PRELIMINARY DRAFT

TEXAS LEGISLATIVE COUNCIL
Health and Safety Code
Chapters 77, 148, 181A, 330,
377, 378, and 693A
9/17/26

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TITLE 2. HEALTH

SUBTITLE C. PROGRAMS PROVIDING HEALTH CARE BENEFITS AND SERVICES

CHAPTER 77. PROGRAM INFORMATION FOR MILITARY PERSONNEL AND THEIR FAMILIES

Revised Law

Sec. 77.001. DEFINITIONS. In this chapter:

(1) "Directory" means the directory established by Section 77.002.

(2) "Servicemember" means a current or former member of:

(A) the state military forces, as defined by Section 437.001, Government Code; or

(B) a component of the United States armed forces, including a reserve component. (H&S Code, Sec. 161.551.)

Source Law

Sec. 161.551. DEFINITIONS. (a) In this subchapter, "servicemember" means a member or former member of the state military forces or a component of the United States armed forces, including a reserve component.

(b) In this section, "state military forces" has the meaning assigned by Section 437.001, Government Code.

Revisor's Note

(1) The definition of "directory" is added to the revised law for drafting convenience and to

eliminate frequent, unnecessary repetition of the substance of the definition.

(2) Section 161.551(b), Health and Safety Code, provides that "state military forces" has the meaning assigned by Section 437.001, Government Code. Because "state military forces" is only used in the definition of "servicemember" under Section 161.551(a) of that code, the revised law adds the substance of the definition of "state military forces" to the definition of "servicemember" rather than referencing and defining another term.

Revised Law

Sec. 77.002. DIRECTORY OF SERVICES AND OTHER RESOURCES. (a) The department and commission shall compile, maintain, and disseminate through the Texas Information and Referral Network and other appropriate media, a directory of services and other resources, tools, and counseling programs available to servicemembers and servicemembers' immediate families.

(b) The directory must include:

(1) information regarding counseling services that:

(A) facilitate the reintegration of servicemembers into civilian and family life;

(B) identify and treat stress disorders, trauma, and traumatic brain injury;

(C) address parenting and family well-being, employment, and substance use issues; and

(D) provide crisis intervention services;

(2) to the greatest degree possible in the judgment of the department, all private and public community, state, and national resources that:

(A) protect and promote the health and well-being of servicemembers and servicemembers' immediate families; and

(B) are accessible in this state directly or through electronic media, print media, or the Internet; and

(3) other resources that support the health of servicemembers and servicemembers' families.

(c) The department and commission shall organize the directory in a manner that allows a person to locate services in a specific community in this state.

(d) The department and commission shall develop and maintain the directory in collaboration with local, state, and national private and government organizations, including:

(1) the United States Veterans Health Administration;

(2) the United States Department of Defense;

(3) the Texas military forces;

(4) the Texas Veterans Commission; and

(5) other public and private national and community-based organizations that provide support to servicemembers and servicemembers' families.

(e) The department shall provide the directory to the Texas Information and Referral Network within the time and in the manner and format specified by the network.

(f) The department shall provide the directory or a link to the directory on the department's Internet website. (H&S Code, Sec. 161.552.)

Source Law

> Sec. 161.552. DIRECTORY OF SERVICES. (a) The department and commission shall compile, maintain, and disseminate through the Texas Information and Referral Network and through other appropriate media, a directory of services and other resources, tools, and counseling programs available to servicemembers and their immediate family.
>
> (b) The directory must include:
>
> (1) information regarding counseling services that:
>
> (A) facilitate the reintegration of the servicemember into civilian and family life;
>
> (B) identify and treat stress disorders, trauma, and traumatic brain injury;
>
> (C) address parenting and family well-being, employment, and substance abuse issues; and
>
> (D) provide crisis intervention services;
>
> (2) to the greatest degree possible in the judgment of the department, all private and public community, state, and national resources that protect and promote the health and well-being of

servicemembers and their immediate family and that are accessible in the state directly or through electronic media, print media, or the Internet; and

(3) other resources that support the health of servicemembers and their families.

(c) The department and commission shall organize the directory in a manner that allows a person to locate services in a specific community in the state.

(d) The department and commission shall develop and maintain the directory in collaboration with local, state, and national private and government organizations, including:

(1) the United States Veterans Health Administration;

(2) the United States Department of Defense;

(3) the Texas military forces;

(4) the Texas Veterans Commission; and

(5) other public and private national and community-based organizations that provide support to servicemembers and their families.

(e) The department shall provide the directory to the Texas Information and Referral Network of the commission in the time periods and in the manner and format specified by the Texas Information and Referral Network.

(f) The department shall provide the directory on the department's website or through links appearing on the department's website.

Revisor's Note

Section 161.552(b)(1)(C), Health and Safety Code, refers to "substance abuse" issues. The Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5), published by the American Psychiatric Association to assist in classifying mental disorders, combines the categories of substance abuse and substance dependence into a single disorder referred to as "substance use disorder." Therefore, the revised law substitutes "substance use" for "substance abuse" to reflect modern terminology regarding the disorder.

CHAPTER 148. HEALTH INSPECTION OF PRIVATE RESIDENCES

Revised Law

Sec. 148.001. PERMISSION REQUIRED. A person, including an officer or agent of this state or of an instrumentality or political subdivision of this state, may not enter a private residence to conduct a health inspection without first receiving:

(1) permission from a lawful adult occupant of the

residence; or

(2) an authorization to inspect the residence for a specific public health purpose granted by a magistrate or ordered by a court of competent jurisdiction on a showing of a probable violation of a:

(A) state health law;

(B) control measure under Chapter 81; or

(C) health ordinance of a political subdivision. (H&S Code, Sec. 161.011.)

Source Law

> Sec. 161.011. PERMISSION REQUIRED. A person, including an officer or agent of this state or of an instrumentality or political subdivision of this state, may not enter a private residence to conduct a health inspection without first receiving:
>
> (1) permission obtained from a lawful adult occupant of the residence; or
>
> (2) an authorization to inspect the residence for a specific public health purpose by a magistrate or by an order of a court of competent jurisdiction on a showing of a probable violation of a state health law, a control measure under Chapter 81, or a health ordinance of a political subdivision.

Revised Law

Sec. 148.002. CRIMINAL OFFENSES. (a) A person commits an offense if the person violates Section 148.001. An offense under this subsection is punishable by:

(1) a fine of not more than $1,000;

(2) confinement in the Texas Department of Criminal Justice for not more than two years; or

(3) both the fine and confinement.

(b) A person commits an offense if the person knowingly gives evidence obtained in violation of Section 148.001 to the federal government or to an instrumentality of the federal government. An offense under this subsection is punishable by:

(1) a fine of not more than $500;

(2) confinement in the county jail for not more than one year; or

(3) both the fine and confinement. (H&S Code, Sec. 161.012.)

Source Law

Sec. 161.012. CRIMINAL PENALTIES. (a) A person commits an offense if the person violates Section 161.011. An offense under this subsection is punishable by confinement in the Texas Department of Criminal Justice for not more than two years, a fine of not more than $1,000, or both.

(b) A person commits an offense if the person knowingly gives evidence obtained in violation of Section 161.011 to the federal government or to an instrumentality of the federal government. An offense under this subsection is punishable by confinement in the county jail for not more than one year, a fine of not more than $500, or both.

CHAPTER 181A. MEDICAL OR MENTAL HEALTH RECORDS

Revised Law

Sec. 181A.001. DEFINITION. In this chapter, "health care provider" means a person who is licensed, certified, or otherwise authorized by state law to provide health care in the ordinary course of business or practice of a profession. (H&S Code, Sec. 161.201.)

Source Law

Sec. 161.201. DEFINITION. In this subchapter, "health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide or render health care in the ordinary course of business or practice of a profession.

Revisor's Note

Section 161.201, Health and Safety Code, defines "health care provider" to mean a person who is licensed, certified, or otherwise authorized to provide "or render" health care. The revised law omits the quoted language as unnecessary because, in this context, it is included within the meaning of "provide."

Revised Law

Sec. 181A.002. CONFLICTS OF LAW. To the extent of any conflict, this chapter controls over Section 611.0045 of this code, Section 159.006, Occupations Code, and any other provision that authorizes charging a fee to provide medical or mental health records. (H&S Code, Sec. 161.204.)

Source Law

Sec. 161.204. APPLICATION OF OTHER LAW. This subchapter controls over Section 611.0045 of this code and Section 159.006, Occupations Code, and any other provision that authorizes the charging of a fee for providing medical or mental health records.

Revisor's Note

Section 161.204, Health and Safety Code, states that this subchapter, revised as Chapter 181A, Health and Safety Code, controls over Section 611.0045, Health and Safety Code, Section 159.006, Occupations Code, and any other provision that authorizes fees for medical or mental health records. The revised law adds "to the extent of any conflict" for clarity and convenience of the reader because Chapter 181A only controls over those other provisions when a conflict occurs.

