeeping tasks, meal preparation, and escort services. The department contracts with licensed home health agencies to provide these services to individuals for up to 20 hours per week. Those who are functionally limited due to chronic health problems may receive up to 30 hours a week of primary home care. This care must be prescribed by a physician and is supervised by a registered nurse. These services are also provided through licensed home health agencies.

Emergency response systems help aged or disabled clients deal with emergencies by providing quick response from volunteers through an electronic monitoring and remote telephone calling capability.

The department contracts for congregate and home-delivered meals through community-based provider agencies. Meals are provided in a central location or a client's home and are approved by a registered dietician or nutritionist.

One other in-home service is the shared attendant care program. It is targeted to the needs of younger physically disabled people who need personal help and transportation to maintain living situations in the community. In fiscal year 1986, 129 clients are receiving shared attendant services in three areas of the state.

Out-of-home services are available to those who can no longer live alone, but their impairments are not severe enough to warrant institutional care. Adult foster care provides supervision and assistance with daily living to about 600 eligible adults in 24-hour living settings. The supervised living program provides care to about 600 clients who require access to services at all times, but do not require daily nursing care. All day-to-day needs are provided in facilities that range from apartments to converted nursing homes.

The day activity and health services program provides social and nursing services in adult day care facilities to about 800 clients per month. These services are available at least 10 hours each weekday and can provide respite for clients' families. Altogether over 600 clients are served in this program per month. One other program, special services for the handicapped, provides counseling, personal care, and help with the development of skills needed for independent living for about 500 clients per month.

Adult protective services are provided to elderly or disabled persons who may have been abused, neglected, or exploited. Services are provided to clients without regard to income and on a voluntary basis, unless the person is found to be in a life-threatening situation and a court finds that the client lacks the capacity to consent to service. In confirmed adult protective services cases, the staff assist the client in remedying the situation. This may include removal from the home, provision of supportive services and counseling with the client and their family. In fiscal year 1986, it is estimated that about 13,500 investigations will be conducted by TDHS with about $6.8 million (95 percent federal, 5 percent state) expended on the program. Reports of abuse in nursing homes are investigated by the health department, who licenses these facilities.

Other Programs

The energy assistance program provides one summer and one winter utility assistance payment per household whose gross income is below 120 percent of the poverty level. Payments reflect average residential utility costs, vary by household size and income and are sent directly to the utility company whenever possible. The 100 percent federally-funded program is expected to expend $34.6 million in payments to over 300,000 households in fiscal year 1986.

The disaster assistance program provides a one-time assistance grant of up to $5,000 to victims of a major, presidentially declared disaster. Assistance is intended to help victims meet necessary expenses for which insurance or other

governmental assistance is either unavailable or inadequate. Only one disaster, a tornado in Nolan county, occurred in fiscal year 1986. As a result, 280 grants were made at a cost of $553,071 (75 percent federal, 25 percent state). The average grant was about $1,975.

The refugee assistance program is a 100 percent federally-funded activity which provides assistance to eligible refugees and immigrants to enable them to become self-sufficient. The program provides temporary financial, medical, and social services, as well as other assistance, such as courses in English as a second language, job training, and employment services. These services help refugees enter the economic mainstream. About 1,800 recipients per month receive services and $10.3 million is expected to be expended in fiscal year 1986.

The department also conducts special projects which look at methods of improving their service delivery systems. One example is the long-term care case mix project which is examining the department's reimbursement system for nursing homes. These projects are 98 percent federally funded. It is expected that about $4,865,000 will be expended on these projects in fiscal year 1986.

Agency Administration

The department's central management support services provide executive administration and leadership so that the department can perform its statutory responsibilities, and develop and implement policies and procedures for the delivery of services to all clients. (Exhibit 5 illustrates the major components of the department's organizational structure). The program provides assistance to the three-member Board of Human Services as needed and provides for the operation of the functions of the commissioner's office, deputy commissioners and central support services.

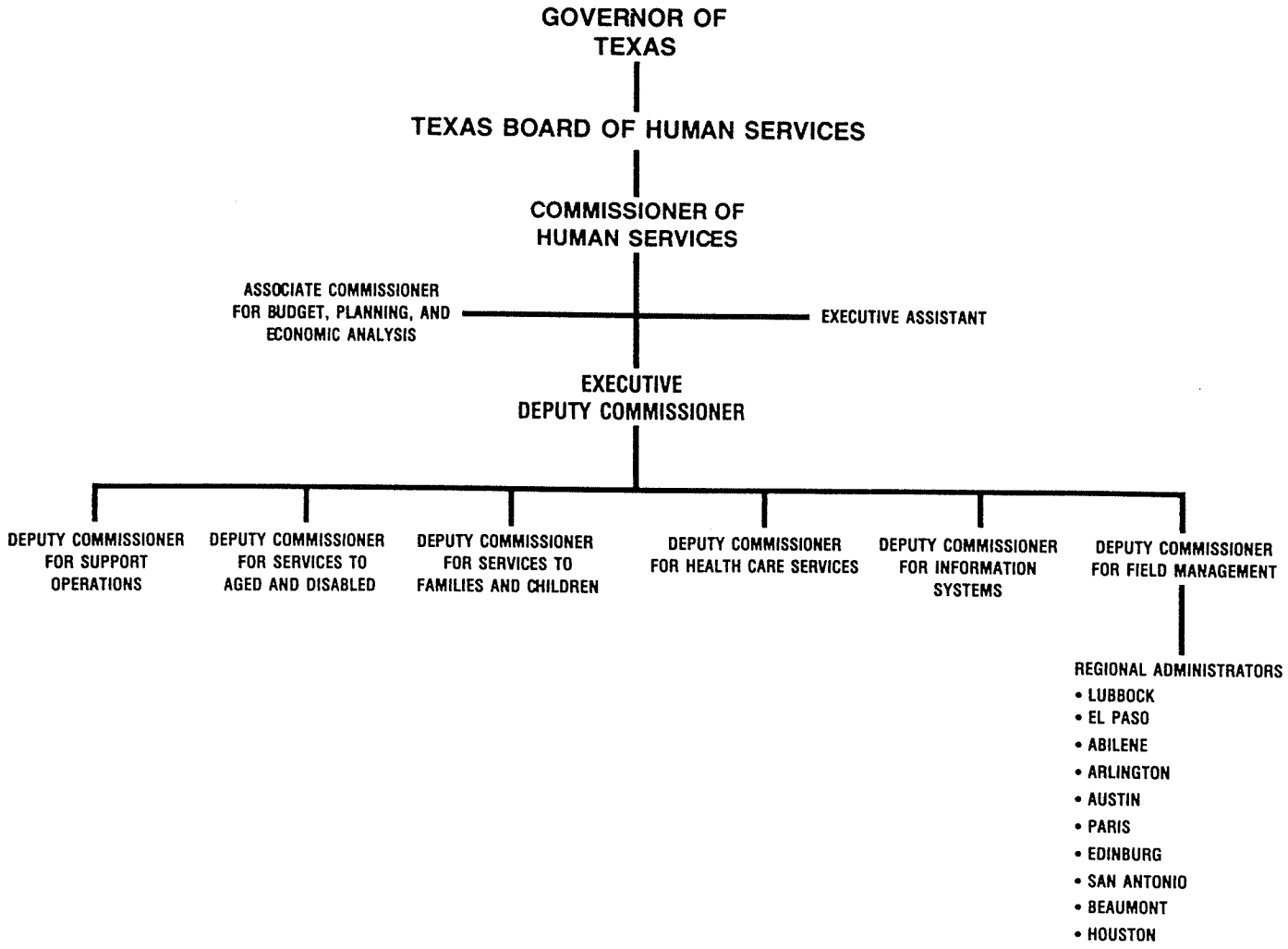
Central management support staff provide executive direction, legal services, audits and investigations, fiscal and reporting services, training, public information and other support services. There are 525 employees in central management support with a fiscal year 1986 expenditure of about $19.4 million (56 percent federal, 44 percent state).

Field management services provides coordination at the regional level of department programs and administration. This activity provides overall planning, direction, monitoring, and support of service delivery activities at the regional level; a hearings process to review appeals regarding client services and to conduct audits and fraud investigations; and executive direction and leadership through 10

Exhibit 5

Texas Department of Human Services

State Office Organization



regional administrators and support staff. There are 634 employees in field management support with a fiscal year 1986 expenditure of about $19.5 million (61 percent federal, 39 percent state).

The office for information systems plans, organizes and manages the department's manual and automated information systems. This includes the automation needs for service delivery programs as well as statistical support for management functions. Information about each application for service is entered by caseworkers into a system called "WelNet". The system ensures that caseworkers obtain all needed information, simultaneously processes eligibility determinations for AFDC and food stamps, and prints needed information for the case file. The office also works with department users in designing, developing, implementing, and maintaining automated information processing services. About 453 staff are involved in this program, and fiscal year 1986 estimated expenditures are $26.6 million (55 percent federal, 45 percent state).

One final area of department activity involves renovations of rent-free office space and capital outlay for needed equipment. Four million eight hundred fifty-one thousand and fifty-four dollars ($4,851,054) (12 percent federal, 88 percent state) is estimated to be spent for this activity in fiscal year 1986.

REVIEW OF OPERATIONS

Explanation of Review Focus

The size of an agency like the Department of Human Services dictates a need to carefully select areas for review. To determine these areas, a number of activities were undertaken:

-- overview discussions with top agency staff based in Austin;

-- site visits to seven of the agency's 12 regions;

-- work session and discussions with interest groups and persons knowledgeable of the agency;

-- review of past legislative issues and relevant evaluation studies and reports.

These activities yielded an understanding of the general objectives of the agency's programs and the problems faced by the staff of the department and the recipients for whom its services are designed. The problems identified are numerous but generally divide into problems that can be addressed through increased funding and those that can be addressed through efforts to maximize the use of current systems and dollars.

The problems that can be addressed through increased dollars are generally a result of the state's historical, conservative approach to the provision of human services. The board chairman's "statement" in the agency's budget request for the 1988-1989 biennium clearly points out the magnitude of the need and the state's general ranking among all states regarding the funding of human services. In fiscal year 1985, for example, less than 22 percent of the child poverty population in Texas was covered by the AFDC program; Texas ranked 46th among the states in the level of financial assistance to dependent children; and Texas ranked 45th in per capita total Medicaid expenditures.

The review of the agency indicated other needs:

-- In July 1986 more than 2,200 persons were on waiting lists for in-home Community Care Services designed to prevent or delay institutionalization. The department estimates these waiting lists will grow to over 5,000 people in fiscal year 1988 and 6,900 in fiscal year 1989. Serving these people would cost $11.8 million state dollars in fiscal year 1988 and $16.7 million state dollards in fiscal year 1989.

-- The income eligibility cap for Medicaid Nursing Home care is $670.20 (FY 1987) per month while the average cost of a nursing

home is estimated to be over $1,000 per month. This gap between earning ability and purchasing power leaves many people ineligible for Medicaid nursing home assistance but unable to pay for nursing home care. Adjusting the cap to meet the average cost of nursing home care would require an additional $6.6 million state dollars in fiscal year 1988, and $12.7 million state dollars in fiscal year 1989. It takes four full years to reach the full impact of adjusting the cap to the maximum. In fiscal year 1992, the state dollar cost would reach $15.0 million.

-- The AFDC grant level average is $57 per month per recipient which meets 32 percent of the state established need standard. Raising this average payment to $68 in 1989 (to meet 35 percent of the need standard) would cost $31.4 million in additional annual state dollars.

-- Medicaid health service benefits are only available for four months after an AFDC recipient obtains a job and no longer receives AFDC payments. This is often viewed as a disincentive for former recipients to stay employed, since most jobs available to recipients are generally low paying and do not provide health care benefits. Extending medicaid benefits to twelve months after leaving AFDC when obtaining a job would reduce disincentives to employment at a cost of $15.4 million additional state dollars for fiscal year 1989.

-- Only 35 percent of the families in which abuse and neglect of children has been confirmed are provided services beyond the initial investigation. Providing services to families with an identified need for on-going services would require an additional $4.2 million in state dollars in fiscal year 1988 and $6.1 million state dollars in fiscal year 1989.

All of the above areas of need are worthy of attention and many have been addressed in the department's biennial budget request to the 70th Legislature. The Sunset review of the agency, however, has focused on trying to solve the second type of problems -- those that can be addressed through better use of existing resources.

The recommendations that follow are the result of using a focus or theme that identified problems for which there are solutions that involve modifications to existing systems without the need for significant additional funding. In many cases, the solutions proposed will actually save the state money or allow it to expand services without additional dollar resource demands.

POLICY-MAKING STRUCTURE

The evaluation of the policy-making structure was designed to determine if the current statutory structure contains provisions that ensure adequate executive and legislative control over the organization of the body; proper balance of interests within the composition; effective means of selection and removal of members; and the proper use of the policy-making body's advisory committees.

Changes to the Size and Qualifications of Board Could Result in Improvements.

The Texas Board of Human Services is a three-member policy-making body originally created in 1939. The board is composed of three members appointed by the governor to staggered six year terms and must represent all geographic areas of the state. To qualify for appointment to the board, a person must have demonstrated an interest in and knowledge of public welfare and must have experience as an executive or administrator.

A review of other policy-making boards showed that only three major state agencies have three member part-time boards. As a general rule, most agencies have larger policy-making boards in order to provide geographic or philosophical diversity, greater public access to members, division of workload, and where necessary, expertise in a given area of regulation or service delivery.

The review indicated that a three-member board can not provide effective geographic representation. In addition, there is a potential for a disruption in decision-making if one board member should be unable to perform their duties for an extended period of time.

- **The Board of Human Services should be expanded to six members.**

  A six-member board would allow for additional geographic representation, division of workload by subcommittee, and increased public access to members without significantly increasing costs of department operations.

- **The board member requirement for experience as an executive or administrator should be deleted.**

  This change would remove an outdated provision and allow the governor to appoint any qualified member of the general public to the board. In addition, the qualification for the person to have a demonstrated

interest in and knowledge of public welfare should be updated to use the term "human services".

Selection of the Chairperson of the Board Should be Changed.

