

HEALTH AND SAFETY CODE

TITLE 2. HEALTH

SUBTITLE B. HEALTH PROGRAMS

CHAPTER 36. SPECIAL SENSES AND COMMUNICATION DISORDERS

Sec. 36.001. SHORT TITLE. This chapter may be cited as the Special Senses and Communication Disorders Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 36.002. PURPOSE. (a) The purpose of this chapter is to establish a program to identify, at as early an age as possible, those individuals from birth through 20 years of age who have special senses and communication disorders and who need remedial vision, hearing, speech, and language services. Early detection and remediation of those disorders provide the individuals with the opportunity to reach academic and social status through adequate educational planning and training.

(b) This chapter shall be implemented in accordance with the provisions of professional license laws that pertain to professional examinations and remedial services for individuals with special senses and communication disorders.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 36.003. DEFINITIONS. In this chapter:

(1) "Communication disorder" means an abnormality of functioning related to the ability to express and receive ideas.

(2) "Other benefit" means a benefit, other than a benefit under this chapter, to which an individual is entitled for payment of the costs of remedial services, and includes:

(A) benefits received under a personal insurance contract;

(B) payments received from another person for personal injury caused by the other person's negligence or wrongdoing; and

(C) payments received from any other source.

(3) "Preschool" means an educational or child-care institution that admits children who are three years of age or older

but younger than five years of age.

(4) "Professional examination" means a diagnostic evaluation performed by an appropriately licensed professional or, if the professional is not required to be licensed under the laws of this state, by a certified or sanctioned individual whose area of expertise addresses the diagnostic needs of an individual identified as having a possible special senses or communication disorder.

(5) "Provider" means a person who provides remedial services to individuals who have special senses and communication disorders, and includes a physician, audiologist, speech pathologist, optometrist, psychologist, hospital, clinic, rehabilitation center, university, or medical school.

(6) "Remedial services" means professional examinations and prescribed remediation, including prosthetic devices, for individuals with special senses or communication disorders.

(7) "School" means an educational institution that admits children who are five years of age or older but younger than 21 years of age.

(8) "Screening" means a test or battery of tests administered to rapidly determine the need for a professional examination.

(9) "Special senses" means the faculties by which the conditions or properties of things are perceived, and includes vision and hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 36.004. SCREENING PROGRAM FOR SPECIAL SENSES AND COMMUNICATION DISORDERS. (a) The executive commissioner by rule shall require screening of individuals who attend public or private preschools or schools to detect vision and hearing disorders and any other special senses or communication disorders specified by the executive commissioner. In developing the rules, the executive commissioner may consider the number of individuals to be screened and the availability of:

(1) personnel qualified to administer the required

screening;

(2) appropriate screening equipment; and

(3) state and local funds for screening activities.

(b) The rules must include procedures necessary to administer screening activities.

(b-1) The rules must allow an individual who attends a public or private school to be screened using photoscreening to detect vision disorders.

(c) The executive commissioner shall adopt a schedule for implementing the screening requirements and shall give priority to the age groups that may derive the greatest educational and social benefits from early identification of special senses and communication disorders.

(d) The rules must provide for acceptance of results of screening conducted by a licensed professional, regardless of whether that professional is under contract with the department, if:

(1) the professional's legally defined scope of practice includes the area for which the screening is conducted; and

(2) the professional uses acceptable procedures for the screening.

(e) The department may coordinate the special senses and communication disorders screening activities of school districts, private schools, state agencies, volunteer organizations, and other entities so that the efforts of each entity are complementary and not fragmented and duplicative. The department may provide technical assistance to those entities in developing screening programs and may provide educational and other material to assist local screening activities.

(f) The department may provide screening personnel, equipment, and services only if the screening requirements cannot otherwise be met.

(g) The department shall monitor the quality of screening activities provided under this chapter.

(h) This section does not prohibit a volunteer from participating in the department's screening programs.

(i) A hearing screening performed under this section is in addition to any hearing screening test performed under Chapter 47. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1347, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0120, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 363 (H.B. 3157), Sec. 1, eff. September 1, 2017.

Sec. 36.005. COMPLIANCE WITH SCREENING REQUIREMENTS.

(a) An individual required to be screened shall undergo approved screening for vision and hearing disorders and any other special senses and communication disorders specified by the executive commissioner. The individual shall comply with the requirements as soon as possible after the individual's admission to a preschool or school and within the period set by the executive commissioner. The individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian, may substitute professional examinations for the screening.

(b) An individual is exempt from screening if screening conflicts with the tenets and practices of a recognized church or religious denomination of which the individual is an adherent or a member. To qualify for the exemption, the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian, must submit to the admitting officer of the preschool or school on or before the day of admission an affidavit stating the objections to screening.

(c) The chief administrator of each preschool or school shall ensure that each individual admitted to the preschool or school complies with the screening requirements set by the executive commissioner or submits an affidavit of exemption.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0121, eff. April 2, 2015.