Revised Law

Sec. 181A.003. FEES. (a) This section applies only to disability benefits or other benefits or assistance under:

(1) Chapter 31, Human Resources Code;

(2) the state Medicaid program;

(3) Title II, the federal Social Security Act (42 U.S.C. Section 401 et seq.);

(4) Title XVI, the federal Social Security Act (42 U.S.C. Section 1382 et seq.);

(5) Title XVIII, the federal Social Security Act (42 U.S.C. Section 1395 et seq.);

(6) 38 U.S.C. Section 1101 et seq.; or

(7) 38 U.S.C. Section 1501 et seq.

(b) A health care provider or health care facility may not charge a fee for a medical or mental health record requested by a patient or former patient, or by an attorney or other authorized representative of the patient or former patient, for use in supporting:

(1) an application for disability benefits or other

benefits or assistance the patient or former patient may be eligible to receive based on that patient's or former patient's disability; or

(2) an appeal relating to the denial of the benefits or assistance described by Subdivision (1).

(c) A health care provider or health care facility may charge a fee for the medical or mental health record of a patient or former patient requested by a state or federal agency in relation to the patient's or former patient's:

(1) application for benefits or assistance under Subsection (b); or

(2) appeal relating to denial of the benefits or assistance under Subsection (b).

(d) A person, including a state or federal agency, that requests a record under this section shall include with the request a statement or document from the department or agency responsible for issuing the relevant benefits or assistance that confirms the application or appeal.

(e) A health care provider or health care facility is not required to provide without charge more than one complete record for a request received under this section for a patient or former patient receiving benefits under a program described by Subsection (a)(6) or (7). If additional material is added to the patient's or former patient's record, on request the health care provider or health facility shall supplement the record without charge.

(f) Subsection (e) does not affect a person's ability to receive a medical or mental health record relating to benefits received under a program described by Subsections (a)(1)-(5). (H&S Code, Sec. 161.202.)

Source Law

Sec. 161.202. FEES. (a) A health care provider or health care facility may not charge a fee for a medical or mental health record requested by a patient or former patient, or by an attorney or other authorized representative of the patient or former patient, for use in supporting an application for disability benefits or other benefits or assistance

the patient or former patient may be eligible to receive based on that patient's or former patient's disability, or an appeal relating to denial of those benefits or assistance under:

(1) Chapter 31, Human Resources Code;

(2) the state Medicaid program;

(3) Title II, the federal Social Security Act, as amended (42 U.S.C. Section 401 et seq.);

(4) Title XVI, the federal Social Security Act, as amended (42 U.S.C. Section 1382 et seq.);

(5) Title XVIII, the federal Social Security Act, as amended (42 U.S.C. Section 1395 et seq.);

(6) 38 U.S.C. Section 1101 et seq., as amended; or

(7) 38 U.S.C. Section 1501 et seq., as amended.

(b) A health care provider or health care facility may charge a fee for the medical or mental health record of a patient or former patient requested by a state or federal agency in relation to the patient or former patient's application for benefits or assistance under Subsection (a) or an appeal relating to denial of those benefits or assistance.

(c) A person, including a state or federal agency, that requests a record under this section shall include with the request a statement or document from the department or agency that administers the issuance of the assistance or benefits that confirms the application or appeal.

(d) A health care provider or health facility is not required to provide more than one complete record for a patient or former patient requested under Subsection (a)(6) or (7) without charge. If additional material is added to the patient or former patient's record, on request the health care provider or health facility shall supplement the record provided under Subsection (a)(6) or (7) without charge. This subsection does not affect the ability of a person to receive a medical or mental health record under Subsections (a)(1)-(5).

Revisor's Note

(1) Sections 161.202(a)(3), (4), (5), (6), and (7), Health and Safety Code, refer to Titles II, XVI, and XVIII of the federal Social Security Act, 38 U.S.C. Section 1101 et seq., and 38 U.S.C. Section 1501 et seq., respectively, "as amended." The revised law omits the quoted language because under Section 311.027, Government Code (Code Construction Act), a reference to a statute or rule applies to all reenactments, revisions, or amendments of the statute or rule, unless expressly provided otherwise.

(2) Section 161.202(b), Health and Safety Code, provides that a health care provider or health care

facility may charge a fee for certain medical records requested by a state or federal agency in relation to a patient or former patient's application for benefits or assistance under "Subsection (a)" or an appeal in relation to denial of those benefits or assistance. The relevant portion of Section 161.202(a) relating to an application for certain benefits or assistance or an appeal for denial of those benefits or assistance is revised in this chapter as Section 181A.003(b), and the revised law is drafted accordingly.

(3) Section 161.202(d), Health and Safety Code, provides that a health care provider or "health facility" is not required to provide without charge more than one complete record. The revised law substitutes "health care facility" for "health facility" for consistency in terminology used in this chapter.

Revised Law

Sec. 181A.004. DISTRIBUTION OF RECORDS. A health care provider or health care facility shall provide to the requestor a medical or mental health record requested under Section 181A.003 not later than the 30th day after the date on which the provider or facility receives the request. (H&S Code, Sec. 161.203.)

Source Law

Sec. 161.203. DISTRIBUTION OF RECORDS. A health care provider or health care facility shall provide to the requestor a medical or mental health record requested under Section 161.202 not later than the 30th day after the date on which the provider or facility receives the request.

CHAPTER 330. ABUSE, NEGLECT, AND ILLEGAL, UNPROFESSIONAL, OR UNETHICAL CONDUCT IN HEALTH CARE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 330.001. DEFINITIONS. In this chapter:

(1) "Abuse" has the meaning assigned by the federal

Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. Section 10801 et seq.).

(2) "Comprehensive medical rehabilitation" means the provision of rehabilitation services designed to improve or minimize an individual's physical or cognitive disabilities, maximize an individual's functional ability, or restore an individual's lost functional capacity through close coordination of services, communication, interaction, and integration among several professions with shared responsibility for achieving team treatment goals for the individual.

(3) "Hospital" has the meaning assigned by Section 241.003.

(4) "Illegal conduct" means conduct prohibited by law.

(5) "Inpatient mental health facility" has the meaning assigned by Section 571.003.

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

(7) "Mental health facility" has the meaning assigned by Section 571.003.

(8) "Neglect" has the meaning assigned by the federal Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. Section 10801 et seq.).

(9) "State health care regulatory agency" means a state agency that licenses a health care professional.

(10) "Treatment facility" has the meaning assigned by Section 464.001.

(11) "Unethical conduct" means conduct prohibited by the ethical standards adopted by:

(A) a state or national professional organization for the organization's respective profession; or

(B) rules established by the state licensing agency for the respective profession.

(12) "Unprofessional conduct" means conduct

prohibited under rules adopted by the state licensing agency for the respective profession. (H&S Code, Sec. 161.131.)

Source Law

Sec. 161.131. DEFINITIONS. In this subchapter:

(1) "Abuse" has the meaning assigned by the federal Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. Section 10801 et seq.).

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

(3) "Hospital" has the meaning assigned by Section 241.003.

(4) "Illegal conduct" means conduct prohibited by law.

(5) "Inpatient mental health facility" has the meaning assigned by Section 571.003.

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

(7) "Mental health facility" has the meaning assigned by Section 571.003.

(8) "Neglect" has the meaning assigned by the federal Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. Section 10801 et seq.).

(9) "State health care regulatory agency" means a state agency that licenses a health care professional.

(10) "Treatment facility" has the meaning assigned by Section 464.001.

(11) "Unethical conduct" means conduct prohibited by the ethical standards adopted by state or national professional organizations for their respective professions or by rules established by the state licensing agency for the respective profession.

(12) "Unprofessional conduct" means conduct prohibited under rules adopted by the state licensing agency for the respective profession.

Revisor's Note

Section 161.131(2), Health and Safety Code, uses the term "person" when referring to someone with physical or cognitive disabilities. Throughout this chapter, the revised law substitutes "individual" for "person" for clarity and consistency where the context makes clear the referenced person is a natural person and not an entity described by the definition of "person" provided by Section 311.005(2), Government

Code (Code Construction Act), which applies to this code.

SUBCHAPTER B. REPORTING ABUSE, NEGLECT, OR ILLEGAL, UNPROFESSIONAL, OR UNETHICAL CONDUCT

Revised Law

Sec. 330.051. SCOPE OF ABUSE. In this subchapter, "abuse" includes coercive or restrictive actions that are:

(1) illegal or not justified by the patient's condition; and

(2) in response to the patient's request for discharge or refusal of medication, therapy, or treatment. (H&S Code, Sec. 161.132(j).)

Source Law

> (j) In this section, "abuse" includes coercive or restrictive actions that are illegal or not justified by the patient's condition and that are in response to the patient's request for discharge or refusal of medication, therapy, or treatment.

Revisor's Note

Section 161.132(j), Health and Safety Code, provides a definition for the term "abuse" that applies in "this section." The relevant provisions of Section 161.132 of this code referencing the term "abuse" are revised as this subchapter, and the revised law is drafted accordingly.