The Department of Human Services' board members currently elect a chairperson from their membership whereas the governor selects the chair in many other state agencies. For example, this is done at the Board of Pardons and Paroles, the Texas Department of Mental Health and Mental Retardation, the Texas Air Control Board, and the Texas Water Commission. A review of the TDHS board's procedures and types of policy decisions did not reveal any particular need to deviate from this method of selection.

- **The Human Resources Code should be amended to require that the governor select the chairman of the department's board.**

The governor's selection of the chair encourages and helps ensure continuity of policy from the state's chief executive officer down to the various agencies which serve the citizens of the state.

Senate Confirmation of the Commissioner of the Department of Human Services is Unnecessary.

Under section 21.004 of the Human Resources Code, the commissioner of the department is chosen by and serves at the pleasure of the department's board. However, the commissioner also must be confirmed by the senate. Given that the commissioner already is chosen by and serves at the board's pleasure, senate confirmation is unusual and unnecessary. In addition, senate confirmation of the commissioner may be unconstitutional under the Texas Constitution. According to Attorney General Opinion JM-58, any attempt by the legislature to extend its confirmation power to include heads of agencies in the executive branch who are employees, who are not state or district officers or who are state or district officers not appointed by the governor may be in violation of Article II, Section 1 of the Texas Constitution.

- **The statutory requirement that the commissioner of the department be confirmed by the senate should be removed.**

Removing the statutory requirement that the commissioner be confirmed by the senate removes a potential conflict with the Texas Constitution and aligns the appointment process with practices of other state agencies.

Changes in the Department's Advisory Committees Could Result in Improvements in Management and Policy Decisions.

The department currently has eight ongoing advisory committees (see Exhibit 6) which provide assistance to the board and staff in obtaining provider and consumer viewpoints concerning major programs of the department. Five of the committees have no statutory structure and have been created by the department to assist it in carrying out its functions. Although the review indicated that the committees are active and appear to serve useful functions, two areas of concern were noted. First, the authority of the department to appoint and structure advisory committees is unclear. A problem related to this unclear statutory authority is the lack of general directives concerning how the committees are appointed and their relationship to the policy making structure of the department, the Board of Human Services.

The second problem area concerns particular committees. In the case of one committee, the Medical Care Advisory Committee, its composition and appointment system needs adjustment. In the case of the two committees dealing with child care issues, it appears they could be combined into a single committee. Lastly, it appears appropriate to direct another committee, the Committee for Services to Aged and Disabled Persons, to review issues concerning the department's services to disabled persons. The recommendations related to these areas of concern pertaining to the department's advisory committees are set out separately below.

- **Clear statutory directives concerning the department's use of advisory committees should be developed.**

  Five of the department's advisory committees have no statutory structure and authority for the board and department to appoint and use such committees is unclear. Since the committees provide management and policy assistance to the board and department, it is important that each committee has a clear understanding of its role and duties. One concern raised during the review relates to the role of the committees in reviewing and commenting on department rules. Some committee members complain that the use of the committees vary in rulemaking and their input occurs too late to be meaningful. It appears important to obtain input from the committees during the development and prior to final adoption of rules unless an emergency situation exists that

Exhibit 6

TDHS Advisory Committees Considered in Sunset Review

Committee	Year Created	Number of Members
1. Income Assistance Services Advisory Council	1981	11
2. Family Violence Advisory Committee	1984	15
3. Advisory Committee for Services to the Aged & Disabled	1981	15
4. Medical Care Advisory Committee*	1967	29
5. State Advisory Committee on Child Care Facilities*	1975	15 (6 alternates)
6. Advisory Council on Child Care Care Administration*	1973	6 (3 alternates)
7. Public Awareness Advisory Committee	1986	9
8. Church Relations Advisory Group	1976	20

*Statutorily created.

NOTE: During fiscal year 1986, TDHS had seven other advisory committees. One committee has disbanded, two committees have been merged into other committees, one committee has an ad hoc and limited function, another committee functions as a subcommittee of the MCAC, one committee has a 1999 sunset date and another, the Council on Child Welfare Boards is a separate incorporated entity not subject to board appointment.

requires immediate attention. The department takes steps to inform the board of committee positions on rule changes but a clear directive in statute will ensure that such action is consistently taken in future years.

To develop a clear structure for the appointment and use of committees the following statutory changes are needed:

- the establishment of clear authority of the Board of Human Services to appoint and use advisory committees;
- The clarification that the board appoints the membership upon recommendation of the commissioner;
- the requirement that each committee have a balanced composition that represents the viewpoints of providers, consumers and other groups or persons with knowledge and interest in the committee's field of work;
- the requirement that the board specify each committee's purpose and duties;
- the requirement that the board specify how the committees are to report to the board concerning the committee's activities and results of their work; and
- the requirement that the appropriate committee(s) have the opportunity to comment on rule changes during their development and prior to their final adoption unless an emergency situation requires immediate action.

This approach will ensure that current and future committees are of maximum utility to the board and the staff of the department. It is intended that the rule review duty would apply to all board appointed as well as statutory committees.

- **Statutory language governing the composition and appointment of the Medical Care Advisory Committee should be modified.**

This committee, required by federal regulation is designed to provide the department with assistance in carrying out the state's responsibilities under the Medicaid program. Its current composition consists of 23 providers and four consumers with two ex officio members (the

commissioner of health, for example). This composition yields an unbalanced structure which is unlike other advisory committees of the department. The current statutory structure allows the commissioner to appoint the membership to provide for "representation of the various professions and disciplines authorized to provide medical assistance." It appears this directive should be broadened to require the balanced representation of these provider groups as well as consumers and other persons with knowledge and interests in the medical programs administered by the department. This is consistent with the structure of other committees established to provide program input and would allow for the perspectives of those involved in all facets of the department's services to be gained.

The size of the committee is also problematic. The average number of members of all other committees is slightly less than 13 while the current MCAC has 29 members. Although the actual size of the committee should be a decision of the commissioner and board, a reduction in the size to 15 members appears warranted to save costs, conform to the average size of other committees and expedite decision making.

The final clarification relates to the process which should be statutorily clarified to coincide with actual practice. This change will provide for appointment of members by the board upon recommendation of the commissioner.

- **The department's two advisory committees on child care should be merged.**

The department has two statutorily structured advisory committees that assist in departmental activities concerning child care. The Advisory Council on Child Care Administration (Sec. 43.002, HRC) is a six-member body that advises the board and department on issues related to the licensure of child care administrators. The Advisory Committee on Child Care Facilities (Sec. 42.023, HRC) is a 15-member body which advises the board and department on general issues related to the operation of child care facilities. The two committees have different focuses but do have a common department program to assist.

Having two committees for the department's $10 million licensing program appears unnecessary and the separate meeting of the committees can drain already limited department staff resources. Additionally, it appears beneficial to have one committee that can advise the department on both administrative and facility standards issues. In line with the recommendations on the other committees, the board should appoint the committee members upon recommendation of the commissioner. The composition of the committee should ensure a balanced representation of providers and consumers (parents of children in child care facilities, for example) as well as other persons with an interest and knowledge of the committee's field of work. The resulting committee should be charged with the duties that now exist for the two separate committees.

- **The Advisory Committee for Services to Aged and Disabled should review issues related to the department's services for disabled persons and report concerns to the board.**

The department's general mission statement indicates the mission of the department is "to promote the individual's worth and dignity by providing services to families and children, elderly, and disabled individuals to encourage their self-sufficiency and prevent long-term dependence on public assistance." During the review of the department, interest groups raised issues concerning the priority it places on services to disabled persons. A number of structures are in place to consider the state's overall approach to services to the disabled and the department itself has an active "strategic planning" process designed to examine its total array of services and need to adjust its service priorities. Many of the concerns of the disabled community can only be addressed through additional dollars to serve additional persons. Other concerns, however, could be addressed through a focused effort to examine TDHS' programs for disabled persons to determine improvements that could be made within existing resources.

At two recent meetings of the Advisory Committee for Services to Aged and Disabled, a number of long-range issues have been discussed which would be reasonable for the committee to focus on. Examples of these issues include:

What are the scope and range of services that TDHS should provide to persons with mental, developmental and physical disabilities?

Is the current TDHS management information system adequate to collect and report on persons with mental, developmental and physical disabilities?

Other issues relate to ways to better focus, organizationally, TDHS' provision of services to the disabled.

The consideration of these issues by the committee appears appropriate. The answers to the questions are not easily developed and will need to be considered in light of responsibilities of other agencies to serve disabled persons. However, for TDHS, it does appear appropriate for this committee to examine these issues and then funnel their results to the commissioner and board to assist in future decisions regarding the agency's services to disabled persons.

OVERALL ADMINISTRATION

The evaluation of the department's overall administration was designed to determine whether the management policies and procedures, the monitoring of management practices and, the reporting requirements of the agency were adequate and appropriate for the internal management of time, personnel and funds. The review focused on the department's efforts at informing the public of available services, its ability to maximize funds expended in the Medicaid program and its ability to prevent and investigate program fraud.

Current Law Prevents the Department From Maximizing Third Party Resources.

Medicaid is a state and federally funded medical assistance program that is designed to be the "payor of last resort". All other available resources must be used before Medicaid pays claims. The federal government requires states to make reasonable efforts to identify and collect from health and liability insurers before Medicaid becomes responsible for paying medical bills. A 1985 United States General Accounting Office report indicated that the Texas Department of Human Services needed to improve its practices of identifying and recovering third party resources.

The review identified several situations where there is a potential for recovery of additional third party resources from existing insurance coverage if statutory restrictions are removed or additional authorization is provided. The total dollars that could be recovered are identified in the material that follows. However, adjustments must be made to the potential amounts recovered to account for the federally funded share of the Medicaid program (55.16 percent in fiscal year 1987) and for the insurance provider's (National Heritage Insurance Company) share of operating the program.

- **The department should be authorized to match Medicaid recipient data against Workers Compensation claims information to identify private insurance coverage.**

  The department currently conducts data matches with the Texas Employment Commission and other state agencies but is prohibited by statute (Art. 8307, Sec. 9a (b), V.T.C.S.) from obtaining Workers Compensation data from the Texas Industrial Accident Board. Other states match Medicaid data against Workers Compensation data to

identify situations where Medicaid clients are covered by other insurance. The department estimates that about 300 cases each year would be identified as having potential insurance coverage. This includes the 108 cases already identified through other means which resulted in recovery of $91,600 in fiscal year 1985. The average amount of a Medicaid claim in which a recipient also has a pending or completed Workers Compensation claim is $872. The department therefore estimates that authority to obtain Workers Compensation data would facilitate the additional recovery of up to $170,000 per year. The cost of obtaining the data is estimated to be $1,200 per year, resulting in a potential net recovery of $168,800.

- **The department should be authorized to obtain insurance payments directly from the insurance companies of absent parents of AFDC recipients.**

The department does not have adequate authority to recover Medicaid expenses for services provided to a child when a parent without custody provides health insurance. Consequently, the payment by the insurance company is frequently sent directly to the parent. The Medicaid program cannot always obtain reimbursement from an absent parent once this occurs. The Office of the Attorney General is now in the process of obtaining court orders requiring noncustodial parents of children on Medicaid to provide insurance for the children whenever employment related insurance is available. The process will be completed for 1,500 children by fiscal year 1988, and 4,500 children by fiscal year 1989. For example, in fiscal year 1989 the yearly Medicaid premium per child is expected to be $846 which would represent $3,807,000 in total premiums for these children. The department estimates it could recover 70 percent of these expenditures through the availability of private insurance. This means $1,332,450 could be recovered in fiscal year 1989 in addition to funds that would be collected by using the current method of contacting the absent parent and obtaining signed authority to bill the insurance company. These savings would continue as long as the Office of the Attorney General continues to obtain court orders for insurance provided by non-custodial parents. No increase in administrative expenses to the department is anticipated by this change.

- **The department should examine all accident and trauma Medicaid claims over $500.**

Another way the department identifies Medicaid payments which could be recovered is by examining all accident and trauma claims over $1,000. An analysis of Texas Medicaid claims for a 30 day period indicated that there were about 250 claims between $500 and $1,000 which involved accident or trauma diagnoses. Based on the department's current recovery rates, it is estimated that an additional $100,000 per year could be recovered from liability settlements by examining accident and trauma related claims over $500 rather an $1,000. In addition, the department is planning to reduce the administrative expense of reviewing claims by 68 percent through the use of questionnaires rather than telephone contacts to obtain needed information. This change will enable the department to make examination of claims over $500 without additional administrative cost. By examining claims over $500 rather $1,000, and using the questionnaire process, the department should increase recovery of funds and reduce administrative expenses.

Authority To Recover Medicaid Expenditures From Estates Of Nursing Home Recipients Is Needed

The average length of stay in a nursing home is about two and one-half years with an average total stay cost of $21,400 per recipient. There were 76,500 Medicaid recipients who received care in nursing homes in fiscal year 1985 at a total state and federal cost of $441 million. In order to ensure that these funds are used for those most in need of publicly supported medical care, the Medicaid program is designed to be the payor of last resort. Recipients of Medicaid services must provide information regarding their income and assets so that their eligibility for the services may be determined. The review examined the department's ability to identify and recover recipient resources to pay for nursing home or other long term care.

The Medicaid program provides payment for medical services only when an applicant's resources are below $1,700. The applicant must first sell existing property or assets and use the proceeds to pay for medical care before they can become fully eligible for the Medicaid program. One asset, however, which

applicants are not generally required to sell in order to qualify for Medicaid is their home. Federal regulations permit nursing home residents receiving Medicaid to maintain ownership of their home as long as they inform the state that they intend to eventually return to that home. In addition, Texas law prohibits placing a claim against a person's homestead as long as the owner resides in the home or intends to return to residence in the home. Nevertheless, federal regulations recognize the home of recipients 65 years old or over as an asset which could eventually be used to reimburse the state for medical expenses paid by the Medicaid program. In essence, the homestead becomes an available asset upon the death of the recipient.

To comply with federal requirements, recovery from an estate may only occur when the deceased person has no surviving spouse and no dependent or disabled child. Eighteen states currently have programs which enable them to recover expenses from the estates of eligible deceased recipients. For example, Oregon's estate recovery program resulted in the reimbursement of over $4 million in 1985. In Texas, the Department of Mental Health and Mental Retardation currently has statutory authority to recover expenses for care or treatment provided from the estates of clients they have served. This agency recovered about $2,280,000 from private estates in fiscal year 1985.