Sec. 36.006. RECORDS; REPORTS. (a) The chief administrator of each preschool or school shall maintain, on a form prescribed by the department in accordance with department rules, screening records for each individual in attendance, and the records are open for inspection by the department or the local health department.

(b) The department may, directly or through local health departments, enter a preschool or school and inspect records maintained by the preschool or school relating to screening for special senses and communication disorders.

(c) An individual's screening records may be transferred among preschools and schools without the consent of the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian.

(d) Each preschool or school shall submit to the department an annual report on the screening status of the individuals in attendance during the reporting year and shall include in the report any other information required by the executive commissioner. The report must be on a form prescribed by the department in accordance with department rules and must be submitted according to the rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0122, eff. April 2, 2015.

Sec. 36.007. PROVISION OF REMEDIAL SERVICES. (a) The department may provide remedial services directly or through approved providers to eligible individuals who have certain special senses and communication disorders and who are not eligible for special education services that remediate those disorders and that are administered by the Texas Education Agency through the public schools.

(b) The executive commissioner by rule shall:

(1) describe the type, amount, and duration of remedial services that the department provides;

(2) establish medical, financial, and other criteria

to be applied by the department in determining an individual's eligibility for the services;

(3) establish criteria for the selection by the department of providers of remedial services; and

(4) establish procedures necessary to provide remedial services.

(c) The executive commissioner may establish a schedule to determine financial eligibility.

(d) The department may not require remedial services without the consent of the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.34, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0123, eff. April 2, 2015.

Sec. 36.008. INDIVIDUALS ELIGIBLE FOR REMEDIAL SERVICES.

(a) An individual is not eligible to receive the remedial services authorized by this chapter to the extent that the individual or the parent, managing conservator, or other person with a legal obligation to support the individual is eligible for some other benefit that would pay for all or part of the services.

(b) The department may waive ineligibility under Subsection (a) if the department finds that:

(1) good cause for the waiver is shown; and

(2) enforcement of the requirement would tend to defeat the purpose of this chapter or disrupt the administration or prevent the provision of remedial services to an otherwise eligible recipient.

(c) When an application for remedial services is filed or at any time that an individual is eligible for and receiving remedial services, the applicant or recipient shall inform the department of any other benefit to which the applicant, recipient, or person with a legal obligation to support the applicant or recipient may be entitled.

(d) The department may modify, suspend, or terminate the

eligibility of an applicant for or recipient of remedial services after notice to the affected individual and an opportunity for a fair hearing that is conducted in accordance with the department's informal hearing rules.

(e) The executive commissioner by rule shall provide criteria for actions taken under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0124, eff. April 2, 2015.

Sec. 36.009. REIMBURSEMENT. (a) The executive commissioner may require an individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian, to pay or reimburse the department for a part of the cost of the remedial services provided.

(b) The recipient or the parent, managing conservator, or other person with a legal obligation to support an individual who has received remedial services from the department that are covered by some other benefit shall, when the other benefit is received, reimburse the department for the cost of services provided.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0125, eff. April 2, 2015.

Sec. 36.010. RECOVERY OF COSTS. (a) The department is entitled to recover an expenditure for services provided under this chapter from:

(1) a person who does not reimburse the department as required by this chapter; or

(2) a third party with a legal obligation to pay other benefits and who has notice of the department's interests in the other benefits.

(b) The commissioner may request the attorney general to bring suit in the appropriate court of Travis County on behalf of the department. A suit brought under this section need not be

ancillary or dependent on any other action.

(c) In a judgment in favor of the department, the court may award attorney's fees, court costs, and interest accruing from the date on which the department provides the service to the date on which the department is reimbursed.

(d) The executive commissioner by rule shall provide criteria for actions taken under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0126, eff. April 2, 2015.

Sec. 36.011. QUALIFICATIONS OF PERSONS PROVIDING SCREENING AND REMEDIAL SERVICES. (a) The department in accordance with department rules may require that persons who administer special senses and communication disorders screening complete an approved training program, and the department may train those persons and approve training programs.

(b) A person who provides speech and language screening services authorized by this chapter must be:

(1) appropriately licensed; or

(2) trained and monitored by a person who is appropriately licensed.

(c) A person who is not an appropriately licensed professional may not conduct hearing screening authorized by this chapter other than screening of hearing sensitivity. The person shall refer an individual who is unable to respond reliably to that screening to an appropriately licensed professional.

(d) A person who provides a professional examination or remedial services authorized by this chapter for speech, language, or hearing disorders must be appropriately licensed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0127, eff. April 2, 2015.

Sec. 36.012. RESEARCH. (a) The department may conduct

research and compile statistics on the provision of remedial services to individuals with special senses and communication disorders and on the availability of those services in the state.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(80), eff. June 17, 2011.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 7, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(2), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(80), eff. June 17, 2011.

Sec. 36.013. FUNDING. The department may accept appropriations, donations, and reimbursements, including donations of prosthetic devices, and may apply those items to the purposes of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 36.014. CONTRACTS. The department may enter into contracts and agreements necessary to administer this chapter, including contracts for the purchase of remedial services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.