Revised Law

Sec. 330.052. REPORTING REQUIREMENTS. (a) This section applies to an inpatient mental health facility, a treatment facility, or a hospital that provides comprehensive medical rehabilitation services.

(b) A person, including an employee, volunteer, or other person associated with a facility described by Subsection (a), who reasonably believes or who knows of information that would reasonably cause a person to believe the physical or mental health or welfare of a facility patient or client who is receiving chemical dependency, mental health, or rehabilitation services has been, is,

or will be adversely affected by abuse or neglect caused by any person shall as soon as possible report the information supporting the belief to:

(1) the agency that licenses the facility; or

(2) the appropriate state health care regulatory agency.

(c) An employee of or other person associated with a facility described by Subsection (a), including a health care professional, who reasonably believes or who knows of information that would reasonably cause a person to believe the facility or an employee of or health care professional associated with the facility has, is, or will be engaged in conduct that is or might be illegal, unprofessional, or unethical and that relates to the operation of the facility or mental health, chemical dependency, or rehabilitation services provided in the facility shall as soon as possible report the information supporting the belief to the:

(1) agency that licenses the facility; or

(2) appropriate state health care regulatory agency.

(d) The requirements prescribed by this section are in addition to the requirements provided by Chapter 261, Family Code, and Chapter 48, Human Resources Code. (H&S Code, Secs. 161.132(a), (b), (c).)

Source Law

Sec. 161.132. REPORTS OF ABUSE AND NEGLECT OR OF ILLEGAL, UNPROFESSIONAL, OR UNETHICAL CONDUCT. (a) A person, including an employee, volunteer, or other person associated with an inpatient mental health facility, a treatment facility, or a hospital that provides comprehensive medical rehabilitation services, who reasonably believes or who knows of information that would reasonably cause a person to believe that the physical or mental health or welfare of a patient or client of the facility who is receiving chemical dependency, mental health, or rehabilitation services has been, is, or will be adversely affected by abuse or neglect caused by any person shall as soon as possible report the information supporting the belief to the agency that licenses the facility or to the appropriate state health care regulatory agency.

(b) An employee of or other person associated with an inpatient mental health facility, a treatment facility, or a hospital that provides comprehensive medical rehabilitation services, including a health care professional, who reasonably believes or who

knows of information that would reasonably cause a person to believe that the facility or an employee of or health care professional associated with the facility has, is, or will be engaged in conduct that is or might be illegal, unprofessional, or unethical and that relates to the operation of the facility or mental health, chemical dependency, or rehabilitation services provided in the facility shall as soon as possible report the information supporting the belief to the agency that licenses the facility or to the appropriate state health care regulatory agency.

(c) The requirement prescribed by this section is in addition to the requirements provided by Chapter 261, Family Code, and Chapter 48, Human Resources Code.

Revisor's Note

Section 161.132(c), Health and Safety Code, states the requirement prescribed by "this section" is in addition to requirements under Chapter 261, Family Code, and Chapter 48, Human Resources Code. The only requirement prescribed by Section 161.132 is under Subsections (a) and (b) of that section, which require a report of abuse or neglect and a report of illegal, unprofessional, or unethical conduct. The revised law that retains the reference to "this section" because Sections 161.132(a) and (b), Health and Safety Code, are revised in this chapter as Section 330.052.

Revised Law

Sec. 330.053. DISCIPLINARY ACTION. The executive commissioner and each state health care regulatory agency by rule shall provide for appropriate disciplinary action against a health care professional who:

(1) is licensed by the agency; and

(2) fails to report as required by Section 330.052.

(H&S Code, Sec. 161.132(f).)

Source Law

(f) The executive commissioner by rule and each state health care regulatory agency by rule shall provide for appropriate disciplinary action against a health care professional licensed by the agency who fails to report as required by this section.

Revisor's Note

Section 161.132(f), Health and Safety Code,

requires certain agencies to prescribe appropriate disciplinary action against health care professionals who fail to report "as required by this section," meaning Section 161.132 of this code. The provisions of Section 161.132 relating to the duty to report certain information are Subsections (a) and (b) of that section, which are revised in this chapter as Section 330.052, and the revised law is drafted accordingly.

Revised Law

Sec. 330.054. CRIMINAL OFFENSE. (a) A person commits an offense if the person:

(1) intentionally, maliciously, or recklessly reports false material information under Section 330.052; or

(2) fails to report as required by Section 330.052(b).

(b) An offense under this section is a Class A misdemeanor. (H&S Code, Secs. 161.132(h), (i).)

Source Law

(h) A person commits an offense if the person:

(1) intentionally, maliciously, or recklessly reports false material information under this section; or

(2) fails to report as required by Subsection (a).

(i) An offense under Subsection (h) is a Class A misdemeanor.

Revisor's Note

(1) Section 161.132(h)(1), Health and Safety Code, provides an offense if a person reports false information under "this section," meaning Section 161.132 of this code. The provisions of Section 161.132 relating to the duty to report certain information are revised in this chapter as Section 330.052, and the revised law is drafted accordingly.

(2) Section 161.132(h)(2), Health and Safety Code, provides that a person commits an offense if they fail to report under "Subsection (a)," meaning the

duty to report abuse and neglect under Section 161.132(a) of this code. The portion of Section 161.132(a) related to that reporting duty is revised in this chapter as Section 330.052(b), and the revised law is drafted accordingly.

Revised Law

Sec. 330.055. IMMUNITY. (a) A person who in good faith reports under Section 330.052 is immune from civil or criminal liability arising from the report.

(b) The immunity provided by Subsection (a) extends to participation in an administrative or judicial proceeding resulting from the report but does not extend to a person who:

(1) caused the abuse or neglect; or

(2) engaged in the illegal, unprofessional, or unethical conduct. (H&S Code, Sec. 161.132(g).)

Source Law

(g) An individual who in good faith reports under this section is immune from civil or criminal liability arising from the report. That immunity extends to participation in an administrative or judicial proceeding resulting from the report but does not extend to an individual who caused the abuse or neglect or who engaged in the illegal, unprofessional, or unethical conduct.

Revisor's Note

Section 161.132(g), Health and Safety Code, provides immunity from civil and criminal liability arising from a report under "this section," meaning Section 161.132 of this code. The provisions of Section 161.132 relating to the duty to report certain information are Subsections (a) and (b) of that section, which are revised in this chapter as Section 330.052, and the revised law is drafted accordingly.

Revised Law

Sec. 330.056. RULES. The executive commissioner by rule for the commission and the department, and each state health care regulatory agency by rule, shall prescribe:

(1) procedures for:

(A) the investigation of reports received under Section 330.052; and

(B) coordination with and the referral of reports to law enforcement agencies or other appropriate agencies; and

(2) follow-up procedures to ensure that a report referred to another agency receives appropriate action. (H&S Code, Sec. 161.132(d).)

Source Law

> (d) The executive commissioner by rule for the department and the Department of Aging and Disability Services, and each state health care regulatory agency by rule, shall:
>
> (1) prescribe procedures for the investigation of reports received under Subsection (a) or (b) and for coordination with and referral of reports to law enforcement agencies or other appropriate agencies; and
>
> (2) prescribe follow-up procedures to ensure that a report referred to another agency receives appropriate action.

Revisor's Note

(1) Section 161.132(d), Health and Safety Code, refers to the Department of Aging and Disability Services. The Department of Aging and Disability Services was abolished September 1, 2017, in accordance with Section 531.0202(b), Government Code, which is executed law that expired September 1, 2023. The powers and duties of that department were transferred to the Health and Human Services Commission. Because the department no longer exists and the commission has assumed the powers and duties of the department, the revised law substitutes "commission" for "Department of Aging and Disability Services."

(2) Section 161.132(d), Health and Safety Code, refers to reports received under "Subsection (a) or (b)," meaning Sections 161.132(a) and (b) of this code. The provisions of Sections 161.132(a) and (b)

relating to the duty to report certain information are revised in Section 330.052 of this code, and the revised law is drafted accordingly.

SUBCHAPTER C. TRAINING REQUIREMENTS

Revised Law

Sec. 330.101. ANNUAL INSERVICE TRAINING. (a) The executive commissioner by rule shall require each inpatient mental health facility, treatment facility, or hospital that provides comprehensive medical rehabilitation services to annually provide as a condition of continued licensure at least eight hours of inservice training designed to assist employees and health care professionals associated with the facility in identifying:

(1) patient abuse or neglect; and

(2) illegal, unprofessional, or unethical conduct by or in the facility.

(b) The training required under Subsection (a) may be provided:

(1) in person; or

(2) through an electronic method that:

(A) is live, interactive, and instructor-led; and

(B) uses synchronous audiovisual interaction between the instructor and training participants.

(c) The rules must prescribe:

(1) minimum standards for the training program; and

(2) a means for monitoring compliance with the requirement.