The review indicated that the department could greatly increase its recovery of Medicaid expenditures by filing claims against the estates of recipients of long term care. In addition, authority to place a lien against property when permitted by law would provide the department with another tool for recovering Medicaid expenditures. The following amendments to the Human Resources Code and the Probate Code are needed to facilitate recovery of these funds.

- **The Human Resources Code should authorize the department to recover Medicaid expenses through liens on property and from the estates of deceased recipients.**

  Texas homestead laws generally prohibit the state from requiring Medicaid nursing home recipients to use their homes as an asset to pay for medical care or from placing a lien on the home. However, these assets can be used to recover public expenditures upon the death of a former recipient. Potential recovery of Medicaid expenditures from probate of estates of deceased recipients may approach $25 million per year when fully implemented. The state's share of this figure is estimated to be $9,451,500 per year after returning the 55.16 percent

federal share of match funds and allowing for administrative costs. However, a lack of data based on actual experience in this area makes these estimates subject to change and the full recovery potential of these provisions would not be reached until 1991. This phase in period would be necessary to allow for the establishment of department rules, the buildup of an affected client population, and time for court probate proceedings to be completed.

The estimated $25 million total recovery is based on department figures which show that 12,056 Medicaid recipients died in nursing homes between July 1984 and June 1985. Based on TDHS data, it was estimated that 15 percent or 1,808 recipients retained their homestead and did not have a living spouse. Although the average expense of a nursing home stay is $21,400, it is estimated that $14,000 will be the average amount recoverable after other expenses of the estate were paid. This figure is based on a limited federal Health Care Finance Administration study, and national data on average equity available in homesteads of elderly persons.

- **The Probate Code should be amended to give the department priority as a claimant against the estate of a deceased recipient.**

The Texas Probate Code (Sec.322, V.T.C.S.), requires that claims against the estates of deceased persons be paid according to a specific priority: first, expenses of funeral and last sickness up to $5,000; second, expenses of administration and management of the estate; third, claims secured by mortgage or other liens; and fourth, claims for taxes, penalties and interest. Finally, all other claims against the estate are paid. The department would currently be considered as a claimant in this final category. By establishing a separate category for the department following claims for taxes, penalties and interest, priority would be given to payment of publicly funded services. The department would then have priority over the final category which includes common creditors or other debts to individuals. Establishing this "position" for the state is similar to the position provided for Medicaid claims in other states.

Flexibility is Needed in the Physician Reimbursement Structure.

The Texas Human Resources Code (Sec. 32.028), requires that the rate of payment for a professional Medicaid service is the usual and customary rate (UCR) that prevails in the community. In accordance with this requirement, the state uses the federal Medicare program's profile of Usual and Customary Charges to determine the rate a physician is paid for a service. Under this system, physicians' payments are generally the lower of: 1) prevailing rates for a service within a geographic area; 2) the customary charge based on the physician's historical charge data; or 3) the physician's actual charge. A review of the UCR system indicated that it is sometimes inequitable to rural physicians. In addition, new physicians who have not established a historical profile of charges for certain procedures may actually receive higher reimbursement than physicians who have participated in the Medicaid program for a longer period of time.

Different payment systems are used in other states as well as in Texas. For example, the Texas Rehabilitation Commission pays physicians through a system which places a ceiling on the amount the agency will pay for specific services. Because the Rehabilitation Commission has no statutory requirement to reimburse physicians in accordance with a specific methodology, the agency has the needed flexibility to determine how its limited funds will be spent.

Because federal funds are used in the Medicaid program, the federal Health Care Finance Administration must approve any method used by states to reimburse providers for services. Changes to the physician reimbursement system in Texas are also subject to the Texas rulemaking process. These processes help to ensure that any change to a reimbursement system will be cost effective, equitable, and allow for public and physician input.

- **The statutory provision requiring the agency to reimburse medical care providers according to the usual and customary rate system should be replaced with general rate system development authority.**

  The department should be given the general statutory authority to develop a payment system which is both equitable and cost effective. The federal government is evaluating its own system of paying physicians under the Medicare program. Changes made to the Medicare program often become mandatory for the Medicaid program as well. Providing more flexible statutory instructions would enable the department to be responsive to federal requirements if they occur. The

modification of the statutory provision will not result in additional costs to the department. A new physician reimbursement system developed through the department's rulemaking process would result in a more equitable redistribution of existing Medicaid funds.

Additional Efforts are Needed to Make the Public Aware of the Department's Programs.

The department develops and distributes a large variety of public awareness information such as pamphlets, posters, news releases, and public announcements. Most information is sent to the regions where the eventual distribution is determined. The information is displayed in local TDHS offices, is sent to other facilities upon request, or individual TDHS workers may request that information be displayed at other appropriate locations. There is no central system in place to ensure that public awareness information is displayed and available at locations where those in need of services may easily obtain it.

- **Memoranda of understanding should be developed to provide for distribution of public awareness information.**

The department should enter into formal agreements with the Department of Health, the Department of Mental Health and Mental Retardation and the Rehabilitation Commission to exchange and distribute public awareness information. These agencies each have local service delivery components which may serve clients who are potentially eligible for services from other state agencies. This would assist clients currently receiving state supported services to be aware of and obtain a continuum of services for which they may be eligible.

- **Contracts with service providers should allow the department to require contractors to display public awareness information.**

The department enters into contracts with a wide range of service providers, including doctors, hospitals, nursing homes, community service agencies, units of local government and others. These entities may also serve clients who are potentially eligible for services from TDHS, but are unaware of those services. If all TDHS contracts include a clause allowing the department to display public awareness information, the department would be able to set up a system for distributing public information utilizing locations best suited for reaching appro-

priate populations. However, it should be realized that public information efforts could result in increased use of programs such as AFDC and Food Stamps. This would in turn result in additional state and federal expenditures on these programs.

Additional Efforts to Contract for Services Could Reduce Department Costs.

With rising costs, greater technology and the expansion of services offered by the department, increased attention should be given to providing services in the most cost-effective manner possible. One method of ensuring that this is done is to require governmental agencies to develop complete cost analyses of the commercially available activities they perform, and to compare these analyses to competitive bids offered by private firms. Many activities performed by the department are so closely related to the public interest that they are generally not entrusted to a private agency or firm. The regulation of nursing homes for example, is considered to be a function which the state should perform, to ensure the safety of those who cannot protect themselves. Nevertheless, products or services are often available in the private sector, where the state's contracting for such services would not be contrary to public interest. The federal Office of Management and Budget (OMB) has required cost comparisons between federal agencies and private contractors for many years. The OMB developed a policy statement, referred to as Circular A-76, which prohibits the federal government from performing any commercial activity which could be procured from private enterprise. In 1979, the A-76 policy was revised to emphasize government's role in improving productivity, identifying the least costly method of performing activities and implementing these methods, regardless of whether the activities were contracted or remained within the agency.

Over 1,700 cost comparisons have been made since 1979, in compliance with OMB requirements. It was determined that the government could provide the activities compared more economically than the private bidders in 45 percent of the cases. Some reasons for this are the government's avoidance of contract administration costs, the availability of volume purchase discounts and the ability to avoid material or labor-related costs of transferring the activity to a contractor.

The cost comparison process, and implementation of cost saving procedures identified by the process, was found to yield savings averaging 20 percent of the

agency's previous cost, even when the activity is continued within the agency. By subjecting its activities to a competitive process which requires scrutiny of its costs, the agency develops more innovative and less costly methods of meeting its objectives.

Other state governments are currently contracting for a variety of services through the private sector. For example, Florida and Kentucky contract with the private sector for the operation of state mental health and mental retardation facilities. The department, in fact, contracts the majority of activities in its Purchased Health program to a private insurance corporation. Thirty percent of the department's total budget is used in this program.

The review identified a number of activities available commercially which would be subject to the competitive comparison process if the department were a federal agency. These activities include data processing, claims payment (such as the vendor drug program and nursing home payment system), audio-visual and graphic services, library operations, transportation and others.

The review also determined that at least four other states are working with the Council on State Governments to develop contracting procedures modeled after the federal OMB policy.

- **The TDHS should develop cost estimates and performance standards for activities it conducts which are also available in the private sector, compare these estimates with competitive bids, and contract for the performance of commercially available activities whenever it is determined that the cost of contracting would be less than the department's cost of performing the activity.**

The internal process of developing cost estimates and performance standards should result in the establishment of the most efficient and effective operation possible. Because the cost estimates developed internally serve as a basis for comparison with commercial firms, department staff have a strong incentive to develop efficient ways to meet performance standards. The review and improvement of internal activities on a regular basis helps the department remain competitive with the marketplace. The agency would also be better able to account for its costs and expenditures as a result of its analysis. The department has staff in its research, demonstration and evaluation

division who could work with management and budget staff to perform these functions. Therefore, no additional cost is expected to result from the cost comparison activities.

The transition of an activity from within the agency to a private firm would involve additional costs of administering and monitoring the contract. In addition, to justify any disruption and temporary loss of productivity which could result from the contracting of an activity, private bids should reflect a cost of at least 10 percent less than the department's cost of performing the activity. Contracting would only be required when a savings of at least 10 percent could be demonstrated. Because contracts would only be entered into when cost savings are evident, no additional costs would result from this recommendation.

- **The statute should require the State Purchasing and General Service Commission to assist TDHS in its completion of A-76 reviews.**

In order to provide independent oversight, the commission would be required to review the department's estimate for retaining the activity in-house, evaluate the competitive bids, and determine which approach is most cost-effective. To accomplish these additional functions, the commission may require additional staff or training, however any additional cost to the commission should be offset by the savings to the state that will result from the process.

The Department's Internal Audit Functions Should Be Assured of Independence.

Currently, the department utilizes an Inspector General to accomplish several investigation and audit duties. These duties include investigation of recipient fraud and abuse of department programs, referral of provider fraud cases to the Attorney General, internal affairs investigations, financial and compliance audits of providers, review of provider cost reports, audit coverage of the activities of the National Heritage Insurance Company and internal audits and reviews of financial and operating practices of the department.

In recent months, the department has taken steps to ensure that the internal audit function is as independent of departmental administrative

entities as possible. First, the department has established, through an internal memorandum of understanding, that the Inspector General in the performance of internal audit functions will report to the chairman of the Board of Human Services. For other duties the Inspector General will report to the Commissioner. A second step the department has taken is to require that they board chairman make the final determination of priorities for internal audit activities and to report these priorities directly to the Inspector General. Third, the findings and the reports developed by the internal audit activities will be sent to the chairman with copies provided to the commissioner. Lastly, both the chairman and commissioner can initiate special internal audit activities should the need arise.

These procedures should ensure that the internal audit function maintain needed independence from departmental administrative entities. However, there is no assurance that such a structure will be maintained in future years as board and organizational changes occur.

- **The department's statute should be amended to require the Inspector General to report to the chairman of the Board of Human Services for the purpose of accomplishing internal audit functions of the department.**

This change will ensure that a structure will be maintained that ensures the independence of the Inspector General in the performance of internal audit functions. For all other functions, the Inspector General will report to the Commissioner.

The Range of Sanctions for Medicaid Fraud and Abuse is not Adequate.

The Department of Human Services, in fiscal year 1986, dispersed over $1.5 billion for services for Medicaid recipients. Approximately 46 percent of this amount was state funded. To prevent fraud by Medicaid providers, a system should be in place that acts quickly when fraud is discovered and has a wide range of punitive measures to deter such actions. Currently, there are three kinds of action that can be taken against Medicaid providers involved in fraudulent activity. A "provider" is a person, firm partnership, corporation, agency, association, institution or other entity approved by the department to provide medical assistance. This includes, for example, doctors, hospitals, and nursing homes.

First, the department can use various administrative sanctions such as payment hold or removal of a provider from the program in cases where there is

minor fraud or abuse by the provider. In fiscal year 1986, 249 providers were placed on payment hold and 35 persons or facilities were dropped from the program. This approach is sufficient for dealing with minor cases of fraud and abuse, however, more serious cases require more stringent measures.

The second approach for dealing with fraud involves the referral of serious cases of fraud by the department to the attorney general's Medicaid Fraud Control Unit for criminal action. The Medicaid Fraud Control Unit investigates and prepares these cases for prosecution. However, the cases are actually tried by the local prosecutor in the city or county where the fraudulent activity took place. This process can be time consuming. A typical case can take an average 9 to 15 months to resolve. These cases can be costly as well. In fiscal year 1986, the attorney general's office estimates it will have spent approximately $209,000 investigating and preparing cases for prosecution. The attorney general's office will petition the court for reimbursement for administrative costs in cases where the court has ruled in the state's favor. However, only $47,422 has been recovered in fiscal year 1986.

The third kind of action that can be taken against fraud by a medical provider involves action by the federal government. Under federal law, the federal government can seek civil monetary penalties in cases of Medicaid fraud or abuse. This serves as a way to recoup funds obtained inappropriately and as a punitive measure to discourage future fraudulent or abusive activity. Under this law, the federal government can seek recoupment through the courts of funds that were obtained through fraud or abuse. In addition, the government can seek damages in the amount of double the money billed inappropriately and civil penalties up to $2,000 per false claim. The federal government decides whether to seek the civil monetary penalty and often uses the criminal case developed by the attorney general's office or referrals from the department as the basis of the civil suit. The state is currently not authorized to seek a civil monetary penalty.

There are two problems with this approach. First, seeking a civil monetary penalty through the federal government can be time consuming. Second, even though Texas may assist the federal government by preparing or referring a case for civil action, it currently receives only the negotiated overpayment, none of the penalty settlement nor the cost of investigating these cases. Since 1984, the federal government has negotiated 16 civil monetary penalty cases in Texas. This resulted in the negotiated settlement of $438,514 in Medicaid overpayments on

behalf of the department. The federal government retained an additional $450,909 in penalty settlements and $10,558 in interest payments. The average length of time taken to resolve these cases has been 14 months with one case taking 28 months.