(d) The department shall review and the executive commissioner shall modify the rules as necessary not later than the last month of each state fiscal year. (H&S Code, Sec. 161.133.)

Source Law

Sec. 161.133. INSERVICE TRAINING. (a) The executive commissioner by rule shall require each inpatient mental health facility, treatment facility, or hospital that provides comprehensive medical rehabilitation services to annually provide as a

condition of continued licensure a minimum of eight hours of inservice training designed to assist employees and health care professionals associated with the facility in identifying patient abuse or neglect and illegal, unprofessional, or unethical conduct by or in the facility.

(a-1) The training required under Subsection (a) may be provided:

(1) in person; or

(2) through a live, interactive, instructor-led, and electronic method that uses synchronous audiovisual interaction between the instructor and employees.

(b) The rules must prescribe:

(1) minimum standards for the training program; and

(2) a means for monitoring compliance with the requirement.

(c) The department shall review and the executive commissioner shall modify the rules as necessary not later than the last month of each state fiscal year.

Revisor's Note

Section 161.133(a-1), Health and Safety Code, refers to training methods and interactions between the instructor and "employees" that satisfy the training required by Subsection (a) of Section 161.133 of this code. The revised law substitutes "training participants" for "employees" because the use of the term "employees" is clearly a drafting error. The training standards apply to interactions between the instructor and all training participants referenced in Section 161.133(a), including health care professionals.

SUBCHAPTER D. RETALIATION PROHIBITED

Revised Law

Sec. 330.151. EFFECT OF LAW. This subchapter does not abrogate any other right to sue or interfere with any other cause of action. (H&S Code, Secs. 161.134(i), 161.135(g).)

Source Law

[Sec. 161.134]

(i) This section does not abrogate any other right to sue or interfere with any other cause of action.

[Sec. 161.135]

(g) This section does not abrogate any other right to sue or interfere with any other cause of action.

Revisor's Note

Sections 161.134(i) and 161.135(g), Health and Safety Code, provide that "this section" does not abrogate any other right to sue or interfere with any other cause of action. The provisions of Sections 161.134 and 161.135 of this code relating to the right to sue a facility that retaliates against a person who reports a violation of the law are revised as this subchapter, and the revised law is drafted accordingly.

Revised Law

Sec. 330.152. PROHIBITED RETALIATION AGAINST EMPLOYEES; CIVIL LIABILITY. (a) A hospital, mental health facility, or treatment facility may not suspend or terminate the employment of or discipline or otherwise discriminate against an employee for reporting to the employee's supervisor, a facility administrator, a state regulatory agency, or a law enforcement agency a violation of law, including a violation of this chapter, a rule adopted under this chapter, or a rule of another agency.

(b) A hospital, mental health facility, or treatment facility that violates Subsection (a) is liable to the individual discriminated against. An individual who has been discriminated against in violation of Subsection (a) may bring an action for injunctive relief, damages, or both.

(c) A plaintiff bringing an action under this section has the burden of proof, except that it is a rebuttable presumption that the plaintiff's employment was suspended or terminated, or that the employee was disciplined or discriminated against, for making a report related to a violation if the suspension, termination, discipline, or discrimination occurs before the 60th day after the date on which the plaintiff made a report in good faith.

(d) An action under this section may be brought in the district court of the county in which:

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

(2) the defendant conducts business.

(e) An individual who alleges a violation of Subsection (a) must bring an action under this section before the 180th day after the date the alleged violation occurred or was discovered by the employee through the use of reasonable diligence. (H&S Code, Secs. 161.134(a), (b), (f), (g), (h).)

Source Law

> Sec. 161.134. RETALIATION AGAINST EMPLOYEES PROHIBITED. (a) A hospital, mental health facility, or treatment facility may not suspend or terminate the employment of or discipline or otherwise discriminate against an employee for reporting to the employee's supervisor, an administrator of the facility, a state regulatory agency, or a law enforcement agency a violation of law, including a violation of this chapter, a rule adopted under this chapter, or a rule of another agency.
>
> (b) A hospital, mental health facility, or treatment facility that violates Subsection (a) is liable to the person discriminated against. A person who has been discriminated against in violation of Subsection (a) may sue for injunctive relief, damages, or both.
>
> (f) A plaintiff suing under this section has the burden of proof, except that it is a rebuttable presumption that the plaintiff's employment was suspended or terminated, or that the employee was disciplined or discriminated against, for making a report related to a violation if the suspension, termination, discipline, or discrimination occurs before the 60th day after the date on which the plaintiff made a report in good faith.
>
> (g) A suit under this section may be brought in the district court of the county in which:
>
> (1) the plaintiff was employed by the defendant; or
>
> (2) the defendant conducts business.
>
> (h) A person who alleges a violation of Subsection (a) must sue under this section before the 180th day after the date the alleged violation occurred or was discovered by the employee through the use of reasonable diligence.

Revisor's Note

(1) Section 161.134(a), Health and Safety Code, provides that a hospital, mental health facility, or treatment facility may not terminate or discipline an employee for reporting certain violations, including a violation of "this chapter" or a rule adopted under "this chapter." It is clear from the context that the reference to "this chapter" is a drafting error and

that the legislature intended to refer to "this subchapter," meaning Subchapter L, Chapter 161, Health and Safety Code, because the relevant provisions governing abuse, neglect, and unprofessional or unethical conduct in health care facilities are contained in that subchapter. Subchapter L is revised as Chapter 330 of this code, and the revised law is drafted accordingly.

(2) Sections 161.134(f), (g), and (h), Health and Safety Code, refer to a suit brought under "this section," meaning Section 161.134 of this code. The revised law retains the reference to "this section" because the provisions of Section 161.134 relating to a plaintiff's ability to sue for discrimination are revised in this section.

(3) Section 161.134, Health and Safety Code, provides in Subsection (b) that a person may "sue" for injunctive relief and damages, in Subsection (f) that a plaintiff "suing" under that section has the burden of proof, and in Subsection (g) that a "suit" may be brought in certain district courts. Throughout this chapter, the revised law substitutes "bring an action," "bringing an action," and "action" for the quoted language, respectively, because the substituted language is consistent with modern usage in laws relating to civil actions.

Revised Law

Sec. 330.153. PROHIBITED RETALIATION AGAINST NONEMPLOYEES; CIVIL LIABILITY. (a) A hospital, mental health facility, or treatment facility may not retaliate against a person who is not an employee for reporting a violation of law, including a violation of this chapter, a rule adopted under this chapter, or a rule of another agency.

(b) A hospital, mental health facility, or treatment

facility that violates Subsection (a) is liable to the person retaliated against. A person who has been retaliated against in violation of Subsection (a) may bring an action for injunctive relief, damages, or both.

(c) A person bringing an action under this section has the burden of proof, except that it is a rebuttable presumption that the plaintiff was retaliated against if:

(1) before the 60th day after the date on which the plaintiff made a report in good faith, the hospital, mental health facility, or treatment facility:

(A) discriminates in violation of Section 330.152 against a relative who is a facility employee;

(B) transfers, disciplines, suspends, terminates, or otherwise discriminates against the person or a relative who is a facility volunteer or is employed under the patient work program administered by the department;

(C) commits or threatens to commit, without justification, the person or a relative of the person; or

(D) transfers, discharges, punishes, or restricts the privileges of the person or a relative of the person who is receiving inpatient or outpatient services in the facility; or

(2) a person expected to testify on behalf of the plaintiff is intentionally made unavailable through an action of the facility, including a discharge, resignation, or transfer.

(d) An action under this section may be brought in the district court of the county in which:

(1) the plaintiff received care or treatment; or

(2) the defendant conducts business. (H&S Code, Secs. 161.135(a), (b), (c), (f).)

Source Law

Sec. 161.135. RETALIATION AGAINST NONEMPLOYEES PROHIBITED. (a) A hospital, mental health facility, or treatment facility may not retaliate against a person who is not an employee for reporting a violation of law, including a violation of this chapter, a rule

adopted under this chapter, or a rule of another agency.

(b) A hospital, mental health facility, or treatment facility that violates Subsection (a) is liable to the person retaliated against. A person who has been retaliated against in violation of Subsection (a) may sue for injunctive relief, damages, or both.

(c) A person suing under this section has the burden of proof, except that it is a rebuttable presumption that the plaintiff was retaliated against if:

(1) before the 60th day after the date on which the plaintiff made a report in good faith, the hospital, mental health facility, or treatment facility:

(A) discriminates in violation of Section 161.134 against a relative who is an employee of the facility;

(B) transfers, disciplines, suspends, terminates, or otherwise discriminates against the person or a relative who is a volunteer in the facility or who is employed under the patient work program administered by the department;

(C) commits or threatens to commit, without justification, the person or a relative of the person; or

(D) transfers, discharges, punishes, or restricts the privileges of the person or a relative of the person who is receiving inpatient or outpatient services in the facility; or

(2) a person expected to testify on behalf of the plaintiff is intentionally made unavailable through an action of the facility, including a discharge, resignation, or transfer.

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

(1) the plaintiff received care or treatment; or

(2) the defendant conducts business.

Revisor's Note

(1) Section 161.135(a), Health and Safety Code, provides that a hospital, mental health facility, or treatment facility may not retaliate against a person for reporting a violation of "this chapter" or a rule adopted under "this chapter." It is clear from the context that the reference to "this chapter" is a drafting error and that the legislature intended to refer to "this subchapter," meaning Subchapter L, Chapter 161, Health and Safety Code, for the reason stated in Revisor's Note (1) to Section 330.152. The revised law is drafted accordingly.

(2) Sections 161.135(c) and (f), Health and Safety Code, refer to a suit brought under "this

section," meaning Section 161.135 of this code. The revised law retains the reference to "this section" because the provisions of Section 161.135 relating to a plaintiff's ability to sue for being discriminated against are revised as this section.

Revised Law

Sec. 330.154. DAMAGES. (a) A plaintiff who prevails in an action under this subchapter may recover:

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

(2) exemplary damages; and

(3) reasonable attorney fees.

(b) In addition to amounts recovered under Subsection (a), a plaintiff is entitled to, if applicable:

(1) reinstatement in the plaintiff's former position;

(2) compensation for lost wages; and

(3) reinstatement of lost fringe benefits or seniority rights. (H&S Code, Secs. 161.134(c), (d), (e), 161.135(d), (e).)

Source Law

[Sec. 161.134]

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

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

(e) In addition to amounts recovered under Subsections (c) and (d), a plaintiff is entitled to, if applicable:

(1) reinstatement in the plaintiff's former position;

(2) compensation for lost wages; and

(3) reinstatement of lost fringe benefits or seniority rights.

[Sec. 161.135]

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

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

Revisor's Note

Sections 161.134(c) and 161.135(d), Health and Safety Code, provide that a plaintiff who prevails in a suit "under this section," meaning a suit arising from certain prohibited retaliatory actions by a facility, may recover certain damages. The provisions of Sections 161.134 and 161.135 of this code relating to the right to sue a facility for certain prohibited retaliatory actions are revised in pertinent part in this subchapter, and the revised law is drafted accordingly.

SUBCHAPTER E. INFORMATIONAL MATERIALS

Revised Law

Sec. 330.201. NOTICE OF DUTY TO REPORT. (a) Each hospital, inpatient mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the hospital or facility that is readily available to patients, residents, volunteers, employees, and visitors a statement of the duty to report under Section 330.052.

(b) The statement must:

(1) be in English and in a second language; and

(2) contain a toll-free telephone number that a person may call to report under Section 330.052. (H&S Code, Sec. 161.132(e).)

Source Law

(e) Each hospital, inpatient mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, volunteers, employees, and visitors a statement of the duty to report under this section. The statement must be in English and in a second language and contain a toll-free telephone number that a person may call to report.

Revisor's Note

Section 161.132(e), Health and Safety Code, requires certain health care facilities to display a statement informing individuals of the duty to report

"under this section," meaning the duty to report abuse, neglect, and illegal, unprofessional, or unethical conduct. The portion of Section 161.132 of this code providing a duty to report that conduct is revised in this chapter as Section 330.052, and the revised law is drafted accordingly.

Revised Law

Sec. 330.202. NOTICE OF PROHIBITED RETALIATION. (a) Each hospital, mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the hospital or facility that is readily available to patients, residents, employees, and visitors:

(1) a statement that employees and staff are protected from discrimination or retaliation for reporting a violation of law; and

(2) a statement that nonemployees are protected from discrimination or retaliation for reporting a violation of law.

(b) The statements described by Subsection (a):

(1) may be combined into one sign; and

(2) must be in English and in a second language. (H&S Code, Secs. 161.134(j), 161.135(h).)

Source Law

[Sec. 161.134]

(j) Each hospital, mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, employees, and visitors a statement that employees and staff are protected from discrimination or retaliation for reporting a violation of law. The statement must be in English and in a second language.

[Sec. 161.135]

(h) Each hospital, mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, employees, and visitors a statement that nonemployees are protected from discrimination or retaliation for reporting a violation of law. The statement must be in English and in a second language. The sign may be combined with the sign required by Section 161.134(j).

Revised Law

Sec. 330.203. BROCHURE ON PROHIBITED SEXUAL EXPLOITATION. (a) In this section, "mental health services provider" has the meaning assigned by Section 81.001, Civil Practice and Remedies Code.

(b) A state health care regulatory agency by rule may require a mental health services provider licensed by that agency to provide a standardized written brochure, in wording a patient can understand, that summarizes the law prohibiting sexual exploitation of patients. The brochure must be available in English and in a second language.

(c) The brochure must include:

(1) procedures for filing a complaint relating to sexual exploitation, including any available toll-free telephone number; and

(2) the rights of a victim of sexual exploitation. (H&S Code, Sec. 161.136.)

Source Law

> Sec. 161.136. BROCHURE RELATING TO SEXUAL EXPLOITATION. (a) A state health care regulatory agency by rule may require a mental health services provider licensed by that agency to provide a standardized written brochure, in wording a patient can understand, that summarizes the law prohibiting sexual exploitation of patients. The brochure must be available in English and in a second language.
>
> (b) The brochure shall include:
>
> (1) procedures for filing a complaint relating to sexual exploitation, including any toll-free telephone number available; and
>
> (2) the rights of a victim of sexual exploitation.
>
> (c) In this section, "mental health services provider" has the meaning assigned by Section 81.001, Civil Practice and Remedies Code.

SUBCHAPTER F. DISCIPLINARY ACTION

Revised Law

Sec. 330.251. DISCIPLINARY ACTION BY REGULATORY AGENCY. In addition to the penalties prescribed by this chapter, a violation of a provision of this chapter by an individual or facility that is licensed by a state health care regulatory agency is subject to the same consequence as a violation of the licensing law applicable to

the individual or facility or of a rule adopted under that licensing law. (H&S Code, Sec. 161.137.)

Source Law

> Sec. 161.137. PENALTIES. In addition to the penalties prescribed by this subchapter, a violation of a provision of this subchapter by an individual or facility that is licensed by a state health care regulatory agency is subject to the same consequence as a violation of the licensing law applicable to the individual or facility or of a rule adopted under that licensing law.

CHAPTER 377. LEAD EXPOSURE

Revised Law

Sec. 377.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of State Health Services.

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

Revisor's Note

The definitions of "department" and "executive commissioner" are added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definitions.

Revised Law

Sec. 377.002. TESTS FOR LEAD EXPOSURE. (a) At the request of an attending physician, the department shall conduct tests for lead poisoning if the physician suspects an individual has been exposed to lead and may have been harmed by that exposure.

(b) The department may only charge for the cost to the department of conducting the test.

(c) The executive commissioner shall adopt rules to implement this section. (H&S Code, Sec. 161.101.)

Source Law

> Sec. 161.101. TESTS FOR EXPOSURE TO LEAD. (a) At the request of an attending physician, the department shall conduct tests for lead poisoning if the physician suspects that a person has been exposed to lead and that the person may have been harmed by that exposure.

(b) The department shall charge only for the cost to the department of conducting the test.

(c) The executive commissioner shall adopt rules to implement this section.

Revisor's Note

Section 161.101(a), Health and Safety Code, refers to a "person" that a physician suspects has been exposed to lead. The revised law substitutes "individual" for "person" for the reason stated in the revisor's note to Section 330.001.

CHAPTER 378. ASBESTOS INSTALLATION

Revised Law

Sec. 378.001. DEFINITIONS. In this chapter:

(1) "Asbestos" means the asbestiform varieties of chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite.

(2) "Contractor" means a person who constructs, repairs, or maintains a public building as an independent contractor. The term includes a subcontractor.

(3) "Department" means the Department of State Health Services.

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

(5) "Public building" means a building used or to be used for purposes that provide for public access or occupancy. The term does not include:

(A) an industrial facility to which access is limited principally to facility employees because of processes or functions that are hazardous to human safety or health;

(B) a federal building or installation;

(C) a private residence;

(D) an apartment building with not more than four dwelling units; or

(E) a manufacturing facility or building that is part of a facility to which access is limited to workers and invited guests under controlled conditions. (H&S Code, Sec. 161.401; New.)

Source Law

Sec. 161.401. DEFINITIONS. In this subchapter:

(1) "Asbestos" means the asbestiform varieties of chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite.

(2) "Contractor" means a person who constructs, repairs, or maintains a public building as an independent contractor. The term includes a subcontractor.

(3) "Public building" means a building used or to be used for purposes that provide for public access or occupancy. The term does not include:

(A) an industrial facility to which access is limited principally to employees of the facility because of processes or functions that are hazardous to human safety or health;

(B) a federal building or installation;

(C) a private residence;

(D) an apartment building with not more than four dwelling units; or

(E) a manufacturing facility or building that is part of a facility to which access is limited to workers and invited guests under controlled conditions.