- **The Human Resources Code should be amended to allow the department to levy an administrative penalty against providers involved in Medicaid fraud and abuse.**

Given the problems associated with the approaches outlined above, it would be more efficient and timely if the department had the authority to seek a civil penalty against Medicaid providers involved in fraudulent or abusive activity. The quickest way to apply the penalty would be to apply it administratively. This approach would allow the state to choose when to pursue civil penalties and would help ensure that inappropriately obtained money and the administrative costs associated with trying the case would be recouped. In addition, the monetary penalty would be kept by the state.

The structure for applying the penalty should include a definition for what constitutes an inappropriate act, and the process by which the amount of the penalty will be determined. In addition, the structure would include a process by which the person who has filed a false claim would be notified by the department about its intent to levy a penalty. The person charged with filing a false claim would have the right to seek a hearing with the department in accordance with the Administrative Procedure Act. If the ruling of the hearings is in favor of the department, the person who filed the false claim would be required to pay the penalty in full. If the person decided to seek judicial review of the penalty, the amount of the penalty would be placed in an escrow account or the individual would post a supersedeas bond with the department for the amount of the penalty. The bond would be effective until the appeal was complete. Finally, judicial review of any final decision of the department assessing a penalty would be conducted under the substantial evidence rule.

EVALUATION OF PROGRAMS

As discussed in the "Review Focus" section, the review of the agency centered on program problems whose solutions involve modifications to existing systems without the need for significant additional funding. For example, long standing concerns were identified in many aspects of the department's operations which can be addressed by removal or clarification of existing statutory provisions. Other concerns identified relate to cross agency jurisdictions and the need to clearly define agency responsibilities to best serve those in need of services.

These kinds of issues are addressed below. The examination of the department yielded a need to focus on solving such issues in four program areas: Protective Services for Families and Children; Family Self Support; Licensing; and Services to Aged and Disabled Persons. The recommendations that follow are organized using these four program titles.

PROTECTIVE SERVICES FOR FAMILIES AND CHILDREN

The department provides protective services for families and children in cases of child abuse or neglect and family violence. These services are provided to protect the victims of such abuse or violence from any further instances of harm. Child protective staff are responsible for investigating reports of child abuse or neglect and for providing services to help prevent its recurrence. These services can include counseling and services to families where the child can be safely left in the home, temporary foster care until the child can be returned home, or adoption services for children whose parents' rights have been terminated. The department is also responsible for contracting with a network of shelters through Texas to promote services for victims of family violence.

The review of TDHS' protective services for families and children found that improvements could be made to clarify the departments responsibilities in a number of areas, increase the use of federal funds for foster care, and better coordinate the delivery of services to youth across agencies. The details of the recommendations to improve these areas are set out below.

Additional Definition of Child Abuse and Neglect is Needed.

Chapter 34 of the Texas Family Code currently requires "any person having cause to believe that a child's physical or mental health or welfare has been or may

be adversely affected by abuse or neglect" to make a report to the Department of Human Services. Knowingly failing to report is a Class B misdemeanor. This broad mandate is unclear regarding what must be reported under the law as child abuse and neglect. The department has attempted to clarify the statutory mandate by defining child abuse and neglect in their rules. The rules give definitions of abuse, neglect and exploitation, as well as sexual abuse and sexual exploitation. However, without clarification in the statute, there continues to be a wide disparity between what the general public, professionals working with children, attorneys, prosecutors, and the department interprets as child abuse and neglect. In general, terms that have a wide ranging impact and the potential for being easily misinterpreted are defined in statute. In addition, a review of child abuse laws in 49 other states indicated that they all include statutory definitions of child abuse and neglect.

Another section of the Family Code that has led to some concern is the requirement that TDHS make a thorough investigation of all reports of child abuse and neglect. While this is a valid goal for the state, the number of reports of child abuse and neglect far exceeds the department's resources to investigate them all. For example, there were approximately 86,000 reports of actual or potential abuse and neglect received and 68,515 reports investigated in fiscal year 1985. The department has established through rules a system to prioritize reports based on the severity and immediacy of harm to a child. While all priority I and II reports are investigated, reports classified as priority III are investigated only when resources are available. These reports generally concern situations where there is a potential for abuse or neglect, but none is alleged to have already occurred. In fiscal year 1985, the department estimates that less than 15 percent of the priority III reports were investigated. Although the department has set the priorities in rules, the statute currently conveys a false expectation that all reports will be investigated, regardless of severity. This has resulted in some confusion in the public's perception of TDHS' responsibilities in investigating child abuse and neglect.

The following recommendations address changes to the statute that will clarify the responsibilities of persons reporting child abuse and neglect, as well as TDHS' responsibilities in investigating these reports.

- **Chapter 34 of the Family Code should include definitions of child abuse and neglect.**

Statutory definitions would clarify when a person can be prosecuted under the law for failure to report child abuse and neglect. It will aid the public and professionals who deal with children in more accurately reporting potential cases of abuse and neglect. These definitions would also give TDHS a clearer mandate as to what should be investigated as child abuse and neglect. The department and the Child Abuse/Neglect Committee of the Texas Bar Association are currently developing proposed statutory definitions which should be considered in the actual construction of definitions of abuse and neglect.

- **TDHS should be directed in statute to prioritize the investigations of child abuse and neglect within available resources.**

The statute should indicate that it is the goal of the state to ensure that all child abuse and neglect reports are investigated. However, recognizing that the number of reports may exceed the department's investigative resources, priority shall be given to certain children based on the severity and immediacy of harm alleged in the report. This will ensure that the department has the authority to prioritize the investigations of child abuse and neglect for children most in need of protection within the level of resources available. This approach is not expected to result in a decrease in the number or scope of reports currently being investigated.

Physical Examinations as Part of a Child Abuse Investigation Should Not Be Required in Some Instances.

The Texas Family Code (Sec. 34.05) requires that the investigation of alleged child abuse or neglect include a visit to the child's home, and a physical examination of all children in that home. Because the term "physical examination" is not defined, it is unclear whether the intent is that all the children should be physically seen by a caseworker or whether an actual medical examination of all the children is required. Caseworkers currently attempt to physically examine all children in the home, but the department does not routinely conduct medical

examinations of children as part of an investigation unless there is reason to believe the child is in need of medical treatment or medical expertise is needed to determine if abuse or neglect has occurred.

There are many investigations of alleged abuse or neglect in which physical or medical examinations are not necessary to determine if the allegations of abuse or neglect are true. One example in which a medical examination is not necessary is a situation in which children are not being supervised properly, but no physical harm to the children is alleged or found. Examples in which all the children in a home do not need to be seen include cases in which the abuse occurred away from the home or when siblings are very unlikely to have received similar abuse due to their age or gender. Requirements that all such children be physically seen by the caseworker or that medical examinations be obtained for all these children are costly and often unnecessary to determine if abuse or neglect is present.

- **Physical and medical examinations of all children in a home where a child has allegedly been abused or neglected should be optional, however, TDHS should be authorized to obtain medical examinations when necessary.**

This recommendation will enable caseworkers to physically view all the children in the home as part of an investigation only when necessary to determine if other children in the family may be abused or neglected. The staff time that was formerly needed to travel to the home and examine all the children in such cases will now be available for other abuse or neglect investigations.

Adding authority to obtain medical examinations will ensure that the department can have a physician examine any of the children in the home when necessary. Section 34.05(c) of the Texas Family Code provides that an investigation may include a psychological or psychiatric examination of all the children in the home. If the parents do not consent to an examination requested by the department, the court can order the examination. The parents are entitled to notice and a hearing in these situations. The authority for a medical examination should be added to these options. No cost savings are anticipated from the adoption of this recommendation as the department will continue to provide medical examinations for a similar number of children.

TDHS Workers Should Not be Penalized for Good Faith Performance of Their Duties.

The department's child protective services workers make decisions on a day-to-day basis whether or not to recommend that a child be removed from or returned to their home. Decisions are also made on the appropriate placement of children in the department's care. Even if the decisions are properly made based on current conditions, there is always a potential that the child could come to harm at a later time. There have been two recent instances in which criminal charges have been brought against TDHS staff for actions arising in the course of good faith performance of their duties. For example, in one case protective service workers responding to a report of child abuse did not find adequate cause to have a child removed from the home. The child later died and three employees were charged with injury to a child because the child had not been removed and taken into state custody. In both cases, the charges were ultimately dropped, however the staff members charged incurred considerable legal expenses for which they were personally responsible. In 1980, three employees incurred a total of about $18,000 in legal fees and in 1984, eight employees incurred about $28,000 in legal expenses.

A bill which included indemnification of state employees who incur expenses in such cases was vetoed by the governor in the 69th legislative session because its possible applications were too broad. The review showed that there is a need to protect TDHS employees from incurring expenses resulting from the good faith performance of their duties although this protection should be limited in its scope and coverage.

- **TDHS should be authorized to reimburse employees for legal expenses up to $10,000 per employee incurred in criminal actions arising in the course of good faith performance of their duties.**

  This recommendation would allow the department to reimburse TDHS employees for the reasonable cost of legal expenses resulting from criminal prosecutions for actions taken in the line of duty. The reimbursement should only be made upon a finding of not guilty or if charges are dropped. Funds should not be set aside specifically for this purpose since there is only a potential and not an expectation that criminal charges will be brought against department employees in the future.

Clarification of State Agencies' Responsibilities for Investigation and Oversight of "Out-of-Home" Child Abuse and Neglect is Needed.

The Department of Human Services is the state agency designated as responsible for the protection of children from abuse or neglect. This responsibility has traditionally focused on providing "in-home" services to children whose parents do not take appropriate actions to ensure their children's safety and well-being. However, in recent years there has been a growing awareness of abuse that occurs outside the home by child care providers given the responsibility for a child's health and welfare. In 1984, Congress responded to public concern about this problem and expanded federal child abuse laws to include out-of-home abuse by child care providers. The Texas Family Code currently provides a broad mandate for the reporting and investigating of abuse or neglect, but the statute does not specifically include the reporting or investigation of out-of-home abuse or neglect.

The statute also does not make clear the responsibility for the investigation of out-of-home abuse when a facility is operated or regulated by the state. In cases where a state agency is responsible for operating, licensing or regulating a facility caring for children, that state agency is responsible for ensuring the health and safety of children in those facilities. The state agencies that operate facilities caring for children include TDMHMR's state schools and hospitals, TYC's training schools and halfway houses, the Texas School for the Blind, and the Texas School for the Deaf. Investigations of abuse are conducted by the agency involved and reported to TDHS and the Office of Youth Care Investigations which provides oversight to ensure that the investigations are handled appropriately.

Examples of child care facilities that are licensed or regulated by state agencies include day care and 24 hour child care facilities through TDHS, private psychiatric hospitals and foster homes through TDMHMR, and children's hospitals and nursing homes through the Texas Department of Health. The licensing agency provides an independent oversight of the investigation of abuse in these facilities. For this reason, TDHS currently delegates the authority to investigate allegations of abuse or neglect in licensed facilities to the state agencies involved.

These methods of investigating and reporting abuse result in some confusion as many people still perceive TDHS as the agency responsible for these children, even though another state agency has more direct responsibility for their care. Having two state agencies both investigate these situations, however, is duplicative

and costly, with little assurance that the overall process would be improved. In addition, it places TDHS in the position of overseeing the care of another agency's children without any authority to enforce corrective measures. The traditional methods of TDHS to protect children by removing a child from the home or terminating parental rights are not appropriate in cases such as this. The state agency that operates, licenses or regulates the facility has the authority to take corrective action. It appears more efficient to give that agency full responsibility for investigating any allegations of abuse and for taking corrective action to ensure the safety of these children.

The major areas of concern that were identified with transferring this responsibility from TDHS to other state agencies indicate that each agency needs to have clear procedures outlined in their rules governing how these investigations will be conducted in facilities they operate or regulate, and that independent oversight is needed to ensure that the investigations are handled properly. There is limited oversight now by the Office of Youth Care Investigations (OYCI) at TDHS. The following recommendations clarify the responsibilities of TDHS and other state agencies in the investigation of out-of-home abuse of children, and the authority of OYCI in overseeing these investigations.

- **Out-of-home abuse and neglect should be included under the statutory requirements for the reporting and investigation of child abuse and neglect.**

  This will make clear that the provisions of Chapter 34 of the Family Code for reporting and investigating abuse and neglect apply to situations that involve any person responsible for a child's care, not just the child's parents or family. This will ensure that professionals who work with children in child care facilities and members of the general public understand the requirement to report not only "in-home" abuse of children by their parents, but also any "out-of-home" abuse or neglect by persons employed or volunteering in any type of facility in which children are being cared for. Employees often will only report to their supervisors, with the expectation that the supervisor will then take all necessary actions. Reporting to TDHS will ensure that a full investigation and report is made.

- **State agencies should have full responsibility for the investigation of alleged abuse or neglect in facilities they operate, regulate or license for the care of children, and should adopt and publish formal rules governing how these investigations will be conducted.**

This will clarify that the following agencies will be responsible for and will adopt formal rules for the investigation of abuse and neglect in the facilities they operate and regulate: TDHS, TDMHMR, TYC, TDH, the Texas School for the Blind, and the Texas School for the Deaf. This reduces any duplication or overlap of state agency responsibilities in the investigation of child abuse or neglect in these facilities. TDHS will be responsible for investigating allegations of abuse or neglect in out-of-home settings that are not specifically regulated by another state agency. For example, juvenile probation detention centers, and public and private schools would fall into this category. In these cases, TDHS will report the results of their investigations to the policy-making body of the facility involved for corrective action.

Reports will continue to be received by TDHS, under Chapter 34 requirements, but when an allegation of abuse involves a facility under another state agency, TDHS will refer the report to that agency for investigation and corrective action. The state agencies which operate their own facilities will be responsible then for reporting the results of investigations in their facilities to the Office of Youth Care Investigations for independent oversight. Results of investigations in licensed facilities will not be routinely reported to OYCI as the licensing agency is already providing independent oversight. However, OYCI will be responsible for investigating any complaints it receives concerning investigations by state licensing agencies.