Revisor's Note

The definitions of "department" and "executive commissioner" are added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definitions.

Revised Law

Sec. 378.002. MATERIAL SAFETY DATA SHEET REQUIRED; PROHIBITED ASBESTOS INSTALLATION OR REINSTALLATION. (a) A person may not install materials or replacement parts in a public building if:

(1) the person does not obtain a required material safety data sheet; or

(2) the materials or parts, according to the material safety data sheet, contain more than one percent asbestos and an alternative material or part exists.

(b) The executive commissioner shall adopt rules designating the materials or replacement parts for which a person must obtain a material safety data sheet under Subsection (a) before installing the materials or parts in a public building. (H&S

Code, Sec. 161.402.)

Source Law

Sec. 161.402. MATERIAL SAFETY DATA SHEET REQUIRED; ASBESTOS INSTALLATION OR REINSTALLATION PROHIBITED. The executive commissioner shall adopt rules designating the materials or replacement parts for which a person must obtain a material safety data sheet before installing the materials or parts in a public building. A person may not install materials or replacement parts in a public building if:

(1) the person does not obtain a required material safety data sheet; or

(2) the materials or parts, according to the material safety data sheet, contain more than one percent asbestos and there is an alternative material or part.

Revisor's Note

Section 161.402, Health and Safety Code, provides that the executive commissioner of the Health and Human Services Commission shall adopt rules designating the materials and replacement parts for which a person must obtain a "material safety data sheet." The portion of Section 161.402 that introduces the requirement for the material safety data sheet is revised in this chapter as Section 378.002(a), and the revised law adds a cross-reference to that subsection for the convenience of the reader.

Revised Law

Sec. 378.003. INJUNCTIVE OR OTHER RELIEF. (a) The attorney general or the appropriate district or county attorney, in the name of the state, may bring an action for an injunction or other process against a contractor who is violating or threatening to violate this chapter.

(b) An action under this section may be brought in a district court of:

(1) Travis County; or

(2) a county in which any part of the violation or threatened violation occurs.

(c) The district court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary

restraining order, temporary injunction, or permanent injunction. (H&S Code, Sec. 161.403.)

Source Law

> Sec. 161.403. INJUNCTION. (a) The attorney general or the appropriate district or county attorney, in the name of the state, may bring an action for an injunction or other process against a contractor who is violating or threatening to violate this subchapter. The action may be brought in a district court of Travis County or of a county in which any part of the violation or threatened violation occurs.
>
> (b) The district court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

Revised Law

Sec. 378.004. CIVIL PENALTY. (a) A contractor who violates this chapter is subject to a civil penalty not to exceed $10,000 a day for each violation. Each day a violation continues is a separate violation for purposes of imposing a civil penalty under this section.

(b) In determining the amount of the civil penalty, the court shall consider:

(1) any previous violation by the contractor;

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

(3) whether the health and safety of the public was threatened by the violation;

(4) the demonstrated good faith of the contractor; and

(5) the amount necessary to deter a future violation.

(c) The attorney general, or the appropriate district or county attorney, in the name of the state, may bring an action under this section in a district court of:

(1) Travis County; or

(2) a county in which any part of the violation occurs.

(d) The party bringing the action may:

(1) combine an action to assess and recover civil penalties with an action for injunctive relief brought under Section 378.003; or

(2) file an action to assess and recover civil penalties independently of an action for injunctive relief.

(e) A penalty collected under this section by the attorney general shall be deposited in the state treasury to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the action was brought. (H&S Code, Sec. 161.404.)

Source Law

Sec. 161.404. CIVIL PENALTY. (a) A contractor who violates this subchapter is subject to a civil penalty not to exceed $10,000 a day for each violation. Each day of violation constitutes a separate violation for purposes of penalty assessment.

(b) In determining the amount of the civil penalty, the court shall consider:

(1) the contractor's previous violations;

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

(3) whether the health and safety of the public was threatened by the violation;

(4) the demonstrated good faith of the contractor; and

(5) the amount necessary to deter future violations.

(c) The attorney general or the appropriate district or county attorney, in the name of the state, may bring an action under this section in a district court of Travis County or of a county in which any part of the violation occurs.

(d) The party bringing the suit may:

(1) combine a suit to assess and recover civil penalties with a suit for injunctive relief brought under Section 161.403; or

(2) file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

(e) A penalty collected under this section by the attorney general shall be deposited in the state treasury to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

Revisor's Note

Section 161.404, Health and Safety Code, provides in Subsection (d) that a party bringing a "suit" may combine certain suits into one suit or file the suits independently and provides in Subsection (e) that a penalty collected in a "suit" brought by a district or county attorney shall be deposited to the credit of the

county in which the "suit" was heard. Throughout this chapter, the revised law substitutes "action" for "suit" for the reason stated in Revisor's Note (3) to Section 330.152.

Revised Law

Sec. 378.005. RECOVERY OF COSTS. The party bringing an action under Section 378.003 or 378.004 may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including investigation costs, court costs, reasonable attorney's fees, witness fees, and deposition expenses. (H&S Code, Sec. 161.405.)

Source Law

> Sec. 161.405. RECOVERY OF COSTS. The party bringing a suit under Section 161.403 or 161.404 may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including investigation costs, court costs, reasonable attorney's fees, witness fees, and deposition expenses.

Revised Law

Sec. 378.006. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty on a contractor who violates this chapter.

(b) The amount of the penalty may not exceed $10,000 a day for each violation. Each day a violation continues is a separate violation for the purpose of imposing a penalty under this section.

(c) The penalty amount must be based on:

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

(2) the contractor's history of any previous violation;

(3) the amount necessary to deter a future violation;

(4) the contractor's efforts to correct the violation; and

(5) any other matter that justice may require.

(d) The enforcement of the penalty may be stayed during the time the order is under judicial review if the contractor:

(1) pays the penalty to the clerk of the court; or

(2) files a supersedeas bond with the court in the amount of the penalty.

(e) A contractor who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the department to contest the affidavit as provided by those rules.

(f) The attorney general may bring an action to collect the penalty under this section.

(g) A proceeding to impose an administrative penalty under this section is considered to be a contested case under Chapter 2001, Government Code. (H&S Code, Sec. 161.406.)

Source Law

> Sec. 161.406. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty on a contractor who violates this subchapter.
>
> (b) The amount of the penalty may not exceed $10,000 a day for a violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.
>
> (c) The penalty amount shall be based on:
>
> (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
>
> (2) the history of previous violations;
>
> (3) the amount necessary to deter a future violation;
>
> (4) efforts to correct the violation; and
>
> (5) any other matter that justice may require.
>
> (d) The enforcement of the penalty may be stayed during the time the order is under judicial review if the contractor pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A contractor who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the department to contest the affidavit as provided by those rules.
>
> (e) The attorney general may sue to collect the penalty.
>
> (f) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Revisor's Note

Section 161.406(e), Health and Safety Code,

provides that the attorney general may "sue" to collect a penalty under that section. The revised law substitutes "bring an action" for "sue" for the reason stated in Revisor's Note (3) to Section 330.152.

Revised Law

Sec. 378.007. REMEDIES CUMULATIVE. The civil penalty, administrative penalty, and injunction authorized by this chapter are in addition to any other civil, administrative, or criminal action provided by law. (H&S Code, Sec. 161.407.)

Source Law

> Sec. 161.407. REMEDIES CUMULATIVE. The civil penalty, administrative penalty, and injunction authorized by this subchapter are in addition to any other civil, administrative, or criminal action provided by law.

CHAPTER 693A. ALLOCATION OF ORGANS AVAILABLE FOR TRANSPLANT

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 693A.001. DEFINITIONS. In this chapter:

(1) "Auxiliary aids and services" means:

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) provision of information in a format readily accessible and understandable to individuals with cognitive, neurological, developmental, or intellectual disabilities;

(D) acquisition or modification of equipment or devices; and

(E) other services and actions similar to those described by Paragraphs (A), (B), (C), and (D).

(2) "Disability" has the meaning assigned by the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

(3) "Health care facility" means a facility licensed, certified, or otherwise authorized to provide health care in the ordinary course of business. The term includes a hospital, nursing facility, laboratory, intermediate care facility, mental health facility, transplant center, and any other facility for individuals with intellectual or developmental disabilities.

(4) "Health care provider" means an individual or facility licensed, certified, or otherwise authorized to provide health care in the ordinary course of business or professional practice. The term includes a physician, hospital, nursing facility, laboratory, intermediate care facility, mental health facility, transplant center, and any other facility for individuals with intellectual or developmental disabilities.

(5) "Organ procurement organization" means an organization with a defined service area including all or part of this state that is a qualified organ procurement organization under 42 U.S.C. Section 273 and is currently certified or recertified in accordance with that federal law.