- **The functions performed by the Office of Youth Care Investigations should be modified and placed in the attorney general's office.**

The Office of Youth Care Investigations was originally established by executive order in 1973 in response to concerns about the mistreatment of children in state facilities. The purpose of the office currently is to review all investigations of child abuse or neglect in facilities licensed, regulated or operated by the state. The OYCI also receives and investigates complaints if a person is unsatisfied with the findings of a

state agency's investigation. In February 1986, the OYCI was transferred from the Governor's Office to TDHS and funded by a one year federal grant for $58,000. Since that time concerns have been encountered about the office being housed within one of the agencies it was set up to oversee, its overall functions, and how to fund OYCI once the grant runs out. Two actions are set out below to address these concerns.

First, the functions of OYCI should be modified to focus on the direct oversight of investigations in state-operated facilities. These include facilities operated by TDMHMR, TYC, the Texas School for the Blind, and the Texas School for the Deaf. As mentioned previously, the OYCI's involvement with facilities which are licensed or regulated by a state agency should be limited to the investigation of complaints when a person is disatisfied with the findings of an agency's original investigation. This includes facilities licensed or regulated by TDHS, TDMHMR, TDH and TYC. In practice, the OYCI will review all reports regarding abuse investigations in state-operated facilities to determine if further corrective action is needed. The same review will occur in response to a complaint regarding an agency's investigation in a licensed facility. If corrective action is needed in either situation, the OYCI will report its findings to the policymaking body of the involved state agency.

Second, the functions of OYCI should be transferred from TDHS to the attorney general's office. This will help ensure the continuation of independent oversight by placing OYCI in an agency that is not included in its oversight responsibilities. The authorization and purpose of OYCI should be made clear in the statute. The agencies involved will be required to contract with the attorney general's office to provide funding for OYCI. The attorney general's office would determine the proportionate amount to be paid by each agency based on an estimate of the number of investigations or complaints to be handled during a fiscal year. This ensures a continuing funding structure for OYCI. More importantly, stable, independent oversight will ensure that allegations of abuse or neglect of children in state-operated or regulated facilities are properly investigated and resolved.

TDHS Participation in Independent Adoptions and Child Custody Divorce Cases is Not Needed.

Courts in Texas often require social studies to assist judges in making decisions about the appropriate placement of children. A social study provides information about a child's current or potential living environment and about the parents or prospective caretakers. Social studies can be ordered in divorce cases involving disputed custody, in adoption cases, and in cases where children are placed outside of their state of residence. The Texas Family Code (Sec. 11.12) currently allows any person appointed by the court to make the study.

The department has responsibility to conduct social studies in cases where a child in custody of the Texas Department of Human Services is being adopted and in cases where the interstate placement of a child is being considered. However, the courts often require the department to also perform the studies for independent adoptions and custody disputes. A total of 3,099 of these two types of court-ordered social studies were conducted in fiscal year 1985 at a cost of $619,000. The court is required to award a fee in such cases, however only $129,000 in fees were received by the department in fiscal year 1985. Fees awarded by courts often are not equivalent to the cost of providing the service, and in most cases, the fees are not awarded at all.

The time required to complete studies for custody disputes and independent adoptions ranges from about 5 to over 20 hours, depending on the number of children in the home and other variables. It seems more appropriate for protective service workers to spend time and resources on investigating cases of abuse and neglect of children. In addition, the agency indicates that social studies needed for custody disputes or independent adoptions can be safely and effectively conducted by the private sector at the expense of individuals requiring such services.

- **The Family Code should direct the courts to use private agencies or individuals to conduct social studies involving custody disputes or independent adoptions.**

The department reports that an adequate number of social workers and other professionals exist within the state to provide social studies when ordered by the courts. Courts could maintain a list of qualified persons in the private sector willing to conduct social studies. Fees for the social study would be awarded as part of the court costs incurred by the adoptive or divorced parents in need of the study. This action would

save the department approximately $191,000 in contracting costs per year. In addition, agency staff would have more time available for the protection of abused and neglected children.

The State Should Continue to Use the Interstate Compact on Placement of Children.

A child may require placement outside of his or her own home state variety of reasons. In some cases, the child is eligible for adoption, and the adoptive parents reside out of state. In other cases, the child's safety with the natural parents is at risk due to abuse or neglect, and a placement with a relative out of state is warranted. Because a great variety of circumstances make placement of children across state lines necessary, including the lack of available services in the child's own state, a mechanism is needed to coordinate these placements. The Interstate Compact on the Placement of Children was formed in 1960 for this purpose, and Texas ratified the Compact in 1975. This agreement between 49 states promotes cooperation between participating states so that each child requiring placement could be placed in an environment suitable to the child's needs.

The Texas Office of the Interstate Compact for the Placement of Children is located within the Texas Department of Human Services (TDHS). The commissioner of TDHS serves as the compact administrator and the functions of the compact are carried out by TDHS staff. The commissioner generally assigns a member of the TDHS staff to attend national compact meetings. Texas' dues for participation in the compact were $3,000 in fiscal year 1985. During this time, 754 children were placed out of Texas and 991 were received by Texas from other states.

Prior to the establishment of the compact, state social service agencies encountered difficulties obtaining social studies from other states. The studies are essential for determining the suitability of existing and prospective placements for children. In addition, states did not have authority to require other states to provide certain services or financial support once a placement occurred. The compact defines the types of placement subject to the agreement, the procedures to be followed in making an interstate placement, and the specific responsibilities of both the sending and receiving agencies.

- **Texas membership in the Interstate Compact on Placement of Children should be continued with modifications.**

Texas should continue to participate in the compact since the problems which existed before the participation would likely recur if the state withdrew its membership. The agreement also provides a means to expedite the placement of children in other states when it is in the child's best interests to do so. Texas' participation in the compact also ensures that financial responsibility for children placed in the state is clearly established before placement occurs. Two minor adjustments should be made to the compact language which are discussed in the following paragraphs.

Section 45.026 of the Human Resources Code requires the governor to appoint the commissioner of the Texas Department of Human Services as compact administrator. The commissioner generally assigns a member of the agency's staff to attend national compact meetings when he is unable to do so. The commissioner should be authorized to designate an alternate person to attend meetings in his absence to be consistent with current practice.

The Texas Department of Human Services, as a state agency, is subject to the Texas Open Meetings Act. However, as a body, membership of the compact is not subject to state or federal open meeting requirements. Within Texas, no public notification of the subject matter, dates, and location of the compact meetings has occurred. The department should be required to file notice of the national compact meetings with the secretary of state's office. This notice will facilitate the ability of Texas citizens to obtain information on compact activities or provide input to the compact administrator in Texas prior to national meetings.

Greater Use of Federal Funds for Child Care Could Reduce State Costs.

In 1980, Congress enacted the Adoption Assistance and Child Welfare Act authorizing federal funding for programs to improve services to children and their families. The law also was designed to ensure that state agencies were channeling efforts to find permanent homes for children.

A major part of this law is "Title IV-E" which provides federal dollars for children who have been removed from their home by the court and placed into child care institutions. Currently, the federal government will reimburse a state for 55 percent of the cost of food, clothing and shelter for IV-E eligible children. Even though Title IV-E was originally intended for the child welfare population, some states have discovered that in many cases delinquent youth also are eligible for IV-E funding. As a consequence, these states have sought IV-E funds for these children.

A preliminary survey conducted by the Texas Youth Commission indicated that 172 children or approximately 30 percent of the children in its care could be eligible for IV-E benefits. If these children are eligible for federal aid the state would be able to offset state funds currently used to pay for the care of these children with federal funds.

- **The Family Code should be amended to allow TDHS and TYC to obtain federal funding for IV-E eligible children under TYC care.**

To participate in Title IV-E, there must be a judicial decision that it would be contrary to the welfare of the child to remain in the home. The court must also find that efforts have been made to prevent or eliminate the need to remove the child and that efforts have been made to make it possible for the child to return to his or her home.

Amending Title 3 of the Texas Family Code to require juvenile courts to make the "reasonable efforts" finding whenever a child is placed on probation outside their home or is committed to TYC would meet the federal requirements and make it possible to receive federal funding for foster care placements for delinquent children. Since uniform court disposition forms are not widely utilized for Title 3 proceedings, the statutory amendment should help ensure consistency in meeting the federal requirement. Preliminary estimates indicate the federal dollars that would flow to the state due to this change could reach $1 million annually. Administrative costs to be incurred by TDHS and TYC to carry out the program should be minimal, but are not included in the above estimate. Due to the partnership nature of this approach, TYC would be responsible for complying with federal standards and would be subject to sanctions for noncompliance.

Better Coordination of Youth Services Could Help Children With Multiple Problems.

Texas provides services to youth through five separate state agencies. Children who are abused or neglected receive services from TDHS, mentally ill or retarded youth receive services from TDMHMR, the Texas Education Agency oversees the education of children in public or private schools, and if juveniles get in trouble with the law they are referred to a local probation department overseen by TJPC, or committed to the TYC for more serious offenses. Each of these agencies operates under legal and statutory constraints concerning what population they can serve and what kind of services they can provide. There also are an increasing number of youth in need of the services that these agencies provide at a time when resources are shrinking. Consequently, each agency is prioritizing which children are most in need of their care, which leaves a number of children who are no longer eligible for services from any agency. There are also a large number of multi-problem children in need of services beyond the capability of any single agency to appropriately provide. These children may qualify for services from a number of agencies, but once they are accepted by one agency, that agency generally becomes responsible for their total care. This results in children not receiving all the necessary services they require, or in agencies duplicating the services offered by other agencies because there is no mechanism for the agencies to coordinate services to an individual child.

In examining similar activities in other states, there is an increasing emphasis on coordination of youth services, particularly in states with multiple agencies serving youth. Another approach that is being implemented in a number of states to ensure coordination is the merger of child welfare, juvenile justice, and mental health systems for children and youth. According to a survey of 42 states published in 1984 by the National Conference of State Legislatures, almost 70 percent mentioned some type of coordinating mechanism between agencies serving children and youth, with 65 percent of the states noting that the coordination was established by their state legislatures. Over 50 percent named interagency agreements as the mechanism most frequently used to coordinate services. The key advantages cited for coordinating service delivery are greater cost effectiveness through the reduction of duplication and fragmentation of services, improved ability for agencies to work together to serve children with multiple problems, and increased accountability through a better understanding of the constraints and parameters of the agencies involved.

Another concern identified during the review is that the lack of any systematic interagency coordination can result in a lawsuit. In 1979, in North Carolina a class action suit, referred to as the "Willie M." case, resulted in a court order mandating changes in the treatment of children. "Willie M." was an abused 11-year old who was tried for larceny. He was a child who "fell through the cracks" because he was too young for an adult and psychiatric hospital, too violent for an adolescent facility, too "bright" for a mental retardation center, and not "bright" enough for a state psychiatric hospital. A court order from the lawsuit resulted in the hiring of over 600 caseworkers statewide to oversee cases to ensure the cooperation of various agencies in meeting the needs of this type of child. While interagency coordination may not be a guarantee that children will receive the necessary services, it does provide a system to better meet their needs.

The review of the situation in Texas indicated that a variety of efforts exist in the area of improving coordination between the five agencies serving youth in Texas. On the state level, the Health and Human Services Coordinating Council is involved in efforts to improve agency coordination in the placement of children in contract residential care. This includes establishing a common rate structure and application form. There are also a number of examples of coordination at the local level. The Harris County Commissioners Court has directed the local child welfare agency, the juvenile probation department and the mental health authority to meet regularly to better coordinate their services. In Beaumont, TDHS and the juvenile probation department voluntarily developed a project to exchange staff for a day to improve understanding of each others' roles. These examples represent individual attempts at different levels to resolve specific problems through interagency coordination. However, they are the exception and not the rule, because there is no vehicle for routine interagency coordination, at either the state or local level.

The following recommendations address these issues by establishing a system of state and local level coordination through the Health and Human Services Coordinating Council (HHSCC), and directing the council to conduct a study of the costs and benefits of combining youth services in Texas.

- **A Youth Services Interagency Group should be established under the HHSCC to coordinate youth services at the state level.**

The purpose of this group will be to provide a forum for interagency planning and advocacy of youth service issues. Under this

recommendation the group is to be convened by the HHSCC by October 1, 1987 and include representatives nominated by TDHS, TDMHMR, TEA, TYC, and TJPC. Under this recommendation, the group will also include a judge involved in the placement of children, and a representative of a private sector youth agency or association appointed by the HHSCC. Specific tasks of the group will include defining each agency's service capabilities and authority; identifying youth in need of services that no agency currently serves; and facilitating cost-effective use of existing resources by developing approaches for split funding of multi-problem youth. Most importantly, they will be responsible for developing a model for initiating local level interagency staffings of multi-problem youth by January 1, 1988. This model must include specific geographical areas to be served by each local level staffing group.

- **Local level interagency staffings of multi-problem youth should be implemented through a memorandum of understanding between the five agencies serving youth.**

A memorandum of understanding should be developed between all five agencies to implement the local level staffings, and each agency should adopt formal rules detailing the responsibilities of each agency's local representatives. Each local group is to include representatives of TDHS, TDMHMR, TYC, local school districts, juvenile probation departments, and a private sector youth agency.

The purpose of all the local level staffings will be to discuss the cases of individual multi-problem youth and to decide how agencies can help provide a continuum of services to meet the youth's needs. Any agency would be able to submit a child's case history for consideration if needed services cannot be obtained through that agency alone. The group can be called together by a representative of any member agency. This will help ensure that multi-problem youth are afforded the services available through all the agencies.

- **The HHSCC should conduct a study of the costs and benefits of combining youth services in Texas.**

In the process of examining the need for better coordination of youth services, it appears that several other states have resolved these

problems by centralizing the functions of separate agencies into one youth services agency. While this approach may have merit, it would require extensive study before a determination could be made of how it could work in Texas. The HHSCC functions include conducting such studies, and the interagency coordination groups should provide a good vehicle for the collection of data to evaluate the impact of implementing a more centralized approach to youth services. Since the delivery of service to youth involve both the public and private sectors, the study should be designed to obtain the perspective of each. The HHSCC should be directed to finalize the study in a report to the legislature by January 1989.

Statewide Support and Development Funds Should Be Distributed on an Equitable Basis.