(6) "Organ transplant-related services" includes transplant-related counseling, information, and treatment. (H&S Code, Secs. 161.471, 161.472(a) (part), 161.473(d) (part), (e) (part), and (f) (part); New.)

Source Law

Sec. 161.471. DEFINITIONS. In this subchapter:

(1) "Auxiliary aids and services" means:

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) provision of information in a format readily accessible and understandable to individuals with cognitive, neurological, developmental, or intellectual disabilities;

(D) acquisition or modification of equipment or devices; and

(E) other services and actions similar to those described by Paragraphs (A), (B), (C), and (D).

(2) "Disability" has the meaning assigned by the Americans with Disabilities Act of 1990 (42

U.S.C. Section 12101 et seq.).

(3) "Health care facility" means a facility licensed, certified, or otherwise authorized to provide health care in the ordinary course of business, including a hospital, nursing facility, laboratory, intermediate care facility, mental health facility, transplant center, and any other facility for individuals with intellectual or developmental disabilities.

(4) "Health care provider" means an individual or facility licensed, certified, or otherwise authorized to provide health care in the ordinary course of business or professional practice, including a physician, hospital, nursing facility, laboratory, intermediate care facility, mental health facility, transplant center, and any other facility for individuals with intellectual or developmental disabilities.

(5) "Organ procurement organization" means an organization that is a qualified organ procurement organization under 42 U.S.C. Section 273 that is currently certified or recertified in accordance with that federal law.

[Sec. 161.472]

(a) . . . each organ procurement organization that has a defined service area that includes all or part of this state . . . .

[Sec. 161.473]

(d) . . . [to allow individuals with a disability access to] organ transplant-related services, including transplant-related counseling, information, or treatment, ...

(e) . . . [to allow an individual with a known disability access to] organ transplant-related services, including transplant-related counseling, information, or treatment, ...

(f) . . . [to an individual with a known disability seeking] organ transplant-related services, including organ transplant-related counseling, information, or treatment, ...

Revisor's Note

The definition of "organ transplant-related services" is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

SUBCHAPTER B. KIDNEY SHARING POOL

Revised Law

Sec. 693A.051. FORMATION OF KIDNEY SHARING POOL. Under the system for allocating kidneys available for transplant in this state, to the extent allowed by federal law, a statewide pool of 20 percent of the kidneys from deceased donors of each blood type recovered by each organ procurement organization is provided to a special pool for redistribution among patients with the longest

transplantation wait times in this state. (H&S Code, Sec. 161.472(a) (part).)

Source Law

> Sec. 161.472. FORMATION OF KIDNEY SHARING POOL AND DISTRIBUTION TO LONGEST WAITING PATIENTS. (a) Under the system for allocating kidneys available for transplant in this state, to the extent allowed by federal law, a statewide pool of 20 percent of the kidneys from deceased donors of each blood type recovered by each organ procurement organization . . . is provided to a special pool for redistribution to patients who have been waiting the longest for transplantation in this state.

Revised Law

Sec. 693A.052. KIDNEY DISTRIBUTION TO PATIENTS. (a) The pool established under Section 693A.051 shall include medically eligible patients who:

(1) have low panel reactive antibodies of less than 10 percent; and

(2) in terms of accumulated wait time, comprise the top 20 percent of all patients waiting for transplantation in this state.

(b) The order of kidney distribution to patients qualified for placement in the pool under Subsection (a) is based solely on the length of wait time for each patient.

(c) As a patient in the pool receives a transplant, the patient shall be replaced in the pool, in turn, by the patient with the next longest wait time.

(d) Only accumulated wait time may be used to establish priority access to the pool.

(e) An organ procurement organization participating in the pool established under Section 693A.051 may not assign points for a human leukocyte antigen (HLA) match, except for a six antigen match with zero antigen mismatch. (H&S Code, Secs. 161.472(b), (c), (d).)

Source Law

> (b) Medically eligible patients with low panel reactive antibodies of less than 10 percent who, in terms of accumulated waiting time, comprise the top 20 percent of all patients waiting will be put in a pool.

As one of those patients receives a transplant, the patient will be replaced in the pool, in turn, by the next longest waiting patient. Only accumulated waiting time will be used to establish priority access to the pool.

(c) With the exception of assigning points for a six antigen match with zero antigen mismatch, assigning points for human leukocyte antigen (HLA) match will be eliminated by organ procurement organizations that are participating in the pool established under Subsection (a).

(d) After a patient has qualified for entry into the pool established under Subsection (b), the order of distribution is based solely on the length of time each patient has waited.

Revisor's Note

Section 161.472(c), Health and Safety Code, refers to organ procurement organizations participating in the pool established "under Subsection (a)." Section 161.472(a) of this code, relating to the formation of the kidney sharing pool, is revised in this chapter in pertinent part as Section 693A.051, and the revised law is drafted accordingly.

Revised Law

Sec. 693A.053. ADMINISTRATION OF KIDNEY SHARING POOL. (a) The federal Organ Procurement and Transplantation Network shall manage the use of the pool established by this subchapter.

(b) A panel of appropriate physician specialists of Texas' Organ Procurement and Transplantation Network members shall monitor the listing of patients and the appropriate use of the pool. (H&S Code, Secs. 161.472(e), (f).)

Source Law

(e) Use of the pools will be managed by the federal Organ Procurement and Transplantation Network.

(f) A panel of appropriate physician specialists of Texas' Organ Procurement and Transplantation Network members will monitor the listing of patients and the appropriate use of the pools.

SUBCHAPTER C. ORGAN TRANSPLANT DISCRIMINATION PROHIBITED

Revised Law

Sec. 693A.101. APPLICABILITY. (a) This subchapter applies to each stage of the organ transplant process.

(b) This subchapter does not require a referral or

recommendation for, or the performance of, a medically inappropriate organ transplant. (H&S Code, Secs. 161.473(b) (part), (h), 161.474(b) (part), (c).)

Source Law

[Sec. 161.473]

(b) . . . This section does not require a referral or recommendation for, or the performance of, a medically inappropriate organ transplant.

(h) This section applies to each stage of the organ transplant process.

[Sec. 161.474]

(b) . . . This section does not require a referral or recommendation for, or the performance of, a medically inappropriate organ transplant.

(c) This section applies to each stage of the organ transplant process.

Revised Law

Sec. 693A.102. PROHIBITED DISCRIMINATION BASED ON DISABILITY. (a) A health care provider may not, solely based on an individual's disability:

(1) determine the individual is ineligible to receive an organ transplant;

(2) deny medical or other services related to an organ transplant, including evaluation, surgery, counseling, and postoperative treatment;

(3) refuse to refer the individual to a transplant center or other related specialist for evaluation or receipt of an organ transplant;

(4) refuse to place the individual on an organ transplant waiting list; or

(5) place the individual at a position lower in priority on the list than the position the individual would have been placed if not for the individual's disability.

(b) Notwithstanding Subsection (a), a health care provider may consider an individual's disability when making a treatment recommendation or decision solely to the extent that a physician, following an individualized evaluation of the potential transplant recipient, determines the disability is medically significant to

the organ transplant.

(c) A health care provider may not consider an individual's inability to independently comply with post-transplant medical requirements as medically significant for the purposes of Subsection (b) if the individual has:

(1) a known disability; and

(2) the necessary support system to assist the individual in reasonably complying with the requirements.

(d) It is not a violation of this section if:

(1) a physician in good faith determines an individual's disability is medically significant to the organ transplant, as described by Subsection (b); or

(2) a health care provider in good faith makes a treatment recommendation or decision based on a physician's determination that an individual's disability is medically significant to the organ transplant, as described by Subsection (b).

(e) A health care provider shall comply with the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) to the extent that Act applies to a health care provider. This subsection may not be construed to require a health care provider to comply with that Act if the Act does not otherwise require the health care provider's compliance. (H&S Code, Secs. 161.473(a), (b) (part), (c), (g), (j), (k).)

Source Law

Sec. 161.473. DISCRIMINATION ON BASIS OF DISABILITY PROHIBITED. (a) A health care provider may not, solely on the basis of an individual's disability:

(1) determine an individual is ineligible to receive an organ transplant;

(2) deny medical or other services related to an organ transplant, including evaluation, surgery, counseling, and postoperative treatment;

(3) refuse to refer the individual to a transplant center or other related specialist for evaluation or receipt of an organ transplant; or

(4) refuse to place the individual on an organ transplant waiting list or place the individual at a position lower in priority on the list than the position the individual would have been placed if not for the individual's disability.

(b) Notwithstanding Subsection (a), a health

care provider may consider an individual's disability when making a treatment recommendation or decision solely to the extent that a physician, following an individualized evaluation of the potential transplant recipient, determines the disability is medically significant to the organ transplant. . . .

(c) A health care provider may not consider an individual's inability to independently comply with post-transplant medical requirements as medically significant for the purposes of Subsection (b) if the individual has:

(1) a known disability; and

(2) the necessary support system to assist the individual in reasonably complying with the requirements.

(g) A health care provider shall comply with the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) to the extent that Act applies to a health care provider. This subsection may not be construed to require a health care provider to comply with that Act if the Act does not otherwise require compliance by the health care provider.

(j) A physician who in good faith makes a determination that an individual's disability is medically significant to the organ transplant, as described by Subsection (b), does not violate this section.

(k) A health care provider who in good faith makes a treatment recommendation or decision on the basis of a physician's determination that an individual's disability is medically significant to the organ transplant, as described by Subsection (b), does not violate this section.

Revisor's Note

Sections 161.473(j) and (k), Health and Safety Code, provide that certain good faith determinations that an individual's disability is medically significant to an organ transplant do not violate "this section." Although some provisions of Section 161.473 are revised elsewhere in this chapter, the revised law retains the reference to "this section" because the prohibition on discriminating against an individual based on the individual's disability is revised in this section.

Revised Law

Sec. 693A.103. ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITY. (a) A health care facility shall make reasonable modifications in policies, practices, or procedures as necessary to allow individuals with a disability to access organ

transplant-related services.

(b) Reasonable modifications in policies, practices, and procedures may include:

(1) communicating with persons supporting or assisting with the individual's postsurgical and post-transplant care, including medication; and

(2) considering the support available to the individual in determining whether the individual is able to reasonably comply with post-transplant medical requirements, including support provided by:

(A) family;

(B) friends; or

(C) home and community-based services, including home and community-based services funded by:

(i) Medicaid;

(ii) Medicare;

(iii) a health plan in which the individual is enrolled; or

(iv) any other program or source of funding available to the individual.

(c) A health care provider shall make reasonable efforts to:

(1) comply with the policies, practices, and procedures, as applicable, developed by a health care facility under Subsection (a), as necessary to allow an individual with a known disability access to organ transplant-related services; and

(2) provide auxiliary aids and services to an individual with a known disability seeking organ transplant-related services as necessary to allow the individual access to those services.

(d) Subsections (a) and (c) do not apply if a health care provider or health care facility can demonstrate that compliance with a requirement of this section would:

(1) fundamentally alter the nature of the organ transplant-related services; or

(2) impose an undue hardship on the provider or facility. (H&S Code, Secs. 161.473(d) (part), (e) (part), (f) (part).)

Source Law

(d) A health care facility shall make reasonable modifications in policies, practices, or procedures as necessary to allow individuals with a disability access to organ transplant-related services . . . unless the health care facility can demonstrate that making the modifications would fundamentally alter the nature of the services or would impose an undue hardship on the facility. Reasonable modifications in policies, practices, and procedures may include:

(1) communicating with persons supporting or assisting with the individual's postsurgical and post-transplant care, including medication; and

(2) considering the support available to the individual in determining whether the individual is able to reasonably comply with post-transplant medical requirements, including support provided by:

(A) family;

(B) friends; or

(C) home and community-based services, including home and community-based services funded by:

(i) Medicaid;

(ii) Medicare;

(iii) a health plan in which the individual is enrolled; or

(iv) any other program or source of funding available to the individual.

(e) A health care provider shall make reasonable efforts to comply with the policies, practices, and procedures, as applicable, developed by a health care facility under Subsection (d), as necessary to allow an individual with a known disability access to organ transplant-related services . . . unless the health care provider can demonstrate that compliance would fundamentally alter the nature of the services or would impose an undue hardship on the health care provider.

(f) A health care provider shall make reasonable efforts to provide auxiliary aids and services to an individual with a known disability seeking organ transplant-related services . . . as necessary to allow the individual access to those services, unless the health care provider can demonstrate that providing the transplant-related services with auxiliary aids and services present would fundamentally alter the transplant-related services provided or would impose an undue hardship on the health care provider.

Revisor's Note

Section 161.473(e), Health and Safety Code, refers to policies, practices, and procedures developed by a health care facility under "Subsection (d)" of Section 161.473 of this code to ensure

individuals with a disability have access to organ transplant-related services. The portion of Section 161.473(d) of this code related to a health care facility's reasonable modifications of policies, practices, or procedures to allow individuals with a disability access to those services is revised in this chapter as Section 693A.103(a), and the revised law is drafted accordingly.

Revised Law

Sec. 693A.104. DISCIPLINARY ACTION. (a) A violation of Section 693A.102 or 693A.103 is grounds for disciplinary action by the regulatory agency that issued a license, certificate, or other authority to a health care provider who committed the violation.

(b) Before a regulatory agency may take disciplinary action against a health care provider for a violation, the applicable regulatory agency must:

(1) notify the health care provider of the agency's finding that the health care provider has violated or is violating Section 693A.102 or 693A.103 or a rule adopted under Section 693A.102 or 693A.103; and

(2) provide the health care provider with an opportunity to correct the violation without penalty or reprimand. (H&S Code, Sec. 161.473(i).)

Source Law

(i) A violation of this section is grounds for disciplinary action by the regulatory agency that issued a license, certificate, or other authority to a health care provider who committed the violation. Before a regulatory agency may take disciplinary action against a health care provider for a violation, the applicable regulatory agency shall:

(1) notify the health care provider of the agency's finding that the health care provider has violated or is violating this section or a rule adopted under this section; and

(2) provide the health care provider with an opportunity to correct the violation without penalty or reprimand.

Revisor's Note

Section 161.473(i), Health and Safety Code,

provides that a violation of "this section" is grounds for disciplinary action. The provisions of Section 161.473 of this code relating to prohibited discrimination against individuals with a disability and required accommodations for those individuals are revised in this chapter as Sections 693A.102 and 693A.103, and the revised law is drafted accordingly.

Revised Law

Sec. 693A.105. PROHIBITED DISCRIMINATION BASED ON VACCINATION STATUS. (a) A health care provider may not, solely on the basis of an individual's vaccination status:

(1) determine an individual is ineligible to receive an organ transplant;

(2) deny medical or other services related to an organ transplant, including evaluation, surgery, counseling, and postoperative treatment;

(3) refuse to refer the individual to a transplant center or other related specialist for evaluation or receipt of an organ transplant; or

(4) refuse to place the individual on an organ transplant waiting list or place the individual at a position lower in priority on the list than the position the individual would have been placed if not for the individual's vaccination status.

(b) Notwithstanding Subsection (a), a health care provider may consider an individual's vaccination status when making a treatment recommendation or decision solely to the extent that a physician, following an individualized evaluation of the potential transplant recipient, determines the vaccination status is medically significant to the organ transplant.

(c) A physician who in good faith determines an individual's vaccination status is medically significant to the organ transplant, as described by Subsection (b), does not violate this section.

(d) A person may not take an adverse action or impose a

penalty of any kind against a health care provider based solely on the fact that the health care provider complied with Subsection (a).

(e) A health care provider may:

(1) develop alternative risk mitigation strategies, including antibody testing, prophylactic treatments, and antiviral therapy, in lieu of requiring a vaccination; and

(2) inform patients of the risks and benefits of receiving a vaccination. (H&S Code, Secs. 161.474(a), (b) (part), (d), (e), (f).)

Source Law

> Sec. 161.474. DISCRIMINATION ON BASIS OF VACCINATION STATUS PROHIBITED. (a) A health care provider may not, solely on the basis of an individual's vaccination status:
>
> (1) determine an individual is ineligible to receive an organ transplant;
>
> (2) deny medical or other services related to an organ transplant, including evaluation, surgery, counseling, and postoperative treatment;
>
> (3) refuse to refer the individual to a transplant center or other related specialist for evaluation or receipt of an organ transplant; or
>
> (4) refuse to place the individual on an organ transplant waiting list or place the individual at a position lower in priority on the list than the position the individual would have been placed if not for the individual's vaccination status.
>
> (b) Notwithstanding Subsection (a), a health care provider may consider an individual's vaccination status when making a treatment recommendation or decision solely to the extent that a physician, following an individualized evaluation of the potential transplant recipient, determines the vaccination status is medically significant to the organ transplant. . . .
>
> (d) A person may not take an adverse action or impose a penalty of any kind against a health care provider based solely on the fact that the health care provider complied with Subsection (a).
>
> (e) A physician who in good faith makes a determination that an individual's vaccination status is medically significant to the organ transplant, as described by Subsection (b), does not violate this section.
>
> (f) A health care provider may:
>
> (1) develop alternative risk mitigation strategies, including antibody testing, prophylactic treatments, and antiviral therapy, in lieu of requiring a vaccination; and
>
> (2) inform patients of the risks and benefits of receiving a vaccination.

Revisor's Note

Section 161.474(e), Health and Safety Code, refers to a physician who in good faith determines an individual's vaccination status is medically significant to an organ transplant as described by "Subsection (b)" of Section 161.474 of this code. The portion of Subsection (b) related to determining whether an individual's vaccination status is medically significant to an organ transplant is revised in this chapter as Section 693A.105(b), and the revised law is drafted accordingly.