The department is appropriated funds by the legislature for several programs which provide for the general support or development of community based services or programs for populations identified as being in need of assistance. This type of funding differs from the funding of direct services in that it is intended to provide for the general support of a program, rather than to pay for specific services delivered. For example, the Family Violence Program supports the development of shelters and services for victims of family violence throughout Texas. The Truant and Runaway Program contracts with a variety of providers to develop and operate new programs and strengthen existing services for truants, runaways and their families. The purpose of supporting such programs is to develop a network of services across the state which can prevent situations where clients would later need direct services from TDHS. Similarly, federal funds available to the state generally carry with them the requirement to utilize the funding on a statewide basis.

The review identified one TDHS program, Alternative Treatment for Youth, that deviates from these general approaches. In fiscal year 1986, almost $1.7 million was appropriated to TDHS for this program. The objectives of the program are to provide services for emotionally disturbed and delinquent youth and to encourage the statewide development of high quality alternative treatment programs for youth. There are currently over 50 programs across the state which provide services to emotionally disturbed or delinquent youth through therapeutic

camps, independent living programs and residential treatment centers. However, the funding for Alternative Treatment for Youth has historically been contracted out to a single program, the Hope Center for Youth in Houston, Texas. The legislature originally specified that Hope Center for Youth would receive the funds and required Hope Center for Youth to provide direct services and be a model for establishment of other community-based services. This funding practice has continued and the program currently serves emotionally disturbed and delinquent youth through two therapeutic wilderness camps, supervised apartment living, family therapy and an alternative school. While this program accepts youth from any part of the state, it primarily serves youth from Houston and the surrounding areas. Therefore, while the services Hope Center provides may be of a high quality, they primarily benefit only one region of the state, while there is a clear need for these services statewide.

In fiscal year 1986, $1,685,167 was contracted to the Hope Center for Youth. Because TDHS provides this general support, which constitutes 55 percent of the program's total budget, TDHS is not required to pay a daily rate for youth they refer for services. In fiscal year 1986, TDHS estimates that services to TDHS clients constituted less than 20 percent of the total grant to Hope Center, or approximately $337,260. Therefore, the remaining $1,347,907 went towards the general support of the program which includes services to other children. In general, state assistance to support community based programs should not be limited to one geographical area, when there is a statewide need for these services. The department receives similar line item funding for Truant and Runaway Services, and distributes these funds to 16 programs across the state, based on a statewide system of geographical areas of service. A similar process could be utilized for the Alternative Treatment for Youth program as well as other support or development programs operated by the department to provide a more equitable distribution of these funds statewide. This approach would be in keeping with the Alternative Treatment for Youth program objectives.

- **The statute should require that funds for the general support and development of programs should be allocated equitably across the state.**

This recommendation will ensure that when TDHS is appropriated funds to assist in the general support or development of services that are needed statewide, that these funds will be equitably distributed across

the state. This type of support is different than the purchase of direct services which must be obtained wherever or whenever needed. This approach will necessitate that the department assess its current allocation system for Alternative Treatment for Youth as well as other such support or service development programs. Pilot projects are not intended to be affected by this recommendation.

FAMILY SELF SUPPORT

The department provides various support services for families to help them attain a level of self-sufficiency so that department services are no longer necessary. Family self-support services include family planning, child day care, preventive health care for children, employment assistance and emergency relief services. These programs were found to be serving the existing needs of many Texans. However, greater coordination of these programs with related activities of other state agencies and ensuring follow-up of services provided would increase program effectiveness. Recommendations concerning these improvements are set out below.

Data Collection Efforts are Insufficient to Determine the Effectiveness of Employment Programs.

The department assists both AFDC and food stamp recipients to obtain jobs. This assistance is provided directly by TDHS staff, through a federally funded contract with the Texas Employment Commission, through local Job Training Partnership Act agencies, and through contracts with other public or private employment agencies. Almost 30,700 clients are expected to be placed in jobs through these programs in fiscal year 1986. The department maintains data on the number of clients referred to programs for job-finding services, how many are placed, the number of clients still employed after 30 days and various other statistics. Although these statistics provide necessary management information, they do not reflect the effectiveness of job-finding services in terms of whether clients remain employed and no longer receive public assistance.

The primary goal of the department's employment program is to reduce clients' dependency on AFDC and food stamps by assisting them to obtain productive jobs. The information currently available is not sufficient to determine whether TDHS programs are effective at reducing long-term dependency on public

assistance. For example, in fiscal year 1985 the department reports that about 72 percent of those placed remain on the job past 30 days. However, it is not known how many remain on the job three or four months later. Clients continue to receive medicaid and other services until four months after employment. There is no information to show how often former AFDC clients leave their jobs prior to the end of the fourth month when their medicaid benefits end. Furthermore, the DHS strategic plan points out the importance of evaluation of program effectiveness under the current economic climate.

- **The department should collect information and conduct studies on the effectiveness of the employment programs it funds or operates.**

  This type of information is essential to determine which programs are the most successful and should be continued or which need to be changed or discontinued. Most of the information needed is currently collected by the department on computer or could be collected by income assistance workers. In addition, TEC is developing this type of information for the clients it serves, and JTPA follows up a sample of their population at 13 and 26 weeks after placement. The costs to the department would be limited to adjusting computer programs and ensuring that direct service workers obtain the necessary information from the clients.

Increased Use of Job Training Programs Could Reduce Long-Term Dependency on Public Assistance.

The Job Training Partnership Act (JTPA) is a federal legislative initiative which provides funding and a structure for a program designed to prepare unskilled youth and adults for employment. The program is administered in Texas by the Department of Community Affairs (TDCA). Services are delivered on the local level throughout Texas by 34 private industry councils (PIC's) composed of local business people, a representative of the Texas Employment Commission, community organizations, educational agencies, and other public and private agencies. Participation by the private sector in planning and delivering job training services is considered to be the key element which distinguishes JTPA from previous job training programs. The PIC's develop locally based programs to provide training for the economically disadvantaged and for those with serious barriers to employment. The State Job Training Coordinating Council authorized

by federal law and established in state law in 1983 (Art. 4431(52) VACS) provides general oversight, develops statewide goals and program objectives, and assists in coordination of training and employment services in the state.

Federal requirements and state goals set in the Texas Job Training Act direct the JTPA program to serve economically disadvantaged persons and to reduce dependency on public welfare and unemployment compensation. The Department of Community Affairs and Department of Human Services have signed interagency agreements for coordination of JTPA services. In fiscal year 1985, the JTPA program provided training to 6,313 TDHS clients with 2,637 job placements being made. The Department of Human Services estimates there are about 29,485 TDHS clients per year who need to receive training in order to be employed. AFDC recipients often have little or no job experience or job-related skills. In general, only extremely low-paying jobs are available to such untrained, unskilled workers. Those who may have additional barriers to employment, such as lack of day care or low educational levels are especially difficult to assist. The jobs available for these persons provide little incentive to stay off AFDC and therefore lose Medicaid and day care benefits.

Discussions with TDHS regional personnel showed that there is a disparity across the state in the use of the JTPA program and in the cooperation of local PIC's in serving AFDC clients. The use of existing employment systems in the state could be maximized through increased coordination of programs at both the state and local levels, and through legislative direction that training and employment of AFDC recipients is a priority for the state. The legislature has recognized this need by including a rider in the current appropriation patterns for TDHS and TDCA directing that JTPA funds be used as much as possible to secure employment for AFDC recipients. Helping recipients to obtain steady employment is the key element to reducing long-term dependency on public assistance.

The following recommendations provide further emphasis on the employment of AFDC recipients and coordination of employment services.

- **The JTPA policy statement should include emphasis on serving AFDC recipients.**

  This addition to the policy statement in the Texas Job Training Partnership Act (Art. 4413(52), VTCS) would provide clear statutory direction for JTPA programs to serve AFDC recipients in order to

reduce dependency on public assistance. Other states have also directed the JTPA program to focus on AFDC recipients.

- **The State Job Training Coordinating Council should be required by statute to assist local councils in developing programs to serve more AFDC clients.**

This duty would fit in with the council's current responsibilities for planning and coordination, while placing emphasis on the need to assist local PIC's and TDHS local offices in developing effective programs to train greater numbers of AFDC recipients. Direction and coordination of the increased efforts to serve AFDC recipients is essential to making the program successful throughout the state.

- **The Texas Job Training Partnership Act should require that a representative of the local TDHS region serve on each Private Industry Council.**

Lack of communication and knowledge of agencies' differing program requirements can often cause difficulties in developing well-coordinated programs. This recommendation will increase coordination of employment services on the local level and reduce barriers in providing needed services to AFDC recipients. Implementation of this recommendation will ensure that representatives of all three of the state's major employment or training programs will serve on the local councils.

Better Coordination of Family Planning Services is Needed.

Federal funds for family planning services in Texas are provided through four different sources. The Texas Department of Health administers Title V of the Social Security Act and Title X of the Public Health Services Act. The Texas Department of Human Services administers Titles XIX and XX of the Social Security Act. The agencies combined spend over $38 million and serve over 420,000 people each year.

A review of the family planning programs and the allocation of funding for these programs indicated that additional coordination could improve services. Family planning providers indicated they encounter difficulties when offering services under more than one federal funding source. One problem is the differences in standards between programs for how services should be provided. Also, each program has unique reporting requirements for providers.

The review also identified that lack of coordination of the current systems of allocation could result in funding inequities within the state. Under three of the programs, allocations of funds are made to providers of family planning services across the state. However, the allocation processes do not fully take into account funding from each of the other programs into a particular community. This can result in some areas of the state receiving family planning funding from multiple sources while other areas may receive limited funding.

The agencies are attempting to develop a joint allocation process through an interagency agreement and two advisory groups also exist which are intended to coordinate services. However, adequate coordination does not yet exist to prevent funding problems and develop consistent standards.

- **The department should enter into a Memorandum of Understanding (MOU) to be adopted as formal rules of each agency with the Texas Department of Health to provide for continuing coordination of Family Planning Services.**

The MOU is intended to result in mutually agreed upon procedures and standards for the provision of services and the allocation of funds. The MOU should define each agency's responsibilities in providing family planning services. The MOU should be updated on an annual basis and should include the following areas: a coordinated means for allocating funds; a means for developing, monitoring and maintaining service standards for providers which are consistent between agencies and funding sources when possible under federal guidelines; and a means for collecting data which is consistent between agencies and funding sources. Attention to the above areas should improve the equity of funding in the state, increase consistency among the standards established by the agencies, and improve the quality of data collected by the agencies. In addition, the adoption of the MOU as formal rules would allow for public input from interested parties through the rulemaking process.

Additional Follow-up is Needed in the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program.

The Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) is a federally mandated preventive health care program for children receiving public assistance under the Medicaid program. The program is intended to provide

early detection and treatment of children's health and dental problems before they become more serious and therefore more costly.

The federal government mandates three program requirements. First, the state must inform all AFDC families of the availability of EPSDT services. Second, the state shall provide or arrange for the screening services. Third, the state must arrange for corrective treatment of health problems identified through the screening.

The department is developing an automated process, called a treatment tracking system, for reporting on whether children receive treatment for problems identified during an EPSDT medical screening. The treatment tracking report was used to conduct a study of children screened in December 1985. The study indicated that up to 60 percent of children identified as having potential medical problems could not be confirmed as having received follow-up diagnosis or treatment for these conditions. Failure to treat problems which are identified defeats the purpose of providing the original medical screening.

Although the treatment tracking system has been under development since 1982, the department does not regularly utilize it to determine if children with abnormal conditions receive follow-up. Using the data from the system, the department could send notices either to providers or the families to encourage follow-up care. In addition, the department currently operates a family health education program which could be used to directly contact families when needed. There are currently 20 employees available throughout the state working in this program.

- **The department should follow up EPSDT screenings and encourage treatment of health problems identified.**

  The treatment tracking system is available to provide the department with a mechanism for identifying EPSDT children who need follow-up care, but have not received it after a reasonable length of time. The department should attempt to contact these families to encourage corrective treatment. The early treatment of medical problems results in savings to the Medicaid program by preventing complications which could occur if a problem is left unattended. Additional efforts of the department in operating this system would be limited to making the follow-up contact with the families by mail, since the treatment tracking system is already developed and the family health education program is currently in place.

Review of the Temporary Emergency Relief Program

The Texas Human Resources Code (Sec. 34.003) authorizes the Temporary Emergency Relief Program (TERP) and specifically provides for the Sunset Commission to review the program and make recommendations regarding continuance. The program was created in 1983 in response to economic conditions which resulted in rapid increases in the number of needy people who were homeless or were without other basic necessities. The program distributes grants to local governments or non-profit organizations on a dollar for dollar match basis. These organizations provide non-cash assistance in the form of food, utilities, housing, and clothing directly to needy people. The department distributed $475,000 through TERP in fiscal year 1986.

In 1985, the Texas Omnibus Hunger Act was passed which established an emergency nutrition program to provide emergency food assistance to families. The statute requires this program to be administered by TDHS under the same rules and procedures as TERP, and the two programs were merged by the department. The emergency nutrition portion of the program distributed $750,000 in fiscal year 1986.

The economic conditions which led to the establishment of TERP have not improved. The unemployment rate in Texas in 1983 was about eight percent. The average unemployment rate for the first seven months of 1986 was 8.6 percent and unemployment in June 1986 rose to 10.0 percent. In addition, the department estimates that 3.1 million Texans were living below the poverty level in 1986.

- **The Temporary Emergency Relief Program should be continued.**

The TERP program is expected to serve approximately 64,000 persons in fiscal year 1986. Under current economic conditions there is a continuing need for these types of emergency services. If the program is continued in statute for a twelve year period, the legislature will be able to determine whether these services are needed at a future time through the appropriations process. In addition, there is currently a Task Force on Emergency Assistance Programs reviewing the coordination of emergency assistance programs in Texas. Recommendations of the Task Force are expected in mid-September 1986 and could include modifications to the TERP and emergency nutrition programs. Recommendations resulting from this work will be reviewed and included as appropriate in the Sunset Commission's recommendations to the 70th Legislature.

LICENSING

The purpose of the department's licensing division is to protect and ensure the health and safety of children under the care of a person or facility outside of the home. The licensing division is responsible for regulating day-care centers, family homes, 24-hour child-care facilities and administrators, and child-placing agencies. In fiscal year 1986 the division regulated over 29,000 facilities and persons involved in the provision of child care.

The review focused on ways to streamline and improve the departments efforts in carrying out its licensing responsibilities. The details of the recommendations to provide these improvements are set out below.

Regulation of Family Homes Could be Improved

The Human Resources Code requires the registration of all family homes by TDHS. Individuals providing care in their homes for 12 or fewer children under the age of 14, are considered family homes and are required to register with DHS. In fiscal year 1986, $483,083 was budgeted for registering family homes. Approximately 21,715 family homes will be registered in fiscal year 1986. A $35 registration fee is charged and in fiscal year 1986 the agency anticipates it will collect approximately $760,000 which is deposited in the general revenue fund.

The department's development of registration rather than licensing for these homes was based on several considerations. Unlike large day-care centers, parents are better able to determine the safety, health and quality of care offered in family homes. Family homes are smaller and provide care for fewer children than day-care centers. In addition, family homes do not suffer from the high rate of turnover in personnel experienced by day-care centers, and in many cases parents personally know the operator of the family home.

However the "registration" approach presents certain problems. Registration implies that these facilities have met minimum standards set out by TDHS. Since family homes are registered without inspection, the current "registration" proces provides no real assurance that the homes are safe. Further, the homes can advertise that they are "registered with the Department of Human Services" which may mislead the public.

There is also some confusion between the current definitions of a family home and a group day-care home. Currently a family home may care for up to six children in addition to the providers own children. A family home may also provide

before and after school care for older siblings of the children in care so long as the total number of children does not exceed 12. A group-day care home is defined as a facility that provides care for 7 to 12 children under 14 years of age. Group day-care homes are licensed while family homes are registered. This has resulted in confusion among providers on whether they need to register or obtain a license from the department.

The department has also expressed concern over the need to continue to register smaller family homes. In the department's opinion, individuals caring for fewer than three unrelated children from one or two families should be exempt from regulation. Exempting these facilities would get the department out of the regulation of "good neighbors". The department argues that a person caring for their own children and one or two children of a neighbor is clearly not a business, even though they may be paid for the care provided.

Alternatives to the current system have been considered. These alternatives range from full licensure of the currently registered facilities to no regulation at all. The estimate of cost relating to full licensure of the facilities is extremely high (approximately $4,170,000 per year) and this regulatory approach is inappropriate because of the reasons noted above concerning the characteristics of family home care. Setting up a program to provide one inspection of new registrants is estimated to cost $2,000,000. Turnover in these facilities is estimated to be 40 to 50 percent.

Other states have tried to use localized associations of family homes to strengthen the sharing of information between members regarding child care practices. They can also provide an informal monitoring function as operators become aware of others in the area that are providing family home services. Although the associations have no regulatory function, they can assist in improving the overall care provided in these facilities.

The registration of family homes in Texas continues to present a less than perfect system. However, this regulatory scheme does provide basic education on how to operate a family home and what constitutes a safe facility. It also provides a disciplinary tool for taking action against family homes found to be endangering the safety and welfare of children in their care. The agency can revoke a registration and seek injunctive relief to close down a family home in those situations. For these reasons, it appears appropriate to continue the program. Two improvements could be made however which are set out below.

- **The department should examine the merits of using family home associations to strengthen the departments regulation of family homes.**

This would require the department to examine the usefulness of associations of registered family homes in various locations around the state. If the approach appears productive the department can encourage the development of such associations to develop child care training programs and informal monitoring functions to improve the overall operations of family homes.

- **The Human Resources Code should be amended to limit the number of children in registered family homes to no more than six and no fewer than three.**

Under this recommendation, individuals caring for fewer than three unrelated children, from no more than one or two families, would be exempt from registration. This would get the department out of the business of regulating "good neighbors" given that in this situation the person caring for two or fewer children is clearly not "in business" even though they may be paid for child care. Allegations of abuse in these facilities would continue to be investigated by the department. In addition, limiting the total number of children in a registered family home to six would eliminate confusion between group-day care homes and registered family homes.

Greater Flexibility is Needed in the Renewal Actions for Child Care Facility Licenses.

Currently, close to 7,500 child care facilities are licensed for two years. Prior to expiration of the license, the agency notifies the facility of the upcoming renewal date and is required by statute (Sec. 42.050(f), HRC) to inspect the facility to determine whether it is in compliance with licensing standards. The review indicated that a significant amount of the department's resources are being spent on facilities with good compliance records. It appears that the department could better direct its licensing efforts towards problem facilities and utilize time and scarce manpower resources in a more effective manner. This could be achieved by modifying the statutory licensing structure to give the department the flexibility to determine if an onsite inspection is necessary for renewal of a biennial license.

The department has under development a compliance monitoring system which can help provide an objective measure of the need to inspect a facility for renewal action.

- **The Human Resources Code should be amended to allow the department to determine if an onsite inspection is necessary for all facilities up for biennial license renewal.**

  This would modify the current licensing structure to give the department the flexibility to determine whether a facility needs to be inspected for renewal of a biennial license.

Use of Local Prosecutors Would Aid in Regulating Child Care and Child Placing Facilities.

Section 42.074 of the Human Resources Code currently authorizes the attorney general to represent the department in suits for injuctive relief brought against child-care and child placing facilities. In fiscal year 1986, the agency was involved in 21 suits seeking injunctive relief against these kinds of facilities. The statute generally has been interpreted as authorizing local prosecutors to represent the department in these kinds of suits, even though the statute does not specifically state this. However, because the statute fails to provide specific authority to local prosecutors to represent the department in these cases, some local prosecutors have been reluctant or have refused to represent the agency. This has reduced the department's flexibility in some situations to act against facilities operating in violation of the law. This problem could be resolved by amending section 42.074 of the Human Resources Code to authorize a county or district attorney of the county where a facility in violation is located to represent the department in suits seeking injunctive relief against the facility.

- **The Human Resources Code should be amended to authorize local prosecutors to represent the department in suits seeking injunctive relief to close a child placing or child care facility.**

  Providing authority to local prosecutors to represent the department in suits seeking injunctive relief against child care and child-placing facilities will reduce the reluctance of local prosecutors to act for the department in these cases.

Statutory Structure for Regulation of Agency Group Homes Needs Improvement.

There are two problems related to the department's regulation of agency group homes. First, there are two types of foster group homes: independently operated foster group homes and facilities known as agency group homes, which operate under child-placing agencies. These facilities care for 7 to 12 children 24 hours a day. Both types of facilities are licensed by the department. However, the law makes no reference to agency group homes primarily because they did not exist as a distinct type of facility when the licensing law was passed in 1975.

Second, agency group homes are currently regulated in the same manner as independently operated foster group homes, even though they operate as part of a licensed child-placing agency. The department normally licenses all facilities operated by a child-placing agency as part of the child-placing agency. Amending the statute to provide for this regulatory structure would be cost effective and would be consistent with current practices of the department. The two recommendations that follow should solve the two problems identified previously and enable the department to improve its regulation of agency group homes.

- **Section 42.002 of the Human Resources Code should be amended to add the definition of "agency group home" as a facility that provides care for 7 to 12 children for 24 hours a day.**

This action would update the law to include a type of facility that was not in existence when the licensing law was first enacted.

- **Sections 42.041 (b)(2) and 42.053 (a)(b)(c) should be amended to exempt an agency group home from having to obtain a license and provide for the licensing of the facility as part of the child-placing agency that operates it.**

This would lessen the workload of the licensing staff without reducing the protection of children in these facilities. The child-placing agency would be responsible for ensuring that the agency group home complied with licensing standards.

SERVICES TO AGED AND DISABLED PERSONS

This program provides a wide array of community and residential services to elderly and disabled persons. The largest portion of the program provides "Long Term Care" services to persons needing nursing home care or mentally retarded persons in need of specialized residential services. The program also offers

assistance with paying pharmacy bills and transportation to and from medical related appointments. Community care assistance is also provided to assist elderly and disabled persons remain in their own homes. These services consist of in-home personal care assistance, home delivered meals, day activity health services and the like. One last major component of the program is the adult protective services activity. The purpose of this activity is to investigate complaints concerning abuse, neglect or exploitation of elderly and disabled persons and provide services to those in need.

The review indicated a need to improve and clarify statutory language concerning aspects of the department's protective services program for the elderly and disabled. Additionally, a major shift of responsibility from TDHS to TDMHMR for the state's intermediate care facility program for mentally retarded persons (ICF-MR) appears needed. The recommendations to address these concerns are laid out below.

Penalties Could Help In Preventing Abuse, Neglect or Exploitation of Elderly or Disabled Persons.

The Texas Human Resources Code (Sec. 48.036(a)) requires any person having cause to believe that an elderly or disabled person is in the state of abuse, neglect or exploitation to report such information to the department. No penalty exists, however, for failure to report such information. The failure of a person to report can result in the continuation of abuse, neglect, or exploitation of the elderly or disabled.

The department has statutory responsibility to offer protective services to elderly and disabled persons when situations of abuse, neglect or exploitation are reported. Protective services may include investigations of reported abuse, social services, health care, day care, legal assistance, and a variety of other services. These services can only be provided if the department is made aware of the abusive situation.

Twenty-five states have penalties for failure to report such situations involving elderly or disabled individuals. In addition, Texas law makes failure to report child abuse or neglect a Class B misdemeanor punishable by a fine up to $1,000 and/or six months in jail.

- **Failure to report abuse, neglect or exploitation of elderly or disabled individuals should be a Class B misdemeanor.**

This recommendation will help ensure that current requirements for the reporting of abuse and neglect, which are intended to protect the elderly and disabled, are adhered to. Making failure to report abuse, neglect or exploitation a Class B misdemeanor serves as an incentive for persons to report such cases, so that protective services can be offered. No additional cost to the agency is anticipated as a result of the proposed statutory change.

Clarification of Responsibilities for Investigation of the Abuse of Elderly and Disabled Persons in State-Operated or Licensed Facilities is Needed.

The responsibilities of TDHS and other state agencies are currently unclear regarding the investigation of abuse, neglect and exploitation of the elderly or disabled in state-operated or licensed facilities. Chapter 48 of the Human Resources Code gives this responsibility to TDHS except when other state or federal agencies are authorized or required by law to provide protective services to this population. The agencies that operate facilities caring for aged or disabled persons include TDMHMR's state schools and hospitals, the Texas School for the Deaf (TSD), the Texas School for the Blind (TSB) and the Texas Department of Health's chest hospitals. These agencies investigate abuse in their facilities, but this authority is not clarified in statute. There are also no provisions for oversight of these investigations. State agencies also license facilities which care for the elderly or disabled. These agencies include TDMHMR, TDH, and the Texas Commission on Alcoholism and Drug Abuse (TCADA). The licensing approach provides an independent oversight mechanism over licensed facilities. However, there is no structured method for responding to complaints about an investigation in a licensed facility. The following recommendations clarify TDHS' and other state agencies responsibilities in the investigation of elderly or disabled abuse in state-operated and regulated facilities.

- **State agencies should have responsibility for the investigation of alleged abuse or neglect of the elderly or disabled in the facilities they operate or regulate and should adopt rules for conducting these investigations.**

This will clarify that agencies which provide for the care of the elderly or disabled will be responsible for investigating and reporting abuse and

neglect in facilities they operate or license. TDHS will continue to be responsible for investigating allegations of abuse or neglect in settings not specifically operated or regulated by another state agency. All reporting requirements under the law will continue in place, but when an allegation of abuse involves a facility operated or regulated by another state agency, TDHS will refer the report to that agency for investigation and corrective action. These agencies (TDMHMR, TDH, TCADA, TSB, and TSD) will be required to publish formal rules concerning how these investigations will be conducted in facilities they license or operate.

- **TDHS should regularly review investigations of abuse and neglect of the elderly and disabled in state operated facilities, and in state regulated facilities when there is a complaint about the original investigation.**

This recommendation will clarify the authority and duties of TDHS in providing independent oversight over investigations of abuse and neglect of the elderly and disabled in state operated or regulated facilities. The department would regularly review investigations in facilities directly operated by the state, including TDMHMR's state schools and hospitals, TDH Chest Hospitals, TSB and TSD. These agencies would be required to send reports of all investigations conducted to TDHS in a timely manner. The department would only investigate complaints concerning the original investigations in facilities licensed by other state agencies (TDMHMR, TDH, and TCADA).

For example, TDH licenses and investigates abuse or neglect problems in nursing homes. TDHS would only become involved in a nursing home situation if there is a complaint about the original investigation conducted by TDH. Results of TDHS investigations in either state operated or regulated facilities would be reported to the policy-making body of the agency involved, which would then be responsible for taking appropriate actions concerning their facilities, employees, or licensed entities. This system would provide independent oversight of abuse or neglect of the elderly or disabled, similar to that provided by the office of youth care investigations for child abuse and neglect.

The Current Structure of the ICF-MR Program Is Fragmented and Discourages New Providers From Entering the System.

The federal government, through amendments to Title XIX of the Social Security Act, reimburses states for a significant portion of the costs of operating residential facilities for mentally retarded people. The primary purpose of these facilities, known as intermediate care facilities for the mentally retarded (ICF-MR), is to provide health and rehabilitative services. The TDMHMR's state schools are certified as ICF-MR facilities and operate about 10,330 of the 14,395 beds in the ICF-MR system. The remaining 4,065 beds are in community-based facilities. Approximately 87.5 percent or 3,557 of the community ICF-MR beds are in privately operated facilities.

The ICF-MR program is divided into three "levels of care", ICF-MR I, ICF-MR V, and ICF-MR VI. Both clients and facilities are assigned a level of care. For a client, the level of care is based on the client's intellectual functioning, adaptive behavior, health status, and whether or not they are ambulatory. For a facility to be assigned a level of care and qualify for payments, it has to meet certain standards. The standards are related to the type of care that is required to meet the needs of a particular client group.

Funds for ICF-MR programs are appropriated to the Texas Department of Mental Health and Mental Retardation (TDMHMR) and the Texas Department of Human Services. Currently 100 percent of the cost of operating the state schools, which are certified as ICF-MR facilities, is appropriated to TDMHMR out of general revenues. This involved an appropriation of over $472 million for fiscal year 1986-87. The Texas Department of Human Services received a biennial appropriation of over $140 million for the state match of the community-based ICF-MR program and a $10 million revolving fund that is used to draw down the federal match for the state schools. When this federal match is received, it goes into the general revenue fund. Requiring that state schools be funded out of general revenue was originally done to ensure that adequate funds would be available for services to state school clients even if the federal government reduced or discontinued the ICF-MR program. Continuation of this method of finance now appears unnecessary. The program has been in place for 12 years. Although the federal match has varied, it has never been less than 53 percent. Also, relying on a federal match is a commonly used practice in the state that has been applied to much needed services such as nursing home care, food stamps,

AFDC, and purchased health services for aged and disabled persons. Modifying TDMHMR's method of finance would be consistent with current state practices regarding federal funds, would ensure that placement decisions are based on client needs and not funding considerations, and would simplify the comptroller's certification of the appropriations bill.

Currently, three state agencies are involved in the administration of the ICF-MR program. As the designated single state agency for Medicaid, the Texas Department of Human Services administers the program and is responsible for fiscal matters, rate-setting, client eligibility determination, promulgating rules and regulations, and ensuring compliance with state and federal requirements. The Texas Department of Health (TDH) licenses ICF-MR facilities, assigns levels of care to persons eligible for ICF-MR programs, and, through a contract with TDHS, certifies ICF-MR facilities according to the federal Health Care Financing Administration regulations. The Texas Department of Mental Health and Mental Retardation is the agency that has been given the responsibility of planning for persons with mental retardation. It develops the criteria for level of care assignments, standards for providers, and recommendations for ICF-MR policies and procedures.

The complexity of the program and its funding coupled with the involvement of three large agencies in its administration has created difficulties. One frequently heard complaint is that none of the three agencies are able or willing to accept responsibility for solving program problems. Many times this results in a provider being referred from one agency to the next without resolution of the problem.

Another concern identified during the review relates to difficulty the program has in making policy adjustments as the needs of the system and the alternatives for meeting those needs have changed. For example, in April 1982, TDHS adopted the "six-bed or less" rule. This rule required new facilities to have six or fewer beds, to be no closer than three miles from another ICF-MR facility, and to be located within incorporated city limits. The rule was adopted to make sure that the growth of the program did not exceed the funds available to TDHS. Although highly successful as a cost containment measure, this rule has stymied the growth of the system. Now with the requirements placed on the TDMHMR by the Lelsz settlement agreement and that agency's goal to serve clients in the community when appropriate, the system needs to grow. The 69th Legislature

recognized this by removing the "cap" on Medicaid funds and by adding a rider which stated the intent of the legislature that the TDHS adjust their rule to conform with available revenues. To date, the only change in the rule has been lowering the three mile limit to a one mile limit.

The failure to free up the system has contributed to a significant problem in the ICF-MR program. Currently, ICF-MR facilities operate at or near capacity and often have waiting lists. This, coupled with the TDMHMR's efforts to limit admissions to state schools, leaves little slack in the system. If an ICF-MR facility ceases operation for any reason, a crisis exists because of the lack of placement alternatives.

A third problem relates to the failure of the TDMHMR to maximize the use of federal Medicaid funds in their efforts to move clients out of state schools. The legislature appropriated $12.2 million for each year of the 1986-87 biennium to improve the staff-to-client ratios in state schools. The department has used this to establish a prospective payment program, known as the $55.60 program, to encourage mental retardation authorities to expand community-based services and move clients out of state schools. Although the $55.60 program has been successful, it is 100 percent state funded. If the authority and funding for the ICF-MR program had been more centralized, the $55.60 money could have been incorporated into the ICF-MR budget. This would have more than doubled its value since the federal match is 54 percent of the total.

A more centralized system could have also maximized these dollars through another Medicaid program known as the Intermediate Community Services (ICS) Program. The Omnibus Reconciliation Act of 1981 authorized the waiver of existing Medicaid requirements to permit states to use Title XIX money for programs outside an institutional setting. Under the waiver program, states may offer the following seven services: a) case management, b) homemaker services, c) home health aid services, d) personal care services, e) adult day health services, f) rehabilitation services, and g) respite care. These are similar to many of the services currently paid for by the $55.60 program. If the state had actively pursued a variety of waivers, these services could have been partially funded by Medicaid and further stretched the money in the $55.60 program.

The number and complexity of the problems in the administration of the ICF-MR program indicate the need for a consolidation of authority to provide a less cumbersome, more responsive decision making structure. As the state's

designated mental retardation authority, it appears appropriate to increase TDMHMR's responsibility for the program that serves over 13,000 mentally retarded persons. Concerns have been raised that allowing the single largest provider under the ICF-MR program to administer the program results in a conflict of interest. These concerns have been carefully considered and are addressed in the recommendations that follow.

- **Statutory modification should direct TDHS to transfer the primary administrative responsibilities for the ICF-MR program to TDMHMR and direct TDMHMR to accept that responsibility.**

The details of this shift are outlined in Exhibit 7. This recommendation provides for a change in the method of finance for TDMHMR which provides that agency with a funding structure that can maximize available dollars to best meet the needs of individual clients. The recommendation also provides that TDMHMR is financially responsible for any disallowances, audit exceptions, liabilities or penalties resulting from TDMHMR's actions or failure to act. In cases where punitive actions are recommended by the Health Department for TDMHMR facilities, TDHS will be required to make the disciplinary decision to ensure that a conflict of interest situation does not exist. Other potential conflicts of interest are related to rate-setting and conducting fiscal audits. The potential for conflict in these areas is limited by the federal law requiring rate-setting to be cost-based and the state requirement that the state auditor review the fiscal audit process. Any inappropriate actions by TDMHMR would be identified and corrected through these processes.

The intent of the recommendation is to transfer to TDMHMR as much of the program as is permissible under federal law and regulations. The TDHS will need to remain the "single state agency" for the Medicaid program but interagency contracting will allow the flow of funds as described in Exhibit 7.

- **The TDHS should modify the Medicaid State Plan to reflect the shift in responsibility for the ICF-MR program.**

This change is necessary to comply with federal regulations.

Exhibit 7

SHIFT OF ICF-MR RESPONSIBILITIES

Area of Responsibility	Current Situation	Recommendation
1. Budget	• TDMHMR requests an appropriation from the General Revenue (GR) fund for the operation of the state schools, TDMHMR is responsible for administering these funds. • TDHS requests an appropriation from GR for a revolving fund. This is used to draw down the federal match to the state's expenditures in the state schools. When the federal dollars are received they are deposited in GR. • TDHS also requests an appropriation for community-based ICF-MR facilities. The method of finance is GR and federal funds. TDHS is responsible for administering these funds.	• TDMHMR would request an appropriation for the operation of the state schools and the community-based ICF-MR facilities. The method of finance would include state (46%) and federal (54%) funds. A revolving fund would not be necessary as the federal dollars would be appropriated to TDMHMR. Removing the revolving fund structure reduces TDHS appropriation by approximately $10 million per year. This action is currently being considered in the special session of the legislature. • TDMHMR would be responsible for the administration of these funds. Any disallowances, audit exceptions, liabilities or penalties resulting from TDMHMR's actions or failures to act would be the responsibility of TDMHMR.
2. Rate-setting & Cost Report Analysis	• TDMHMR is responsible for providing direction and assistance to TDHS in the development of program cost reimbursement methodologies. • TDHS is responsible for setting the rates for the ICF-MR program and analyzing the cost reports submitted by the providers.	• TDMHMR would assume responsibility for analyzing the cost reports and setting the rates.

Exhibit 7

SHIFT OF ICF-MR RESPONSIBILITIES
(cont.)

Area of Responsibility	Current Situation	Recommendation
3. Policy & Rule Development	• TDMHMR is responsible for the development of facility and program standards, as well as the development of eligibility criteria and level of care standards. • TDMHMR is responsible for conducting public hearings and developing rules and regulations necessary to administer the ICF-MR program. • The TDHS Board is responsible for adopting rules regarding the ICF-MR program.	• TDMHMR would develop ICF-MR policies and rules. TDHS would review these only for Medicaid policy compliance and final ratification. • The Board of TDMHMR would be responsible for rulemaking. TDHS participates as noted above.
4. Issuance and Renewal of Providor Contracts	• TDHS issues and renews ICF-MR provider contracts.	• TDMHMR would have administrative responsibility for issuing and renewing provider agreements between TDHS and the providers.
5. Eligibility Determination	• TDHS determines if a client is financially eligible to participate. • TDH determines if a client is programatically eligible to participate. • TDMHMR determines if a facility is eligible to apply for certification as an ICF-MR facility. TDH determines if a facility meets the certification standards.	• No change.

Exhibit 7

SHIFT OF ICF-MR RESPONSIBILITIES
(cont.)

Area of Responsibility	Current Situation	Recommendation
6. Provider Payment	• TDHS establishes provider payment eligibility through a computerized system that includes recipient financial eligibility data, facility admission and discharge data, and vendor payment date.	• TDMHMR would contract with TDHS to continue to provide this service until TDMHMR sets up its own computer system to accomplish this or establishes a link to TDHS system.
7. Fiscal Audit	• TDHS conducts fiscal audits of the ICF-MR program.	• TDMHMR would conduct fiscal audits of the ICF-MR program.
8. Billing to HCFA	• TDHS bills HCFA for federal financial participation in Texas' ICF-MR program.	• No change.
9. Enforcement of Standards	• TDHS contracts with TDH for certification of ICF-MR programs. TDH can decertify a facility for non-compliance with standards.	• No change.
	• TDH survey teams review ICF-MR program and recommend punitive actions where necessary.	• MHMR takes punitive action unless it involves a facility or program directly operated by MHMR. TDHS would make the disciplinary decision in such cases.
	• TDHS takes punitive actions when necessary.	
10. Coordination	• The agencies use a combination of interagency contracts and memoranda of understanding to clarify their duties.	• TDMHMR, TDHS, and TDH would review current documents and update them as needed to reflect changes made under this recommendation.

- **Statutory provisions should ensure that any future federal decisions to reduce Medicaid funding will result in proportionate cuts to all programs using Medicaid dollars.**

The issue of a federally imposed Medicaid "cap" has long been discussed. The above instruction is needed to provide policy guidance should such a cap or a reduction in funding occur. The Texas Medicaid structure provides funds for three major programs: purchased health services, nursing home and ICF-MR care. The purpose of the instruction would be to ensure that all three programs would share in a proportionate reduction should the need arise.

- **The TDMHMR should appoint an ICF-MR Advisory Committee.**

This committee appointed by the board of TDMHMR should include a balanced representation of providers, consumers, and other persons with knowledge and interest in the ICF-MR program. Representatives of TDHS and TDH should serve as ex-officio members. This committee should assist TDMHMR in identifying where policy or programmatic changes are needed to improve the ICF-MR program, make recommendations as to how these changes should be structured, and provide comment to the TDMHMR board regarding any proposed rules. This input should help to ensure that the needs of all clients are considered, whether they are served by the state or in the community.

- **The TDMHMR should expand its use of the ICS waiver program.**

This will allow state dollars to be matched with federal dollars thereby increasing the quantity and quality of services in the community. The state's match for this increase in service can be funded in two ways: a) through the shift of dollars from institutional settings as the population in the state school declines; and b) through the use of the money currently allocated to the $55.60 program.

ACROSS-THE-BOARD RECOMMENDATIONS

From its inception, the Sunset Commission identified common agency problems. These problems have been addressed through standard statutory provisions incorporated into the legislation developed for agencies undergoing sunset review. Since these provisions are routinely applied to all agencies under review, the specific language is not repeated throughout the reports. The application to particular agencies are denoted in abbreviated chart form.

TEXAS DEPARTMENT OF HUMAN SERVICES

Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. GENERAL
	X		1. Require public membership on boards and commissions.
X			2. Require specific provisions relating to conflicts of interest.
X			3. Provide that a person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
X			4. Require that appointment to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee.
X			5. Specify grounds for removal of a board member.
X			6. Require the board to make annual written reports to the governor, the auditor, and the legislature accounting for all receipts and disbursements made under its statute.
X			7. Require the board to establish skill-oriented career ladders.
X			8. Require a system of merit pay based on documented employee performance.
X			9. Provide that the state auditor shall audit the financial transactions of the board at least once during each biennium.
X			10. Provide for notification and information to the public concerning board activities.
		*	11. Place agency funds in the Treasury to ensure legislative review of agency expenditures through the appropriation process.
	X		12. Require files to be maintained on complaints.
	X		13. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		*	14. (a) Authorize agencies to set fees.
		*	(b) Authorize agencies to set fees up to a certain limit.
X			15. Require development of an E.E.O. policy.
X			16. Require the agency to provide information on standards of conduct to board members and employees.
X			17. Provide for public testimony at agency meetings.
X			18. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions.

*Already in statute or required.

Texas Department of Human Services
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
**			1. Require standard time frames for licensees who are delinquent in renewal of licenses.
**			2. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date.
**			3. Provide an analysis, on request, to individuals failing the examination.
		X	4. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	5. (a) Provide for licensing by endorsement rather than reciprocity.
		X	(b) Provide for licensing by reciprocity rather than endorsement.
		X	6. Authorize the staggered renewal of licenses.
**			7. Authorize agencies to use a full range of penalties.
		*	8. Specify board hearing requirements.
		X	9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
**			10. Authorize the board to adopt a system of voluntary continuing education.

*Already in statute or required.
**Applies only to licensing of child care administrators.

MINOR MODIFICATIONS OF AGENCY'S STATUTE

Discussions with agency personnel concerning the agency and its related statutes indicated a need to make minor statutory changes. The changes are non-substantive in nature and are made to clarify existing language or authority, to provide consistency among various provisions, or to remove out-dated references. The following material provides a description of the needed changes and the rationale for each.

Minor Modifications To
HUMAN RESOURCES CODE AND FAMILY CODE

CHANGE	RATIONALE
1. Change the reference to agency to reflect its current name.	Amendments made in nine places in the Human Resources Code and three places in the Family Code during the last session did not reflect the change made to the name of the department in separate legislation.
2. Delete reference to a "Geriatric Center" in Austin (Sec. 32.037, HRC)	This language was placed in the Code in anticipation of a federal action which never occurred.